

**Representative Brent H. Goodfellow** proposes to substitute the following bill:

**DISEASE TESTING AMENDMENTS**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Brent H. Goodfellow**

AN ACT RELATING TO DISEASE TESTING FOR EMERGENCY MEDICAL SERVICES PROVIDERS; REQUIRING CERTAIN PERSONS TO SUBMIT TO AN IMMEDIATE WITHDRAWAL OF BLOOD BASED UPON THE EMS PROVIDER'S DETERMINATION OF PROBABLE CAUSE; REQUIRING COURT ORDER FOR SUBSEQUENT TESTING OF THAT BLOOD; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**26-6a-2**, as last amended by Chapter 137, Laws of Utah 1999

**26-6a-5**, as last amended by Chapter 137, Laws of Utah 1999

**78-29-102**, as last amended by Chapter 137, Laws of Utah 1999

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **26-6a-2** is amended to read:

**26-6a-2. Emergency medical services provider's significant exposure -- Documentation -- Request for testing -- Refusal or consent.**

(1) Whenever an emergency medical services provider has a significant exposure in the process of caring for a patient, he shall document that exposure. That documentation shall be in writing, on forms approved by the department, and in the manner and time designated by the department.

(2) (a) Upon notification of a significant exposure, or upon receipt of the documentation described in Subsection (1), the hospital, health care facility, or other facility that receives the patient or individual shall request that he consent to testing of his blood to determine the presence

26 of any disease as defined in Section 26-6a-1. The patient shall be informed that he may refuse to  
27 consent to the test and, if he refuses, the fact of his refusal will be forwarded to the designated  
28 agent and to the department, and the emergency medical services provider may seek a court order,  
29 pursuant to Section 78-29-102, requiring the patient to undergo testing, or may require that blood  
30 be drawn immediately for subsequent testing pursuant to Subsections (2)(c)(ii) and (d). The  
31 designated agent shall forward that information to the emergency medical services provider. The  
32 right to refuse a blood test under the circumstances described in this section does not apply to an  
33 individual who has been convicted of a crime and is in the custody or under the jurisdiction of the  
34 Department of Corrections, or to any person who is otherwise legally required to submit to testing.

35 (b) If consent is given, the facility shall obtain and test, or provide for testing of, the  
36 patient's blood to determine the presence of any disease, in accordance with the provisions of this  
37 chapter.

38 (c) If consent is not given, the emergency medical services provider may:

39 (i) petition the district court for an order requiring the patient to submit to testing, pursuant  
40 to Section 78-29-102[-]; or

41 (ii) require that the individual's blood be drawn immediately, without consent, for  
42 subsequent testing in accordance with Subsection (d), if the emergency medical services provider  
43 determines, using an objective standard, that there is probable cause to believe that the individual  
44 will flee, conceal himself, or that it will not be possible to locate that individual for testing at a  
45 future date.

46 (d) An emergency medical services provider who requires that blood be drawn pursuant  
47 to Subsection (c)(ii) may petition the district court for an order requiring that the blood be tested  
48 pursuant to the provisions and requirements of Section 78-29-102.

49 Section 2. Section **26-6a-5** is amended to read:

50 **26-6a-5. Reporting of test results.**

51 (1) (a) Results of tests conducted under this chapter shall be reported by the facility that  
52 conducted the test to specified officials of the department and to a designated agent of the  
53 emergency medical services agency that employs or utilizes the emergency medical services  
54 provider who reported the significant exposure.

55 (b) In the case of tests for AIDS or Human Immunodeficiency Virus infection, the State  
56 Health Laboratory shall report test results to specified officials in the department, and those

57 officials shall report the test results to the appropriate emergency medical services agency's  
58 designated agent.

59 (c) The designated agent shall report the results of tests conducted under this chapter to  
60 the appropriate emergency medical services provider.

61 (d) The facility that receives a patient shall inform the patient of test results for all tests  
62 conducted under this chapter except tests for AIDS and Human Immunodeficiency Virus infection.  
63 Results of tests for AIDS and Human Immunodeficiency Virus infection shall be reported to the  
64 patient by the department or its designee, in accordance with Section 26-6a-8.

65 (2) In making a report to a designated agent under this chapter, the facility that conducted  
66 the test shall, or in the case of a test for AIDS or Human Immunodeficiency Virus infection the  
67 department shall, use a case number instead of the patient's name.

68 (3) In making a report to the emergency medical services provider who requested the test,  
69 the designated agent shall use a case number instead of a patient's name.

70 (4) The reporting requirements of this section do not apply to court-ordered testing  
71 conducted pursuant to Title 78, Chapter 29.

72 Section 3. Section **78-29-102** is amended to read:

73 **78-29-102. Petition -- HIV testing -- Notice -- Payment of testing.**

74 (1) An emergency medical services provider, or first aid volunteer who is significantly  
75 exposed during the course of performing the emergency medical services provider's duties or  
76 during the course of performing emergency assistance or first aid may:

77 (a) request that the person to whom he was significantly exposed voluntarily submit to  
78 testing pursuant to Title 26, Chapter 6a; or

79 (b) petition the district court for an order requiring that the person to whom he was  
80 significantly exposed submit to testing or that blood which was drawn pursuant to the provisions  
81 of Subsection 26-6a-2(c)(ii) be tested, to determine the presence of a disease, as defined in Section  
82 78-29-101, and that the results of that test be disclosed to the petitioner by the Department of  
83 Health.

84 (2) (a) The petitioner shall file a petition with the district court seeking an order [~~to submit~~]  
85 [~~to~~] for testing and [~~to disclose~~] disclosure of the results in accordance with the provisions of this  
86 section.

87 (b) The petition shall be sealed upon filing and made accessible only to the petitioner, the

88 subject of the petition, and their attorneys, upon court order.

89 (3) (a) The petition described in Subsection (2) shall be accompanied by:

90 (i) the documentation required under Subsection 26-6a-2(1); or

91 (ii) an affidavit in which the emergency medical services provider or first aid volunteer  
92 certifies that he has been significantly exposed to the individual who is the subject of the petition  
93 and describes that exposure.

94 (b) The petitioner shall submit to testing to determine the presence of a disease, when the  
95 petition is filed or within ten days after the petition is filed.

96 (4) The petitioner shall cause the petition required under this section to be served on the  
97 person who the petitioner is requesting to be tested, or whose blood will be tested, in a manner that  
98 will best preserve the confidentiality of that person.

99 (5) (a) The court shall set a time for a hearing on the matter within 20 days after the  
100 petition is filed and shall give the petitioner and the individual who is the subject of the petition  
101 notice of the hearing at least 72 hours prior to the hearing.

102 (b) The individual who is the subject of the petition shall also be notified that he may have  
103 an attorney present at the hearing, and that his attorney may examine and cross-examine witnesses.

104 (c) The hearing shall be conducted in camera.

105 (6) The district court may enter an order requiring that an individual submit to testing or  
106 that his blood be tested for a disease if the court finds probable cause to believe:

107 (a) the petitioner was significantly exposed; and

108 (b) the exposure occurred during the course of the emergency medical services provider's  
109 duties, or the provision of emergency assistance or first aid by a first aid volunteer.

110 (7) The court may order that additional, follow-up testing be conducted, and that the  
111 individual submit to that testing, as it determines to be necessary and appropriate.

112 (8) The court is not required to order an individual to submit to a test or that blood be  
113 tested under this section if it finds that there is a substantial reason, relating to the life or health of  
114 the individual, not to enter the order.

115 (9) (a) Upon order of the district court that a person submit to testing for a disease, that  
116 person shall report to the designated local health department to have his blood drawn within ten  
117 days from the issuance of the order, and thereafter as designated by the court, or be held in  
118 contempt of court.

119 (b) The court shall send the order to the Department of Health and to the local health  
120 department ordered to draw the blood.

121 (c) Notwithstanding the provisions of Title 26, Chapter 6a, or of Section 26-6-27, the  
122 Department of Health and a local health department may disclose the test results pursuant to a  
123 court order as provided in this section.

124 (d) Under this section, anonymous testing as provided under Section 26-6-3.5 or under  
125 Title 26, Chapter 6a, shall not satisfy the requirements of the court order.

126 (10) The local health department or the Department of Health shall inform the subject of  
127 the petition and the petitioner of the results of the test and advise both parties that the test results  
128 are confidential. That information shall be maintained as confidential by all parties to the action.

129 (11) The court, its personnel, the process server, the Department of Health, local health  
130 department, and petitioner shall maintain confidentiality of the name and any other identifying  
131 information regarding the individual tested and the results of the test as they relate to that  
132 individual, except as specifically authorized by this chapter or by Title 26, Chapter 6a.

133 (12) (a) Except as provided in Subsection (12)(b), the petitioner shall remit payment for  
134 the drawing of the blood specimen and the analysis of the specimen for the mandatory disease  
135 testing to the entity that draws the blood.

136 (b) If the petitioner is an emergency medical services provider, the agency which employs  
137 the emergency medical services provider shall remit payment for the drawing of the blood  
138 specimen and the analysis of the specimen for the mandatory disease testing to the entity that  
139 draws the blood.

140 (13) The entity that draws the blood shall cause the blood and the payment for the analysis  
141 of the specimen to be delivered to the Department of Health for analysis.

142 (14) If the individual is incarcerated, the incarcerating authority shall either draw the blood  
143 specimen or shall pay the expenses of having the individual's blood drawn.