

**DISEASE TESTING OF INDIVIDUALS
EXPOSED TO BLOOD BORNE PATHOGENS**

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrice M. Arent

House Sponsor: David Litvack

LONG TITLE

General Description:

This bill amends and repeals certain provisions in the Health Code, the Judicial Code, and the Labor Code regarding disease testing for blood borne pathogens.

Highlighted Provisions:

This bill:

- ▶ repeals provisions in the Health Code regarding workplace testing for exposure to blood pathogens;
- ▶ moves provisions from the Health Code to the Labor Code regarding worker's compensation presumption for emergency medical services providers;
- ▶ amends provisions in the Judicial Code regarding court-ordered disease testing for at risk public safety officers;
- ▶ adds Hepatitis C to the definition of disease for purposes of disease testing and the presumptions for workers' compensation; and
- ▶ makes technical amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-3-11, as enacted by Chapter 201, Laws of Utah 1996

78-29-101, as last amended by Chapters 137 and 141, Laws of Utah 1999

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

78-29-103, as enacted by Chapter 137, Laws of Utah 1999

ENACTS:

78-29-104, Utah Code Annotated 1953

78-29-105, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

34A-2-901, (Renumbered from 26-6a-10, as last amended by Chapter 137, Laws of Utah 1999)

34A-2-902, (Renumbered from 26-6a-11, as last amended by Chapter 137, Laws of Utah 1999)

34A-2-903, (Renumbered from 26-6a-12, as last amended by Chapter 375, Laws of Utah 1997)

34A-2-904, (Renumbered from 26-6a-13, as last amended by Chapter 375, Laws of Utah 1997)

34A-2-905, (Renumbered from 26-6a-14, as last amended by Chapter 375, Laws of Utah 1997)

REPEALS:

26-6a-1, as last amended by Chapters 137 and 141, Laws of Utah 1999

26-6a-1.5, as enacted by Chapter 137, Laws of Utah 1999

26-6a-2, as last amended by Chapter 86, Laws of Utah 2000

26-6a-3, as last amended by Chapter 137, Laws of Utah 1999

26-6a-4, as last amended by Chapter 79, Laws of Utah 1996

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

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

26-6a-7, as last amended by Chapter 137, Laws of Utah 1999

26-6a-8, as last amended by Chapter 137, Laws of Utah 1999

26-6a-9, as last amended by Chapter 137, Laws of Utah 1999

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

Section 1. Section **26-3-11** is amended to read:

26-3-11. Relation to other chapters.

Because Chapters 2, 4, 6, [~~6a~~] and 33a contain specific provisions regarding collection and disclosure of data, the provisions of this chapter do not apply to data subject to those chapters.

Section 2. Section **34A-2-901**, which is renumbered from Section 26-6a-10 is renumbered and amended to read:

Part 9. Presumptions For Emergency Medical Services Providers

~~[26-6a-10].~~ **34A-2-901. Workers' compensation presumption for emergency medical services providers.**

(1) An emergency medical services provider who claims to have contracted a disease, as defined by [~~Sections 26-6a-1 and~~] Section 78-29-101, as a result of a significant exposure in the performance of his duties as an emergency medical services provider, is presumed to have contracted the disease by accident during the course of his duties as an emergency medical services provider if:

(a) his employment or service as an emergency medical services provider in this state commenced prior to July 1, 1988, and he tests positive for a disease during the tenure of his employment or service, or within three months after termination of his employment or service; or

(b) the individual's employment or service as an emergency medical services provider in this state commenced on or after July 1, 1988, and he tests negative for any disease at the time his employment or service commenced, and again three months later, and he subsequently tests positive during the tenure of his employment or service, or within three months after termination of his employment or service.

(2) Each emergency medical services agency shall inform the emergency medical services providers that it employs or utilizes of the provisions and benefits of this section at commencement of and termination of employment or service.

Section 3. Section **34A-2-902**, which is renumbered from Section 26-6a-11 is renumbered and amended to read:

~~[26-6a-11].~~ **34A-2-902. Workers' compensation claims by emergency medical services providers -- Time limits.**

(1) For all purposes of establishing a workers' compensation claim, the "date of accident" is presumed to be the date on which an emergency medical services provider first tests positive for a disease, as defined in ~~[Sections 26-6a-1 and]~~ Section 78-29-101. However, for purposes of establishing the rate of workers' compensation benefits under Subsection 34A-2-702(5), if a positive test for a disease occurs within three months after termination of employment, the last date of employment is presumed to be the "date of accident."

(2) The time limits prescribed by Section 34A-2-417 do not apply to an employee whose disability is due to a disease, so long as the employee who claims to have suffered a significant exposure in the service of his employer gives notice, as required by Section 34A-3-108, of the "date of accident."

(3) Any claim for workers' compensation benefits or medical expenses shall be filed with the Division of Adjudication of the Labor Commission within one year after the date on which the employee first becomes disabled or requires medical treatment for a disease, or within one year after the termination of employment as an emergency medical services provider, whichever occurs later.

Section 4. Section **34A-2-903**, which is renumbered from Section 26-6a-12 is renumbered and amended to read:

~~[26-6a-12].~~ **34A-2-903. Failure to be tested -- Time limit for death benefits.**

(1) An emergency medical services provider who refuses or fails to be tested in accordance with Section ~~[26-6a-10]~~ 34A-2-901 is not entitled to any of the presumptions provided by ~~[Sections 26-6a-10 through 26-6a-14]~~ this part.

(2) Death benefits payable under Section 34A-2-702 are payable only if it can be established by competent evidence that death was a consequence of or result of the disease and, notwithstanding Subsection 34A-2-702(5), that death occurred within six years from the date the

employee first became disabled or required medical treatment for the disease that caused his death.

Section 5. Section **34A-2-904**, which is renumbered from Section 26-6a-13 is renumbered and amended to read:

[~~26-6a-13~~]. 34A-2-904. Volunteer emergency medical services providers -- Workers' compensation premiums.

(1) For purposes of receiving workers' compensation benefits, any person performing the services of an emergency medical services provider is considered an employee of the entity for whom it provides those services.

(2) (a) With regard to emergency medical services providers who perform those services for minimal or no compensation on a volunteer basis, and who are primarily employed other than as emergency medical services providers, the amount of workers' compensation benefits shall be based on that primary employment. Any excess premiums necessary for workers' compensation shall be paid by the entity that utilized that individual as an emergency medical services provider.

(b) With regard to emergency medical services providers who perform those services for minimal or no compensation or on a volunteer basis, and who have no other employment, the amount of workers' compensation benefits shall be the minimum benefit. Any premium necessary for workers' compensation shall be paid by the entity that utilizes that individual as an emergency medical services provider.

(3) Workers' compensation benefits are the exclusive remedy for all injuries and occupational diseases, as provided by Title 34A, Chapters 2 and 3. However, emergency medical services providers described in Subsection (2) are not precluded from utilizing insurance benefits provided by a primary employer, or any other insurance benefits, in addition to workers' compensation benefits.

Section 6. Section **34A-2-905**, which is renumbered from Section 26-6a-14 is renumbered and amended to read:

[~~26-6a-14~~]. 34A-2-905. Rulemaking authority -- Rebuttable presumption.

(1) The Labor Commission has authority to establish rules necessary for the purposes of

[Sections 26-6a-10 through 26-6a-13] this part.

(2) The presumption provided by [Sections 26-6a-10 through 26-6a-14] this part is a rebuttable presumption.

Section 7. Section **78-29-101** is amended to read:

78-29-101. Definitions.

For purposes of this chapter:

(1) "Blood or contaminated body fluids" includes blood, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and vaginal secretions, and any body fluid visibly contaminated with blood.

(2) "Disease" means ~~[the same as that term is defined in Section 26-6a-1]~~ Human Immunodeficiency Virus infection, acute or chronic Hepatitis B infection, Hepatitis C infection, and any other infectious disease specifically designated by the Labor Commission in consultation with the Department of Health for the purposes of this chapter.

(3) "Emergency medical services provider" means an individual certified under Section 26-8a-302, a public safety officer, local fire department personnel, or personnel employed by the Department of Corrections or by a county jail, who provide prehospital emergency medical care for an emergency medical services provider either as an employee or as a volunteer.

(4) "First aid volunteer" means a person who provides voluntary emergency assistance or first aid medical care to an injured person prior to the arrival of an emergency medical services provider or public safety officer.

(5) "Public safety officer" means a peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications.

(6) "Significant exposure" and "significantly exposed" mean ~~[the same as the term "significant exposure" is defined in Section 26-6a-1.];~~

(a) exposure of the body of one person to the blood or body fluids of another person by:

(i) percutaneous injury, including a needle stick or cut with a sharp object or instrument;

or

(ii) contact with an open wound, mucous membrane, or nonintact skin because of a cut,

abrasion, dermatitis, or other damage; or

(b) exposure that occurs by any other method of transmission defined by the Department of Health as a significant exposure.

Section 8. Section **78-29-102** is amended to read:

78-29-102. Petition -- Disease testing -- Notice -- Payment for testing.

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

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

(b) petition the district court for an order requiring that the person to whom he was significantly exposed submit to testing to determine the presence of a disease, as defined in Section 78-29-101, and that the results of that test be disclosed to the petitioner by the Department of Health.

(2) (a) The petitioner shall file a petition with the district court seeking an order to submit to testing and to disclose the results in accordance with the provisions of this section.

(b) The petition shall be sealed upon filing and made accessible only to the petitioner, the subject of the petition, and their attorneys, upon court order.

(3) (a) The petition described in Subsection (2) shall be accompanied by [~~(i) the documentation required under Subsection 26-6a-2(1); or (ii)~~] an affidavit in which the emergency medical services provider or first aid volunteer certifies that he has been significantly exposed to the individual who is the subject of the petition and describes that exposure.

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

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

(5) (a) The court shall set a time for a hearing on the matter within [~~20~~] ten days after the

petition is filed and shall give the petitioner and the individual who is the subject of the petition notice of the hearing at least 72 hours prior to the hearing.

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

(c) The hearing shall be conducted in camera.

(6) The district court may enter an order requiring that an individual submit to testing for a disease if the court finds probable cause to believe:

(a) the petitioner was significantly exposed; and

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

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

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

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

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

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

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

(10) The local health department or the Department of Health shall inform the subject of

the petition and the petitioner of the results of the test and advise both parties that the test results are confidential. That information shall be maintained as confidential by all parties to the action.

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

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

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

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

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

Section 9. Section **78-29-103** is amended to read:

78-29-103. Confidentiality -- Disclosure -- Penalty.

Any person or entity entitled to receive confidential information under this chapter, other than the individual tested and identified in the information, who violates the provisions of this chapter by releasing or making public that confidential information, or by otherwise breaching the confidentiality requirements of this chapter, is guilty of a class B misdemeanor[~~, unless the information is otherwise released or provided pursuant to the provisions of Title 26, Chapter 6a~~].

Section 10. Section **78-29-104** is enacted to read:

78-29-104. Department authority -- Rules.

The Labor Commission in consultation with the Department of Health has authority to establish rules necessary for the purposes of Subsections 78-29-101(2) and (6).

Section 11. Section **78-29-105** is enacted to read:

78-29-105. Construction.

Nothing in this chapter may be construed as prohibiting:

- (1) a person from voluntarily consenting to the request of a health care provider, as defined in Section 78-14-3, to submit to testing following a significant exposure; or
- (2) a court from considering the petition of a health care provider for an order requiring that a person submit to testing to determine the presence of a disease if a significant exposure has occurred in connection with the health care provider's treatment of that person.

Section 12. **Repealer.**

This bill repeals:

Section **26-6a-1, Definitions.**

Section **26-6a-1.5, Emergency medical services provider -- Choice of action.**

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

Section **26-6a-3, Unconscious or incapable patient -- Testing -- Death of patient.**

Section **26-6a-4, Authority for testing -- Responsibility for costs.**

Section **26-6a-5, Reporting of test results.**

Section **26-6a-6, Confidentiality of information concerning test results -- Exceptions.**

Section **26-6a-7, Violation of confidentiality requirements -- Penalty.**

Section **26-6a-8, Patient notification and counseling.**

Section **26-6a-9, Department authority -- Rules.**