

**POST-EXPOSURE BLOOD TESTING AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Edward H. Redd**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill allows an emergency service provider to request a blood sample if significantly exposed to a person's bodily fluids in the course of performing the provider's duties.

**Highlighted Provisions:**

This bill:

- ▶ allows an emergency service provider to request a court order authorizing a blood sample from an individual if, during the course of performing the provider's duties, the provider is significantly exposed to the individual's bodily fluids.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78B-8-402**, as last amended by Laws of Utah 2013, Chapter 114

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

Section 1. Section **78B-8-402** is amended to read:

**78B-8-402. Petition -- Disease testing -- Notice -- Payment for testing.**



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

31 (a) request that the person to whom the emergency services provider or first aid  
32 volunteer was significantly exposed voluntarily submit to testing; or

33 (b) petition the district court or a magistrate for an order requiring that the person to  
34 whom the emergency services provider or first aid volunteer was significantly exposed submit  
35 to testing to determine the presence of a disease, as defined in Section 78B-8-401, and that the  
36 results of that test be disclosed to the petitioner by the Department of Health.

37 (2) (a) The petitioner may submit by electronic or other means an ex parte request for  
38 an order authorizing a blood draw from the respondent.

39 (b) If the court finds that, on the basis of the information in the ex parte request, the  
40 petitioner was significantly exposed during the course of performing the petitioner's duties as  
41 an emergency services provider or first aid volunteer and that there is a reasonable likelihood  
42 that there will not be an opportunity to obtain a sample at a later date, the court shall issue an  
43 order authorizing the petitioner to obtain a specimen of the person's blood, using reasonable  
44 force, if necessary.

45 (c) Depending upon the location of the respondent, the petitioner shall request a person  
46 authorized under Section 41-6a-523 to perform the blood draw.

47 (d) A sample drawn in accordance with an order following an ex parte request shall be  
48 sent to the Department of Health for testing.

49 ~~[(2)]~~ (3) (a) [The] If a petitioner does not seek or obtain authorization pursuant to  
50 Subsection (2), the petitioner [shall] may file a petition with the district court seeking an order  
51 to submit to testing and to disclose the results in accordance with the provisions of this section.

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

54 ~~[(3)]~~ (4) (a) The petition described in Subsection ~~[(2)]~~ (3) shall be accompanied by an  
55 affidavit in which the petitioner certifies that the petitioner has been significantly exposed to  
56 the individual who is the subject of the petition and describes that exposure.

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

59           ~~[(4)]~~ (5) The petitioner shall cause the petition required under this section to be served  
60 on the person who the petitioner is requesting to be tested in a manner that will best preserve  
61 the confidentiality of that person.

62           ~~[(5)]~~ (6) (a) The court shall set a time for a hearing on the matter within 10 days after  
63 the petition is filed and shall give the petitioner and the individual who is the subject of the  
64 petition notice of the hearing at least 72 hours prior to the hearing.

65           (b) The individual who is the subject of the petition shall also be notified that the  
66 individual may have an attorney present at the hearing and that the individual's attorney may  
67 examine and cross-examine witnesses.

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

69           ~~[(6)]~~ (7) The district court may enter an order requiring that an individual submit to  
70 testing, including blood testing, for a disease if the court finds probable cause to believe:

71           (a) the petitioner was significantly exposed; and

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

74           ~~[(7)]~~ (8) The court may order that the blood specimen be obtained by the use of  
75 reasonable force if the individual who is the subject of the petition is a prisoner.

76           ~~[(8)]~~ (9) The court may order that additional, follow-up testing be conducted and that  
77 the individual submit to that testing, as it determines to be necessary and appropriate.

78           ~~[(9)]~~ (10) The court is not required to order an individual to submit to a test under this  
79 section if it finds that there is a substantial reason, relating to the life or health of the  
80 individual, not to enter the order.

81           ~~[(10)]~~ (11) (a) Upon order of the district court that a person submit to testing for a  
82 disease, that person shall report to the designated local health department to have the person's  
83 blood drawn within 10 days from the issuance of the order, and thereafter as designated by the  
84 court, or be held in contempt of court.

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

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

90 (d) Under this section, anonymous testing as provided under Section 26-6-3.5 ~~shall~~  
91 may not satisfy the requirements of the court order.

92 ~~[(11)]~~ (12) The local health department or the Department of Health shall inform the  
93 subject of the petition and the petitioner of the results of the test and advise both parties that the  
94 test results are confidential. That information shall be maintained as confidential by all parties  
95 to the action.

96 ~~[(12)]~~ (13) The court, its personnel, the process server, the Department of Health, local  
97 health department, and petitioner shall maintain confidentiality of the name and any other  
98 identifying information regarding the individual tested and the results of the test as they relate  
99 to that individual, except as specifically authorized by this chapter.

100 ~~[(13)]~~ (14) (a) Except as provided in Subsection ~~[(13)]~~ (14)(b), the petitioner shall  
101 remit payment for the drawing of the blood specimen and the analysis of the specimen for the  
102 mandatory disease testing to the entity that draws the blood.

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

107 ~~[(14)]~~ (15) The entity that draws the blood shall cause the blood and the payment for  
108 the analysis of the specimen to be delivered to the Department of Health for analysis.

109 ~~[(15)]~~ (16) If the individual is incarcerated, the incarcerating authority shall either draw  
110 the blood specimen or shall pay the expenses of having the individual's blood drawn.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**