

1 **POST-EXPOSURE BLOOD TESTING AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Edward H. Redd**

5 Senate Sponsor: Brian E. Shiozawa

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions regarding disease testing after a significant exposure to
10 blood or contaminated body fluids.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ allows a health care provider to request a blood sample if significantly exposed to a
15 person's bodily fluids in the course of performing the provider's duties;
- 16 ▶ allows a health care provider to request a court order authorizing a blood sample
17 from an individual if, during the course of performing the provider's duties, the
18 provider is significantly exposed to the individual's bodily fluids;
- 19 ▶ clarifies rulemaking authority; and
- 20 ▶ makes technical and conforming changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **78B-8-401**, as last amended by Laws of Utah 2013, Chapter 114



- 28 [78B-8-402](#), as last amended by Laws of Utah 2016, Chapter 92
- 29 [78B-8-403](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
- 30 [78B-8-404](#), as last amended by Laws of Utah 2013, Chapter 114
- 31 [78B-8-405](#), as renumbered and amended by Laws of Utah 2008, Chapter 3

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

34 Section 1. Section **78B-8-401** is amended to read:

35 **Part 4. Disease Testing for Peace Officers, Health Care Providers, and Volunteers**

36 **78B-8-401. Definitions.**

37 For purposes of this [~~chapter~~] part:

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

41 (2) "Disease" means Human Immunodeficiency Virus infection, acute or chronic
42 Hepatitis B infection, Hepatitis C infection, and any other infectious disease specifically
43 designated by the Labor Commission, in consultation with the Department of Health, for the
44 purposes of this [~~chapter~~] part.

45 (3) "Emergency services provider" means:

46 (a) an individual certified under Section [26-8a-302](#), a [~~public safety~~] peace officer,
47 local fire department personnel, or personnel employed by the Department of Corrections or by
48 a county jail, who provide prehospital emergency care for an emergency services provider
49 either as an employee or as a volunteer; or

50 (b) an individual who provides for the care, control, support, or transport of a prisoner.

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

54 (5) "Health care provider" means the same as that term is defined in Section
55 [78B-3-403](#).

56 (6) "Peace officer" means the same as that term is defined in [~~Title 53, Chapter 13,~~
57 ~~Peace Officer Classifications~~] Section [53-1-102](#).

58 [~~(5)~~] (7) "Prisoner" means the same as that term is [~~as~~] defined in Section [76-5-101](#).

59 [~~(6)~~ "Public safety officer" means a peace officer as]

60 [~~(7)~~] (8) "Significant exposure" and "significantly exposed" mean:

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

63 (i) percutaneous injury, including a needle stick, cut with a sharp object or instrument,
64 or a wound resulting from a human bite, scratch, or similar force; or

65 (ii) contact with an open wound, mucous membrane, or nonintact skin because of a cut,
66 abrasion, dermatitis, or other damage; or

67 (b) exposure that occurs by any other method of transmission defined by the Labor
68 Commission, in consultation with the Department of Health, as a significant exposure.

69 Section 2. Section **78B-8-402** is amended to read:

70 **78B-8-402. Petition -- Disease testing -- Notice -- Payment for testing.**

71 (1) An emergency services provider or first aid volunteer who is significantly exposed
72 during the course of performing the emergency services provider's duties or during the course
73 of performing emergency assistance or first aid, or a health care provider acting in the course
74 and scope of the health care provider's duties as a health care provider may:

75 (a) request that the person to whom the emergency services provider [~~or~~], first aid
76 volunteer, or health care provider was significantly exposed voluntarily submit to testing; or

77 (b) petition the district court or a magistrate for an order requiring that the person to
78 whom the emergency services provider [~~or~~], first aid volunteer, or health care provider was
79 significantly exposed submit to testing to determine the presence of a disease, as defined in
80 Section **78B-8-401**, and that the results of that test be disclosed to the petitioner by the
81 Department of Health.

82 (2) (a) A law enforcement agency may submit on behalf of the petitioner ~~H~~→ **[who is an**
83 **emergency services provider or first aid volunteer]** ←~~H~~ by electronic or other means an ex parte
84 request for a warrant ordering a blood draw from the respondent.

85 ~~H~~→ **[~~(b) A health care provider, or the health care provider's designee, may submit by~~**
86 **electronic or other means an ex parte request for a warrant ordering a blood draw from the**
87 **respondent.]**

88 [H] (b) [~~(e)~~] ←~~H~~ The court or magistrate shall issue a warrant ordering the respondent to
89 provide a specimen of the respondent's blood within 24 hours, and that reasonable force may be

90 used, if necessary, if the court or magistrate finds that:

91 (i) the petitioner was significantly exposed during the course of performing the
92 petitioner's duties as an emergency services ~~[or]~~ provider, first aid ~~[provider]~~ volunteer, or
93 health care provider;

94 (ii) the respondent has refused consent to the blood draw or is unable to give consent;

95 (iii) there may not be an opportunity to obtain a sample at a later date; and

96 (iv) a delay in administering available FDA-approved post-exposure treatment or
97 prophylaxis could result in a lack of effectiveness of the treatment or prophylaxis.

98 ~~H→ [H]~~ (c) ~~[H(e)] ←H~~ The petitioner shall request a person authorized under Section
98a [41-6a-523](#)

99 perform the blood draw.

100 ~~H→ [H]~~ (d) ~~[H(e)] ←H~~ A sample drawn in accordance with a warrant following an ex parte
100a request

101 shall be sent to the Department of Health for testing.

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

105 (4) (a) The petition described in Subsection (3) shall be accompanied by an affidavit in
106 which the petitioner certifies that the petitioner has been significantly exposed to the individual
107 who is the subject of the petition and describes that exposure.

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

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

113 (6) (a) The court shall set a time for a hearing on the matter within 10 days after the
114 petition is filed and shall give the petitioner and the individual who is the subject of the petition
115 notice of the hearing at least 72 hours prior to the hearing.

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

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

120 (7) The district court may enter an order requiring that an individual submit to testing,

121 including blood testing, for a disease if the court finds probable cause to believe:

122 (a) the petitioner was significantly exposed; and

123 (b) the exposure occurred during the course of the emergency services provider's
124 duties, ~~or~~ the provision of emergency assistance or first aid by a first aid volunteer, or the
125 health care provider acting in the course and scope of the provider's duties as a health care
126 provider.

127 (8) The court may order that the blood specimen be obtained by the use of reasonable
128 force if the individual who is the subject of the petition is a prisoner.

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

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

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

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

140 (c) Notwithstanding the provisions of Section 26-6-27, the Department of Health and a
141 local health department may disclose the test results pursuant to a court order as provided in
142 this section.

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

145 (12) The local health department or the Department of Health shall inform the subject
146 of the petition and the petitioner of the results of the test and advise both parties that the test
147 results are confidential. That information shall be maintained as confidential by all parties to
148 the action.

149 (13) The court, its personnel, the process server, the Department of Health, local health
150 department, and petitioner shall maintain confidentiality of the name and any other identifying
151 information regarding the individual tested and the results of the test as they relate to that

152 individual, except as specifically authorized by this chapter.

153 (14) (a) Except as provided in Subsection (14)(b), the petitioner shall remit payment
154 for the drawing of the blood specimen and the analysis of the specimen for the mandatory
155 disease testing to the entity that draws the blood.

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

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

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

164 (17) The ex parte request or petition shall be sealed upon filing and made accessible
165 only to the petitioner, the subject of the petition, and their attorneys, upon court order.

166 Section 3. Section **78B-8-403** is amended to read:

167 **78B-8-403. Confidentiality -- Disclosure -- Penalty.**

168 [~~Any~~] A person or entity entitled to receive confidential information under this
169 [~~chapter~~] part, other than the individual tested and identified in the information, who violates
170 [~~the provisions of~~] this [~~chapter~~] part by releasing or making public that confidential
171 information, or by otherwise breaching the confidentiality requirements of this [~~chapter~~] part, is
172 guilty of a class B misdemeanor.

173 Section 4. Section **78B-8-404** is amended to read:

174 **78B-8-404. Department authority -- Rules.**

175 The Labor Commission, in consultation with the Department of Health, has authority to
176 establish rules necessary for the purposes of Subsections **78B-8-401(2)** and [~~(7)~~] (8).

177 Section 5. Section **78B-8-405** is amended to read:

178 **78B-8-405. Construction.**

179 Nothing in this part may be construed as prohibiting[~~-(1)~~] a person from voluntarily
180 consenting to the request of a health care provider[~~, as defined in Section 78B-3-403,~~] to
181 submit to testing following a significant exposure[~~;-or~~].

182 [~~(2) a court from considering the petition of a health care provider for an order~~]

183 requiring that a person submit to testing to determine the presence of a disease if a significant
184 exposure has occurred in connection with the health care provider's treatment of that person.]

Legislative Review Note
Office of Legislative Research and General Counsel