

# HB0434S01 compared with HB0434

~~{deleted text}~~ shows text that was in HB0434 but was deleted in HB0434S01.

Inserted text shows text that was not in HB0434 but was inserted into HB0434S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Andrew Stoddard proposes the following substitute bill:

## DISEASE TESTING AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Andrew Stoddard**

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

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### LONG TITLE

#### General Description:

This bill ~~{enacts provisions permitting a health care provider to order HIV testing under certain circumstances}~~ amends provisions related to disease testing.

#### Highlighted Provisions:

This bill:

- ▶ ~~{defines terms;~~
- ▶ ~~permits a health care provider to order HIV testing of a patient under certain circumstances;~~
- ▶ ~~addresses confidentiality of test results;~~
- ▶ ~~provides immunity from civil liability for certain persons acting in accordance with the statute}~~ amends the amount of time within which an individual must provide a blood sample when a court or magistrate has issued a warrant ordering the

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individual to provide the sample; and

- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

~~{78B-8-401}~~78B-8-402, as last amended by Laws of Utah 2017, ~~{Chapters}~~Chapter  
185~~{ and 326}~~

~~{ENACTS:~~

~~—————78B-8-402.5, Utah Code Annotated 1953~~

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

Section 1. Section ~~{78B-8-401}~~78B-8-402 is amended to read:

~~{~~—————78B-8-401. Definitions:

—————For purposes of this part:

—————(1) "Blood or contaminated body fluids" includes blood, saliva, 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 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 part.

—————(3) "Emergency services provider" means:

—————(a) an individual licensed under Section 26-8a-302, a peace officer, local fire department personnel, or personnel employed by the Department of Corrections or by a county jail, who provide prehospital emergency care for an emergency services provider either as an employee or as a volunteer; or

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

—————(4) "First aid volunteer" means a person who provides voluntary emergency assistance

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~~or first aid medical care to an injured person prior to the arrival of an emergency medical services provider or peace officer.~~

~~—— (5) "Health care facility" means the same as that term is defined in Section 78B-3-403.~~

~~—— [(5)] (6) "Health care provider" means the same as that term is defined in Section 78B-3-403.~~

~~—— (7) "Hospital" means the same as that term is defined in Section 78B-3-403.~~

~~—— (8) "Patient" means an individual who is under the care of a health care provider, under a contract, express or implied.~~

~~—— [(6)] (9) "Peace officer" means the same as that term is defined in Section 53-1-102.~~

~~—— [(7)] (10) "Prisoner" means the same as that term is defined in Section 76-5-101.~~

~~—— [(8)] (11) "Significant exposure" and "significantly exposed" mean:~~

~~—— (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, cut with a sharp object or instrument, or a wound resulting from a human bite, scratch, or similar force; 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 Labor Commission, in consultation with the Department of Health, as a significant exposure.~~

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

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

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

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

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(2) (a) A law enforcement agency may submit on behalf of the petitioner by electronic or other means an ex parte request for a warrant ordering a blood draw from the respondent.

(b) The court or magistrate shall issue a warrant ordering the respondent to provide a specimen of the respondent's blood within ~~[24]~~ two hours, and that reasonable force may be used, if necessary, if the court or magistrate finds that:

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

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

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

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

(c) The petitioner shall request a person authorized under Section 41-6a-523 perform the blood draw.

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

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

(4) (a) The petition described in Subsection (3) shall be accompanied by an affidavit in which the petitioner certifies that the petitioner 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 three days after the petition is filed.

(5) 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.

(6) (a) The court shall set a time for a hearing on the matter within 10 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 the

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individual may have an attorney present at the hearing and that the individual's attorney may examine and cross-examine witnesses.

(c) The hearing shall be conducted in camera.

(7) The district court may enter an order requiring that an individual submit to testing, including blood 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 services provider's duties, the provision of emergency assistance or first aid by a first aid volunteer, or the health care provider acting in the course and scope of the provider's duties as a health care provider.

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

(9) 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.

(10) 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.

(11) (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 the person's blood drawn within 10 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 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 may not satisfy the requirements of the court order.

(12) 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.

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(13) The court, ~~[its]~~ the court's 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.

(14) (a) Except as provided in Subsection (14)(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 services provider, the agency that employs the emergency 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.

(15) 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.

(16) 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.

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

~~{ Section 2. Section 78B-8-402.5 is enacted to read:~~

~~Section 78B-8-402.5. Health care provider ordered HIV testing of patient.~~

~~(1) The health care provider of a patient to whom an emergency services provider, first aid volunteer, or health care provider is significantly exposed, may order that a blood specimen be obtained from the patient and tested for the presence of Human Immunodeficiency Virus infection, if:~~

~~(a) the exposed emergency services provider, first aid volunteer, or health care provider was significantly exposed to the patient while in the course of performing the individual's duties as an emergency services provider, first aid volunteer, or health care provider;~~

~~(b) the patient:~~

~~(i) is unconscious or otherwise unable to consent; and~~

~~(ii) has not refused to be tested;~~

~~(c) the health care provider of the patient has consulted with the health care provider of the emergency services provider, first aid volunteer, or health care provider who was exposed~~

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~~to the patient concerning:~~

~~—— (i) the extent of the exposure; and~~

~~—— (ii) the extent to which a delay in administering prophylaxis could result in a lack of effectiveness of the prophylaxis; and~~

~~—— (d) the health care provider of the patient and the health care provider of the exposed emergency services provider, first aid volunteer, or health care provider determine that a delay in administering prophylaxis could result in a lack of effectiveness of the prophylaxis.~~

~~—— (2) The patient's health care provider may order the patient's blood sample be obtained and tested at:~~

~~—— (a) the hospital or health care facility where the patient is located; or~~

~~—— (b) the laboratory that the hospital or health care facility described in Subsection (2)(a) typically uses for diagnostic testing.~~

~~—— (3) The hospital, health care facility, or laboratory that tests the patient's blood sample:~~

~~—— (a) may share the test results with:~~

~~—— (i) the exposed emergency services provider, first aid volunteer, or health care provider; or~~

~~—— (ii) the health care provider of the exposed emergency services provider, first aid volunteer, or health care provider;~~

~~—— (b) shall share the test results with the patient; and~~

~~—— (c) shall advise all persons with whom the entity shares test results that the test results are confidential.~~

~~—— (4) All persons privy to test results under this section shall maintain the test results as confidential.~~

~~—— (5) The following are immune from civil liability when acting in good faith and in accordance with this section:~~

~~—— (a) a health care provider;~~

~~—— (b) a hospital;~~

~~—— (c) a health care facility; and~~

~~—— (d) a laboratory described in Subsection (2)(b).~~

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