

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1410
(Representatives Grande, Devlin, Kreidt)
(Senator J. Lee)

AN ACT to amend and reenact sections 23-07.5-01, 23-07.5-02, 23-07.5-04, 23-07.5-06, and 23-07.5-07, paragraph 1 of subdivision b of subsection 10 of section 65-01-02, and sections 65-01-15 and 65-01-15.1 of the North Dakota Century Code, relating to testing for exposure to bloodborne pathogens; and to repeal chapter 23-07.3 of the North Dakota Century Code, relating to notification of exposure to infectious diseases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07.5-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Bloodborne pathogen" means a microorganism that is present in human blood or in other bodily fluid or tissue which can cause a disease in humans, including the hepatitis B virus, the hepatitis C virus, and the human immunodeficiency virus, and for which testing is recommended by the United States public health service.
2. "Exposed individual" means a human being who had a significant exposure with another individual who is subject to testing and who is an individual, including a patient, health care provider, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person an individual rendering aid under chapter 32-03.1, who is exposed to a bloodborne pathogen.
3. "Exposure" means a percutaneous injury, including a needle stick or cut with a sharp object; contact with blood, body fluid, or tissue of a mucous membrane or nonintact skin, including exposed skin that is chapped, abraded, or afflicted with dermatitis; or contact with other body fluids that are potentially infectious as determined under guidelines of the United States public health service.
2. ~~"Health care provider" means any person licensed, certified, or otherwise authorized by the law of this state to provide health care services.~~
3. 4. ~~"Health care services" means any services included in the furnishing to any an individual of hospitalization, or medical or dental care, or any services incident to the furnishing of that care or hospitalization, as well as the furnishing to any person an individual of any other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.~~
4. ~~"Human immunodeficiency virus" means any identified causative agent of acquired immune deficiency syndrome.~~
5. ~~"Human immunodeficiency virus infection" means the pathological state produced by a human body in response to the presence of the human immunodeficiency virus~~ "Health care provider" means an individual licensed, certified, or otherwise authorized by the law of this state to provide health care and includes personnel at the state crime laboratory or any commercial or research laboratory that handles blood, body fluid, or tissues.

6. ~~"Informed consent for testing" means the written permission of an individual to be tested for the presence of the human immunodeficiency virus that the individual to be tested for bloodborne pathogens has been informed of the nature of the testing; the reason for the testing; the relevant risks, benefits, and potential alternatives for testing; and the individual has granted permission to be tested.~~
7. ~~"Informed consent form" means a printed document on which an individual may signify that individual's permission to be tested for the presence of the human immunodeficiency virus~~
~~"Personal representative" means any person who has authority under law to act on behalf of an individual or deceased individual in making decisions related to health care or health information.~~
8. ~~"Personal physician" means the physician designated by a patient or individual who has had a significant exposure as the patient's or individual's primary physician or if no physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred, the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician~~
~~"Test subject" means the individual who is the source of the blood, other bodily fluids, or tissue that caused the exposure.~~
9. ~~"Significant exposure" means:~~
 - a. ~~Contact of broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration;~~
 - b. ~~The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or~~
 - e. ~~Exposure that occurs by any other method of transmission defined by the state department of health as a significant exposure.~~
10. ~~"Universal precautions" means measures that a health care provider, emergency medical technician, exposed individual, or an individual rendering aid under chapter 32-03.1 takes in accordance with recommendations of the United States public health service to prevent transmission of disease.~~

SECTION 2. AMENDMENT. Section 23-07.5-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-02. Informed consent for testing - Exception.

1. ~~Except when testing is otherwise provided for~~ permitted by law, a health care provider, blood bank, blood center, or plasma center may not subject ~~a person~~ an individual who is the source of an exposure to a test for the presence of the human immunodeficiency virus bloodborne pathogens unless the subject of the test, the parent or legal guardian or custodian of the subject's personal representative if the subject is a minor who is the subject of the test, or the legal guardian of an is incapacitated person who is the subject of the test, first provides informed consent for testing ~~as provided under subsection 2.~~
2. ~~A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of the human immunodeficiency virus under subsection 1 shall provide the potential test subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential test subject who is incapacitated, with an informed consent form and shall obtain the appropriate individual's signature on the form. The form must contain:~~

- a. ~~The name of the potential test subject who is giving consent for testing and whose test results may be disclosed and, when appropriate, the name of the individual providing consent on behalf of the potential test subject.~~
 - b. ~~A statement of explanation that the test results may be disclosed as authorized by law.~~
 - e. ~~Space specifically designated for the signature of the person providing informed consent for the testing and the date on which the consent is signed.~~
3. ~~A health care provider or an exposed individual who had a significant exposure with another individual may subject~~ If an individual who is the source of an exposure has had blood drawn that is available for testing and the individual has refused to grant consent to have that individual's blood tested for bloodborne pathogens, that individual's blood may be subjected to a test for the presence of the human immunodeficiency virus bloodborne pathogens, without that individual's consent, if all of the following apply:
- a. ~~A blood sample of the individual who is the test subject has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.~~
 - b. ~~The personal physician of the individual exposed, a physician or other qualified health care provider based on available information provided to the physician, determines and certifies in writing that the individual had a significant an exposure.—The certification must accompany the request for testing and disclosure.~~
 - e. ~~The test subject is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.~~
 - d. ~~Before and before testing, the test subject is informed, while competent and conscious, that the test subject's blood may be tested for the presence of human immunodeficiency virus bloodborne pathogens; that the test results may not be disclosed to no one without the test subject's consent authorization, except to the exposed individual, the individual's health care provider, the department, and any other person as authorized by law; that if the exposed individual knows the identity of the test subject, the exposed individual may not disclose the identity to any other person of the test subject except for the purpose of having the test performed; and that a record of the test results may be placed kept in the test subject's exposed individual's medical record, and if not in the medical record, may be kept only if the record does not reveal the test subject's identity. Each exposed individual who had a significant an exposure and to whom test results are disclosed must first sign be given a document indicating the exposed individual's understanding that the exposed individual may not disclose the patient's test subject's identity and that disclosing the this information constitutes a class C felony.~~
4. ~~A patient who has received care from a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 and who has had a significant exposure with the provider may subject the provider's blood to a test for the presence of the human immunodeficiency virus, without the provider's consent, if all of the following apply:~~
- a. ~~A sample of the provider's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.~~
 - b. ~~A physician, based on information provided to the physician, determines and certifies in writing that the patient has had a significant exposure.—The certification must accompany the request for testing and disclosure.~~

- e. ~~The provider or a person rendering aid under chapter 32-03.1 is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.~~
 - d. ~~Before testing, the provider is informed, while competent and conscious, that the provider's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to the provider, the individual who has had a significant exposure, and any other person as authorized by law; that if the patient who has had a significant exposure knows the identity of the provider, that patient may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the provider's identity. Each patient who has had a significant exposure and to whom test results are disclosed must first sign a document indicating the patient's understanding that the patient may not disclose the provider's identity and that disclosing the information constitutes a class C felony.~~
5. 3. If an individual who is the subject of a significant an exposure is ~~unconscious~~ or incapable of giving informed consent for testing under this section, that consent may be obtained ~~in accordance with section 23-12-13~~ from the individual's personal representative. If an individual who is the subject of a significant an exposure dies without an opportunity to consent to testing, collection of appropriate specimens and testing for the presence of bloodborne pathogens, including human immunodeficiency virus, hepatitis B, and hepatitis C infection must be conducted within twenty four hours as soon as reasonably possible. A licensed physician with expertise in infectious diseases shall make the determination of which tests are required. Results of these tests must be provided to the physician providing care for the individual who experienced the ~~significant~~ exposure. If a facility that received the individual who died fails to test for the presence of bloodborne pathogens as required under this subsection because the facility was not aware of the exposure or it was not reasonably possible to conduct testing, the facility shall provide the physician providing care for the exposed individual or health care provider testing results of any bloodborne pathogen present in any medical records of the ~~dead person~~ deceased individual which are in the facility's control within twenty four hours as soon as reasonably possible. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the ~~person who died~~ deceased individual shall attempt to obtain testing results of bloodborne pathogens of the ~~deceased~~ deceased individual within twenty four hours as soon as reasonably possible from the facility where it is believed results exist. The test results must be provided to the physician providing care for the individual who experienced the significant exposure.
6. 4. A test for bloodborne pathogens must be conducted according to recommendations of the United States public health service. Any testing done pursuant to subsection 2 or 3, ~~4, or 5~~ must be conducted in a reasonably expedient manner. ~~An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate~~ The district court for issuance of in the county where the alleged exposure occurred or in which the individual to be tested resides shall issue an order directing another the individual, patient, or provider with whom the individual had a significant who was the source of an exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the test subject to be tested until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within three days of the date the court receives the petition bloodborne pathogens. An affidavit from a physician or other qualified health care provider showing that an exposure has occurred is prima facie evidence of those facts. The affidavit may not be excluded as hearsay if the affidavit is based on

evidence generally relied on by a health care provider, including statements from the provider's patient. The record of any court hearing conducted under this subsection is confidential. The court ~~may~~ shall issue an order requiring testing under this subsection ~~only~~ if:

- a. ~~The other individual, patient, or provider has been requested to consent to testing and has refused to be tested and a sample of the test subject's blood is not available to be used to test for the human immunodeficiency virus;~~
 - b. The court finds probable cause to believe that the ~~person~~ individual petitioning for the testing had ~~a significant~~ an exposure with the test subject;
 - e. ~~b.~~ The petition substitutes a pseudonym for the true name of the test subject;
 - d. ~~c.~~ The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
 - e. ~~d.~~ The proceedings are conducted in camera ~~unless the subject of the test agrees to a hearing in open court~~; and
 - f. ~~e.~~ The court imposes appropriate safeguards against unauthorized disclosure which must specify the ~~persons~~ individuals who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.
7. ~~An exposed individual may request two tests of the test subject after a significant exposure. Each test may be requested as soon as practicable, consistent with the recommendations of the United States public health service, but in no event later than nine months after a significant exposure. The test subject must provide a blood sample within twenty four hours after the first request and within seventy two hours after the second request, subject to the provisions of this chapter.~~
5. If the court issues an order for testing, the court may order the confinement of the test subject until blood is drawn for testing or issue an order establishing reasonable security for the individual's attendance at the test site. This order may be modified or extended.
8. 6. A health care provider who subjects ~~a patient~~ an individual to ~~a significant~~ an exposure must notify the ~~patient~~ individual of the exposure. A health care provider witnessing a ~~significant~~ an exposure may report the exposure pursuant to any appropriate facility or employer guidelines to which the provider may be subject. The knowing failure to inform a ~~patient~~ an individual of ~~a significant~~ an exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.
7. The exposed individual shall pay the expense of testing. However, if the exposure occurs at an employee's workplace, the worker's employer shall pay the expense of testing unless otherwise provided by subdivision b of subsection 10 of section 65-01-02. If the individual to be tested is convicted of a crime relating to the exposure or the exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, a court may order the individual to be tested to pay for the testing.

SECTION 3. AMENDMENT. Section 23-07.5-04 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-04. Record maintenance. A health care provider, ~~blood bank, blood center, or plasma center that~~ who collects a specimen of body fluids or tissues for the purpose of testing for the

presence of ~~an antibody to the human immunodeficiency virus~~ bloodborne pathogens caused by an exposure shall:

1. ~~Obtain~~ obtain from the test subject; ~~the subject's parent, legal guardian, or custodian if the subject is a minor;~~ or the test subject's ~~legal guardian~~ personal representative if the subject is a minor or is incapacitated, informed consent for testing; unless testing is otherwise authorized by law.
2. ~~Maintain a record of the consent received under subsection 1.~~
3. ~~Maintain~~ In addition, the health care provider shall maintain a record of the test results obtained.

SECTION 4. AMENDMENT. Section 23-07.5-06 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-06. Expanded disclosure of test results prohibited. ~~A person~~

1. The results of a test for bloodborne pathogens may be disclosed only to the individual who was tested; to an exposed individual for whom a test was conducted; and to the exposed individual's health care provider as provided by this chapter, and as permitted under title 45, Code of Federal Regulations, part 164, section 512.
2. An exposed individual to whom the results of a test for ~~the human immunodeficiency virus~~ bloodborne pathogens have been disclosed under this chapter may not disclose the test results except as permitted under subsection 3, or as otherwise authorized by law.
3. If the test results are disclosed under this chapter to a law enforcement officer who was exposed to a bloodborne pathogen, the officer may disclose the test results to any other law enforcement officer who has direct physical contact with the test subject, if in the professional judgment of the officer the disclosure is necessary for the health and safety of the other officer and the disclosure is limited to the minimum amount of information needed to protect the health and safety of that officer.

SECTION 5. AMENDMENT. Section 23-07.5-07 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-07. Civil liability. ~~Any person~~ An individual who knowingly violates section 23-07.5-06 is liable to the subject of the test for actual damages and costs plus exemplary damages. A conviction for violation of this chapter is not a condition precedent to bringing an action under this section.

SECTION 6. AMENDMENT. Paragraph 1 of subdivision b of subsection 10 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the ~~bureau~~ organization may pay for preventive treatment for ~~significant exposures documented by emergency medical services providers under chapter 23-07.3;~~ for significant exposures for the employees of licensed facilities as defined by chapter 23-07.3; a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment who is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.

SECTION 7. AMENDMENT. Section 65-01-15 of the North Dakota Century Code is amended and reenacted as follows:

65-01-15. Yearly documentation required for firefighter and law enforcement officer.

Except for benefits for an exposure to infectious disease a bloodborne pathogen as defined by ~~sections 23-07.3-01 and 23-07.3-02~~ section 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under section 65-01-15.1, unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a physician which indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years. ~~Any full-time paid firefighter or law enforcement officer employed on June 30, 1995, is not subject to this section until July 1, 1997.~~

SECTION 8. AMENDMENT. Section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

65-01-15.1. Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers. Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or an exposure to infectious disease a bloodborne pathogen as defined by ~~sections 23-07.3-01 and 23-07.3-02~~ section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. An employer shall require a medical examination upon employment, for any employee subject to this section. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test and papanicolaou smear for women. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section. For purposes of this section, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

SECTION 9. REPEAL. Chapter 23-07.3 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1410.

House Vote: Yeas 90 Nays 1 Absent 3

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State