

**SENATE BILL NO. 2259**

Introduced by

Senator Kilzer

Representative Price

1 A BILL for an Act to amend and reenact section 23-07.5-02 of the North Dakota Century Code,  
2 relating to informed consent for HIV testing.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 23-07.5-02 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **23-07.5-02. Informed consent for testing - Exception.**

- 7 1. Except when testing is otherwise provided for by law, a health care provider, blood  
8 bank, blood center, or plasma center may not subject a person to a test for the  
9 presence of the human immunodeficiency virus unless the subject of the test, the  
10 parent or legal guardian or custodian of a minor who is the subject of the test, or  
11 the legal guardian of an incapacitated person who is the subject of the test, first  
12 provides informed consent for testing ~~as provided under subsection 2.~~
- 13 2. ~~A health care provider, blood bank, blood center, or plasma center that subjects an~~  
14 ~~individual to a test for the presence of the human immunodeficiency virus under~~  
15 ~~subsection 1 shall provide the potential test subject, the parent or legal guardian or~~  
16 ~~custodian of a potential test subject that is a minor, or the legal guardian of a~~  
17 ~~potential test subject who is incapacitated, with an informed consent form and shall~~  
18 ~~obtain the appropriate individual's signature on the form. The form must contain:~~
- 19 a. ~~The name of the potential test subject who is giving consent for testing and~~  
20 ~~whose test results may be disclosed and, when appropriate, the name of the~~  
21 ~~individual providing consent on behalf of the potential test subject.~~
- 22 b. ~~A statement of explanation that the test results may be disclosed as~~  
23 ~~authorized by law.~~

- 1           e. ~~Space specifically designated for the signature of the person providing~~  
2           ~~informed consent for the testing and the date on which the consent is signed.~~
- 3       ~~3.~~ A health care provider or an exposed individual who had a significant exposure  
4       with another individual may subject that individual's blood to a test for the presence  
5       of the human immunodeficiency virus, without that individual's consent, if all of the  
6       following apply:
- 7           a. A blood sample of the individual who is the test subject has been drawn for  
8           other purposes and is available to be used to test for the presence of the  
9           human immunodeficiency virus.
- 10          b. The personal physician of the individual exposed, based on information  
11          provided to the physician, determines and certifies in writing that the individual  
12          had a significant exposure. The certification must accompany the request for  
13          testing and disclosure.
- 14          c. The test subject is capable of consenting when the test is requested, has  
15          been given an opportunity to be tested with consent, and has not consented.
- 16          d. Before testing, the test subject is informed, while competent and conscious,  
17          that the test subject's blood may be tested for the presence of human  
18          immunodeficiency virus; that the test results may be disclosed to no one  
19          without the test subject's consent, except to the exposed individual, the  
20          department, and any other person as authorized by law; that if the exposed  
21          individual knows the identity of the test subject, the exposed individual may  
22          not disclose the identity to any other person except for the purpose of having  
23          the test performed; and that a record of the test results may be placed in the  
24          test subject's medical record, and if not in the medical record, may be kept  
25          only if the record does not reveal the test subject's identity. Each exposed  
26          individual who had a significant exposure and to whom test results are  
27          disclosed must first sign a document indicating the exposed individual's  
28          understanding that the exposed individual may not disclose the patient's  
29          identity and that disclosing the information constitutes a class C felony.
- 30       ~~4.~~ 3. A patient who has received care from a health care provider, emergency medical  
31       services provider, or a person rendering aid under chapter 32-03.1 and who has

- 1 had a significant exposure with the provider may subject the provider's blood to a  
2 test for the presence of the human immunodeficiency virus, without the provider's  
3 consent, if all of the following apply:
- 4 a. A sample of the provider's blood has been drawn for other purposes and is  
5 available to be used to test for the presence of the human immunodeficiency  
6 virus.
  - 7 b. A physician, based on information provided to the physician, determines and  
8 certifies in writing that the patient has had a significant exposure. The  
9 certification must accompany the request for testing and disclosure.
  - 10 c. The provider or a person rendering aid under chapter 32-03.1 is capable of  
11 consenting when the test is requested, has been given an opportunity to be  
12 tested with consent, and has not consented.
  - 13 d. Before testing, the provider is informed, while competent and conscious, that  
14 the provider's blood may be tested for the presence of human  
15 immunodeficiency virus; that the test results may be disclosed to the provider,  
16 the individual who has had a significant exposure, and any other person as  
17 authorized by law; that if the patient who has had a significant exposure  
18 knows the identity of the provider, that patient may not disclose the identity to  
19 any other person except for the purpose of having the test performed; and  
20 that a record may be kept of the test results only if the record does not reveal  
21 the provider's identity. Each patient who has had a significant exposure and  
22 to whom test results are disclosed must first sign a document indicating the  
23 patient's understanding that the patient may not disclose the provider's  
24 identity and that disclosing the information constitutes a class C felony.
- 25 ~~5.~~ 4. If an individual who is the subject of a significant exposure is unconscious or  
26 incapable of giving informed consent for testing under this section, that consent  
27 may be obtained in accordance with section 23-12-13. If an individual who is the  
28 subject of a significant exposure dies without an opportunity to consent to testing,  
29 collection of appropriate specimens and testing for the presence of bloodborne  
30 pathogens, including human immunodeficiency virus, hepatitis B, and hepatitis C  
31 infection must be conducted within twenty-four hours. A licensed physician with

1 expertise in infectious diseases shall make the determination of which tests are  
2 required. Results of these tests must be provided to the physician providing care  
3 for the individual who experienced the significant exposure. If a facility that  
4 received the individual who died fails to test for the presence of bloodborne  
5 pathogens as required under this subsection because the facility was not aware of  
6 the exposure or it was not reasonably possible to conduct testing, the facility shall  
7 provide the physician providing care for the exposed individual or health care  
8 provider testing results of any bloodborne pathogen present in any medical records  
9 of the dead person which are in the facility's control within twenty-four hours. If  
10 there are no testing results for bloodborne pathogens within that facility and there  
11 is reason to believe that results are available from another facility, the facility that  
12 received the person who died shall attempt to obtain testing results of bloodborne  
13 pathogens of the deceased within twenty-four hours from the facility where it is  
14 believed results exist. The test results must be provided to the physician providing  
15 care for the individual who experienced the significant exposure.

16 ~~6-~~ 5. Any testing done pursuant to subsection 2, 3, or 4, ~~or 5~~ must be conducted in a  
17 reasonably expedient manner. An individual who has had a significant exposure,  
18 upon receiving certification of the significant exposure as required by subdivision b  
19 of subsection ~~3~~ 2 or subdivision b of subsection ~~4~~ 3, may petition an appropriate  
20 district court for issuance of an order directing another individual, patient, or  
21 provider with whom the individual had a significant exposure to have blood drawn  
22 to be tested for the presence of the human immunodeficiency virus if a previously  
23 drawn blood sample is not available for testing. Upon receiving the petition, the  
24 court may issue an order confining the test subject to be tested until the hearing or  
25 an order establishing reasonable security for that person's attendance at the  
26 hearing. This order may be modified or extended if testing is ordered. The court  
27 shall hold a hearing on the petition within three days of the date the court receives  
28 the petition. The record of any court hearing conducted under this subsection is  
29 confidential. The court may issue an order requiring testing under this subsection  
30 only if:

- 1           a.    The other individual, patient, or provider has been requested to consent to  
2                    testing and has refused to be tested and a sample of the test subject's blood  
3                    is not available to be used to test for the human immunodeficiency virus;
- 4           b.    The court finds probable cause to believe that the person petitioning for the  
5                    testing had a significant exposure with the test subject;
- 6           c.    The petition substitutes a pseudonym for the true name of the test subject;
- 7           d.    The court provides the test subject with notice and reasonable opportunity to  
8                    participate in the proceeding if the person is not already a party to the  
9                    proceeding;
- 10          e.    The proceedings are conducted in camera unless the subject of the test  
11                    agrees to a hearing in open court; and
- 12          f.    The court imposes appropriate safeguards against unauthorized disclosure  
13                    which must specify the persons who have access to the information, the  
14                    purposes for which the information may be used, and appropriate prohibition  
15                    on future disclosure.
- 16       ~~7.~~ 6.   An exposed individual may request two tests of the test subject after a significant  
17                    exposure. Each test may be requested as soon as practicable, consistent with the  
18                    recommendations of the United States public health service, but in no event later  
19                    than nine months after a significant exposure. The test subject must provide a  
20                    blood sample within twenty-four hours after the first request and within seventy-two  
21                    hours after the second request, subject to the provisions of this chapter.
- 22       ~~8.~~ 7.   A health care provider who subjects a patient to a significant exposure must notify  
23                    the patient of the exposure. A health care provider witnessing a significant  
24                    exposure may report the exposure pursuant to any appropriate facility or employer  
25                    guidelines to which the provider may be subject. The knowing failure to inform a  
26                    patient of a significant exposure or refusal to submit to testing as required under  
27                    this chapter may be considered by a health care provider's licensing board to  
28                    constitute conduct that may subject the licensee to disciplinary action.