

1 H.617

2 Introduced by Representative Toll of Danville

3 Referred to Committee on

4 Date:

5 Subject: Health; communicable disease testing; consent

6 Statement of purpose of bill as introduced: This bill proposes to enable a
7 health care worker or a person providing public safety or emergency response
8 services exposed to blood or bodily fluids during the performance of official
9 duties to petition the Superior Court to order the source person to obtain a test
10 for bloodborne pathogen-related illnesses when voluntary consent is denied.

11 An act relating to testing for bloodborne pathogen-related illnesses after
12 possible transmission to health care, safety, or emergency personnel

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 18 V.S.A. § 1141 is amended to read:

15 § 1141. COMMUNICABLE DISEASE TESTING

16 (a) A health care provider may order a test for bloodborne pathogens if a
17 health care worker, ~~public safety personnel, or emergency personnel~~ or a
18 person providing public safety or emergency response services has been
19 exposed to the blood or bodily fluids of the source ~~patient~~ person during the
20 performance of official duties in a manner sufficient to transmit a bloodborne

1 pathogen-related illness to the affected health care worker, ~~while engaged in~~
2 ~~rendering health services to the source patient~~ or the person providing public
3 safety or emergency response services, provided that:

4 (1) ~~the~~ The source patient person:

5 (A) has provided informed consent, as defined in subdivision
6 9701(17) of this title; ~~or~~

7 (B) is deceased; or

8 (C) has not provided informed consent and the court has ordered the
9 source person to submit to a blood test for bloodborne pathogen-related
10 illnesses pursuant to subsection (n) of this section.

11 (2) ~~the~~ The health care worker or the person providing public safety or
12 emergency response services has provided a blood sample and consented to
13 testing for bloodborne pathogens and a physician has documented that
14 bloodborne pathogen test results are needed for beginning, continuing,
15 modifying, or discontinuing medical treatment for the health care worker; or
16 the person providing public safety or emergency response services.

17 (3) ~~a~~ A physician with specialty training in infectious diseases has
18 confirmed that the health care worker or the person providing public safety or
19 emergency response services has been exposed to the blood or bodily fluids of
20 the source ~~patient~~ person in a manner sufficient to transmit a bloodborne
21 pathogen-related illness;.

1 (4) a A health care provider has informed the health care worker or the
2 person providing public safety or emergency response services of the
3 confidentiality requirements in subsection (c) of this section and the penalties
4 for unauthorized disclosure of source ~~patient~~ person information under
5 subsection (e) of this section; ~~and~~.

6 (5) a A health care provider has informed the source ~~patient~~ person of
7 the purpose and confidentiality provisions in subsections (b) and (c) of this
8 section, respectively, if applicable.

9 (b) Bloodborne pathogen test results of a source ~~patient~~ person obtained
10 under subsection (a) of this section are for diagnostic purposes and to
11 determine the need for treatment or medical care specific to a bloodborne
12 pathogen-related illness of a health care worker or a person providing public
13 safety or emergency response services. Test results may not be used as
14 evidence in any criminal or civil proceedings.

15 (c) The result of a test ordered pursuant to subsection (a) of this section is
16 protected health information subject to the “Standards for Privacy of
17 Individually Identifiable Health Information” established under the Health
18 Insurance Portability and Accountability Act of 1996 and contained in
19 45 C.F.R., Parts 160 and 164, and any subsequent amendments. Test results
20 shall be confidential except that the health care worker or the person providing
21 public safety or emergency response services who sustained the exposure, the

1 health care provider who ordered the test, and the source ~~patient~~ person, upon
2 his or her request, shall be informed of the test results. Test results reported to
3 the health care worker or the person providing public safety or emergency
4 response services and documented in his or her medical record shall not
5 include any personally identifying information relative to the source ~~patient~~
6 person. Test results shall be transmitted to the Commissioner of Health
7 pursuant to subsection (i) of this section.

8 (d) Prior to laboratory testing of a source ~~patient's~~ person's blood sample
9 for bloodborne pathogens, personal identifiers shall be removed from the
10 sample.

11 (e) Unauthorized disclosures of test results obtained under this section shall
12 be subject to the penalties provided under the Health Insurance Portability and
13 Accountability Act of 1996, 42 U.S.C. ~~subsections~~ §§ 1320d-5 and 1320d-6,
14 and may be considered unprofessional conduct under applicable licensing,
15 certification, and registration laws.

16 (f) The results of rapid testing technologies shall be considered preliminary
17 and may be released in accordance with the manufacturer's instructions as
18 approved by the federal Food and Drug Administration. Corroborating or
19 confirmatory testing ~~must~~ shall be conducted as follow-up to a positive
20 preliminary test.

1 (g) The health care provider who requested the test shall provide the source
2 ~~patient~~ person and the health care worker or the person providing public safety
3 or emergency response services an opportunity to receive follow-up testing and
4 shall provide information on options for counseling, as appropriate.

5 (h) Records pertaining to testing performed pursuant to this section shall
6 not be recorded in the source ~~patient's~~ person's medical record unless
7 authorized by the source ~~patient~~ person and shall not be maintained in the
8 location where the test is ordered or performed for more than 60 days.

9 (i) A laboratory having personal knowledge of a test result under this
10 section shall transmit within 24 hours a report thereof to the Department of
11 Health pursuant to subsection 1001(k) of this title.

12 (j) The employer of any health care worker or person providing public
13 safety or emergency response services exposed to blood or bodily fluids while
14 rendering health services to a source ~~patient~~ person during the performance of
15 normal job duties shall maintain an incident report with information regarding
16 the exposure that is relevant to a health care worker's or a person providing
17 public safety or emergency response services workers' compensation claim.
18 The employer shall not be provided or have access to information personally
19 identifying the source ~~patient~~ person.

1 (k) The costs of all diagnostic tests authorized by these provisions shall be
2 borne by the employer of the health care worker or the person providing public
3 safety or emergency response services.

4 (l) Notwithstanding any other law to the contrary, a health care provider
5 who orders a test in accordance with this section shall not be subject to civil or
6 criminal liability for ordering the test. Nothing in this subsection shall be
7 construed to establish immunity for the failure to exercise due care in the
8 performance or analysis of the test.

9 (m) A health care provider's duties under this section are not continuing
10 but limited to testing and services performed under this section.

11 (n)(1) If written informed consent is not given by the source person, a
12 health care worker or a person providing public safety or emergency response
13 services exposed to the blood or bodily fluids of the source person while
14 performing official duties may petition the Superior Court in the unit in which
15 the exposure occurred for an order requiring the source person to be tested for
16 HIV, Hepatitis B, Hepatitis C, or any other bloodborne pathogen-related
17 illnesses if:

18 (A) exposure to the blood or bodily fluids of the source person
19 creates a significant risk of transmission of a bloodborne pathogen-related
20 illness to the affected health care worker or the person providing public safety
21 or emergency response services; and

1 (B) notice of the occupational exposure was provided to the source
2 person and written informed consent for blood testing was sought from the
3 source person by the employer or health care provider of the affected health
4 care worker or the person providing public safety or emergency response
5 services.

6 (2) Within 48 hours following receipt of the petition, the court shall
7 order the source person to obtain a test for bloodborne pathogen-related
8 illnesses if it finds that the petitioner has proven by a preponderance of the
9 evidence that:

10 (A) exposure to the blood or bodily fluids of the source person
11 creates a significant risk of transmission of a bloodborne pathogen-related
12 illness to the affected health care worker or the person providing public safety
13 or emergency response services; and

14 (B) notice of the occupational exposure was provided to the source
15 person and written informed consent for blood testing was sought from the
16 source person by the employer or health care provider of the affected health
17 care worker or the person providing public safety or emergency response
18 services.

19 (3) The petitioner's employer is responsible for the reasonable costs
20 related to obtaining the results of a test for bloodborne pathogen-related

1 illnesses pursuant to this subsection, including the payment of the petitioner's
2 attorney's fees.

3 (o) A blood test administered either consensually or nonconsensually
4 pursuant to this section shall be used solely for purposes described in this
5 section and shall not be used for the investigation or prosecution of any crime.

6 Sec. 2. EFFECTIVE DATE

7 This act shall take effect on July 1, 2018.