

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1221
(Representatives Grande, Hawken, Meier, Potter)
(Senators Christenson, J. Lee)

AN ACT to amend and reenact sections 23-07.3-01 and 23-07.3-02, subsections 1 and 10 of section 23-07.5-01, and subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code, relating to testing for contagious diseases; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07.3-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.3-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Contagious disease" means ~~the interruption, cessation, or disorder of body functions, systems, or organs transmissible by association with the sick or their secretions or excretions, excluding the common cold~~ a reportable condition or disease under section 23-07-01.
2. "Department" means the state department of health.
3. ~~"Emergency medical services provider~~ Exposed individual" means a human being who had a significant exposure with a test subject and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or other person an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including an individual rendering aid under chapter 32-03.1.
4. "Licensed facility" means a hospital, nursing home, dialysis center, or any entity licensed by the state to provide medical care.
5. "Significant exposure" means:
 - a. ~~Contact of broken skin or mucous membrane with a patient's~~ or other individual'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
 - c. Exposure that occurs by any other method of transmission defined by the department as a significant exposure.
6. "Test subject" means the individual to be tested after a significant exposure with another individual.

SECTION 2. AMENDMENT. Section 23-07.3-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.3-02. Procedures following significant exposure - Penalty.

1. If an ~~emergency medical services provider~~ exposed individual has a significant exposure ~~in the process of caring for a patient~~ with a test subject, the ~~emergency medical services~~

~~provider exposed individual shall document that exposure. The documentation must be on forms approved by the department, and in the manner and time designated by the department conducted in accordance with the exposed individual's employer's occupational health program or through the exposed individual's health care provider.~~

2. ~~Upon notification of a significant exposure, or upon receipt of the documentation described in subsection 1, the attending physician exposed individual, that individual's employer, or the exposed individual's health care provider shall request the patient test subject to consent to testing to determine the presence of any contagious disease that may be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. The patient test subject must be informed that the patient test subject may refuse to consent to the test and, if the patient test subject refuses, that the fact of the patient's refusal will be forwarded to the emergency medical services provider exposed individual. If the patient test subject consents to testing, the attending physician test subject shall test be tested for the presence of contagious disease diseases that may be transmitted by that exposure. The testing must be at the expense of the exposed individual or that individual's employer. If the test subject is convicted of a crime relating to the significant exposure or the significant exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, then a court may order the test subject to pay for the testing.~~
3. ~~If a patient test subject who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained from the patient's next of kin or legal guardian in accordance with section 23-12-13. If a patient test subject who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received the patient, testing for the presence of any contagious disease that could be transmitted by that exposure must be conducted. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases.~~
4. ~~The attending physician health care provider that conducted the test under this section shall report the results of the test to the department and to the emergency medical services provider exposed individual who reported the significant exposure. The physician health care provider shall use a case number instead of the patient's test subject's name in making a report to the emergency medical services provider exposed individual who requested the test to ensure the confidentiality of the patient's test subject's identity. All positive test results must be reported to the department in accordance with section 23-07-02.~~
5. ~~A health care provider or an exposed individual who has had a significant exposure with a test subject may subject that individual's blood to a test for the presence of a contagious disease or diseases, without the test subject's consent if all of the following apply:~~
 - a. ~~A sample of the test subject's blood has been drawn for other purposes and is available to be used to test for the presence of contagious disease.~~
 - b. ~~The exposed individual's personal physician, based on information provided to the physician, determines and certifies in writing that the individual had a significant exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. The certification must accompany the request for testing and disclosure.~~
 - c. ~~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 testing, the test subject is informed, while competent and conscious, that the test subject's blood may be tested for the presence of contagious disease; that the test results may not be disclosed to anyone without the test subject's consent, except to the exposed individual and the department; that if the exposed individual knows the identity of the test subject, the exposed individual may not disclose the identity to any other person, except for the purpose of having the test performed; and that a record of the test results may be placed in the test subject'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. A person who discloses the identity of an individual being tested is guilty of a class C felony. Each exposed individual who has had a significant exposure and to whom test results are disclosed shall first sign a document indicating the exposed individual's understanding that the exposed individual may not disclose the information and that disclosing the information is a class C felony.
6. If the test subject does not consent to testing or if consent has not been obtained in accordance with subsection 3, then an exposed individual may petition an appropriate district court for issuance of an order directing the test subject to be tested for the presence of one or more specified contagious diseases that could be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. Upon receiving the petition, the court may issue an order confining the test subject until the hearing or an order establishing reasonable security for that individual'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. The record of a court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:
- a. The test subject has been requested to consent to the testing and has refused to be tested or if consent for testing has not been obtained under subsection 3;
 - b. The court finds probable cause to believe that the individual petitioning for the testing had a significant exposure with the test subject;
 - c. The petition substitutes a pseudonym for the true name of the test subject;
 - d. The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the test subject is not already a party to the proceeding;
 - e. The proceedings are conducted in camera unless the test subject agrees to a hearing in open court; and
 - f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

SECTION 3. AMENDMENT. Subsections 1 and 10 of section 23-07.5-01 of the North Dakota Century Code are amended and reenacted as follows:

- 1. "~~Emergency medical services provider~~ Exposed individual" means a human being who had a significant exposure with another individual who is subject to testing and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or ~~other person~~ an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person rendering aid under chapter 32-03.1.
- 10. "Universal precautions" means measures that a health care provider, emergency medical ~~services provider~~ technician, exposed individual, or ~~a person~~ an individual rendering aid

under chapter 32-03.1 takes in accordance with recommendations of the ~~federal centers for disease control and prevention concerning human immunodeficiency virus transmission in United States public health care settings~~ service to prevent transmission of disease.

SECTION 4. AMENDMENT. Subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code are amended and reenacted as follows:

3. A health care provider, ~~emergency medical services provider, or a person rendering aid under chapter 32-03.1 who provides care to a patient or handles or processes specimens of body fluids or tissues of a patient and~~ an exposed individual who has had a significant exposure with the patient another individual may subject ~~the patient's~~ that individual's blood to a test for the presence of the human immunodeficiency virus, without ~~the patient's~~ that individual's consent, if all of the following apply:
 - a. A blood sample of the ~~patient's blood~~ 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 ~~patient's~~ exposed individual's personal physician, based on information provided to the physician, determines and certifies in writing that the individual ~~has~~ had a significant exposure. The certification must accompany the request for testing and disclosure.
 - c. The ~~patient~~ 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 testing, the ~~patient~~ test subject is informed, while competent and conscious, that the ~~patient's~~ test subject's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one ~~including the patient~~ without the ~~patient's~~ test subject's consent, except to the exposed individual who has had a significant exposure, the department, and any other person authorized by law; that if the exposed individual who has had a significant exposure knows the identity of the ~~patient~~ test subject, ~~that the exposed individual~~ may not disclose the identity to any other person, except for the purpose of having the test performed; and that a record of the test results may be placed in the individual's test subject's medical record, and if not in the medical record, may be kept only if the record does not reveal the ~~patient's~~ test subject's identity. ~~A person who discloses the identity of a patient under subsection 3, 4, 5, 6, 7, or 8 is guilty of a class C felony.~~ Each exposed individual who has had a significant exposure and to whom test results are disclosed ~~must~~ shall first sign a document indicating ~~that the exposed individual's~~ understanding that the exposed individual may not disclose the information and that disclosing the information constitutes a class C felony.
5. If ~~a person~~ an individual who is the subject of a ~~reported~~ significant 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. If ~~a person~~ an individual who is the subject of a ~~reported~~ significant exposure dies without an opportunity to consent to testing ~~prior to admission to, or discharge or release from, the facility that received that person,~~ 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. 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 ~~person~~ individual who experienced the significant exposure. If a facility that received the ~~person~~ 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 emergency medical services provider, individual or health care provider, or person who rendered aid under chapter 32.03.4~~ testing results of any bloodborne pathogen present in any medical records of the dead person which are in the facility's control within twenty-four hours. 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 shall attempt to obtain testing results of bloodborne pathogens of the deceased within twenty-four hours from the facility where it is believed results exist. The test results must be provided to the physician providing care for the ~~person~~ individual who experienced the significant exposure.

6. Any testing done pursuant to subsection 3, 4, or 5 ~~may~~ must be conducted in ~~the most a~~ reasonably expedient manner ~~possible~~. 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 district court for issuance of an order directing ~~the~~ another individual, patient, or provider with whom the individual had a significant 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 ~~person~~ 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 ~~five~~ three days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may 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 ~~patient's or provider's~~ 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 petitioning for the testing ~~has~~ had a significant exposure with the ~~person to be tested~~ test subject;
 - c. The petition substitutes a pseudonym for the true name of the ~~person to be tested~~ test subject;
 - d. The court provides the ~~person to be tested~~ test subject with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
 - e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and
 - f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

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-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1221.

House Vote: Yeas 87 Nays 0 Absent 7

Senate Vote: Yeas 43 Nays 0 Absent 4

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State