

BY: Delegate Bissett

AMENDMENTS TO SENATE BILL NO. 396

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike line 2 in its entirety and substitute “Pregnant Women and Health Care Providers - Aids Counseling and HIV Testing”; in line 8, after “circumstances;” insert “requiring certain individuals in a hospital to order tests to be conducted in a certain manner on blood samples or other body fluids of certain individuals for the presence of antibodies to the human immunodeficiency virus (HIV) under certain circumstances; establishing a certain exception for HIV tests conducted under this Act to the requirement that informed consent be obtained before conducting an HIV test; requiring certain individuals to disclose the results of HIV tests conducted under this Act in a certain manner to certain individuals and provide counseling to certain individuals under certain circumstances; specifying the confidentiality of certain medical records and other information; requiring hospitals to adopt certain procedures; specifying the payment of costs for HIV tests conducted under this Act; providing for a certain limitation of liability for certain individuals under this Act; defining certain terms;”; in line 9 after “women” insert “and conducting tests on blood samples or other body fluids of individuals in a hospital for the presence of antibodies to the human immunodeficiency virus (HIV) under certain circumstances”; after line 9, insert:

“BY repealing and reenacting, with amendments,

Article - Health - General

Section 18-336(b) and 18-338.1(b)

Annotated Code of Maryland

(1994 Replacement Volume and 1996 Supplement)”;

and in line 12, after “18-338.2” insert “and 18-338.3”.

AMENDMENT NO. 2

On page 1, after line 17, insert:

(Over)

“18-336.

(b) Except as provided in Article 27, § 855 of the Code OR § 18-338.2 OF THIS SUBTITLE, before obtaining a fluid or tissue sample from the body of an individual for the purpose of testing the fluid or tissue for the presence of HIV infection, a health care provider shall:

(1) Obtain written informed consent from the individual on a uniform HIV informed consent form that the Department shall develop consistent with the requirements of the Department as established by regulations adopted by the Department; and

(2) Provide the individual with pretest counseling, including:

(i) Education about HIV infection and methods for preventing transmission;

(ii) Information about a physician's duty to warn; and

(iii) Assistance in accessing health care available to an individual who tests positive for the HIV infection.

18-338.1.

(b) [A] EXCEPT AS PROVIDED IN § 18-338.2 OF THIS SUBTITLE, A physician, nurse, or designee of a health care facility shall, at the request of an exposed health care provider, seek the informed consent of a patient to test a blood sample of the patient for the presence of HIV when:

(1) There has been an exposure between the patient and the health care provider;

(2) The health care provider involved in the exposure has given prompt written notice of the exposure, in accordance with the standards of the health care facility, to the chief executive officer or the chief executive officer's designee of the health care facility where the exposure occurred;

(3) The exposure occurred based on the judgment of a physician who is not the health care provider involved in the exposure; and

(4) The health care provider involved in the exposure has given informed consent and has submitted a blood sample to be tested for the presence of HIV in accordance with the provisions

of subsection (d) of this section.”.

On page 3, after line 15, insert:

18-338.3.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) (I) “BODY FLUIDS” MEANS:

1. ANY FLUID CONTAINING VISIBLE BLOOD, SEMEN, OR VAGINAL SECRETIONS; OR

2. CEREBROSPINAL FLUID, SYNOVIAL, OR AMNIOTIC FLUID.

(II) “BODY FLUID” DOES NOT INCLUDE SALIVA, STOOL, NASAL SECRETIONS, SPUTUM, TEARS, URINE, OR VOMITUS.

(3) “EXPOSURE” MEANS AS BETWEEN A PATIENT AND A HEALTH CARE PROVIDER:

(I) PERCUTANEOUS CONTACT WITH BLOOD OR BODY FLUIDS;

(II) MUCOCUTANEOUS CONTACT WITH BLOOD OR BODY FLUIDS;

(III) OPEN WOUND, INCLUDING DERMATITIS, EXUDATIVE LESIONS, OR CHAPPED SKIN, CONTACT WITH BLOOD OR BODY FLUIDS FOR A PROLONGED PERIOD; OR

(IV) INTACT SKIN CONTACT WITH LARGE AMOUNTS OF BLOOD OR BODY FLUIDS FOR A PROLONGED PERIOD.

(Over)

(4) (I) "HEALTH CARE PROVIDER" MEANS AN INDIVIDUAL WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED UNDER THE HEALTH OCCUPATIONS ARTICLE OR THIS ARTICLE TO PROVIDE HEALTH OR MEDICAL CARE IN:

1. THE ORDINARY COURSE OF BUSINESS OR PRACTICE OF A PROFESSION; OR

2. AN APPROVED EDUCATION OR TRAINING PROGRAM.

(II) "HEALTH CARE PROVIDER" INCLUDES ANY AGENT OR EMPLOYEE OF A HOSPITAL.

(III) "HEALTH CARE PROVIDER" DOES NOT INCLUDE AN INDIVIDUAL WHO IS ELIGIBLE TO RECEIVE NOTIFICATION UNDER THE PROVISIONS OF § 18-213 OF THIS TITLE, INCLUDING ANY LAW ENFORCEMENT OFFICER OR ANY MEMBER OF ANY FIRE DEPARTMENT, AMBULANCE COMPANY, OR RESCUE SQUAD.

(5) "HIV" MEANS THE HUMAN IMMUNODEFICIENCY VIRUS THAT CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME.

(6) "HOSPITAL" HAS THE MEANING STATED IN § 19-301 OF THIS ARTICLE.

(B) NOTWITHSTANDING THE PROVISIONS OF § 18-338.1 OF THIS SUBTITLE, THE DESIGNATED INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER OF A HOSPITAL SHALL ORDER A TEST FOR THE PRESENCE OF ANTIBODIES TO THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) UNDER SUBSECTION (C) OF THIS SECTION WHEN:

(1) THERE HAS BEEN AN EXPOSURE IN A HOSPITAL BETWEEN A PATIENT AND A HEALTH CARE PROVIDER THAT, IN ACCORDANCE WITH THE CENTERS FOR DISEASE CONTROL RECOMMENDATIONS, WOULD WARRANT RECOMMENDING OR OFFERING CHEMOPROPHYLAXIS TREATMENT FOR THE HEALTH CARE PROVIDER;

(2) INFORMED CONSENT OF THE PATIENT TO TEST A BLOOD SAMPLE OF THE PATIENT FOR THE PRESENCE OF HIV WAS SOUGHT AND THE PATIENT REFUSED TO CONSENT;

(3) IN ACCORDANCE WITH HOSPITAL PROCEDURES, THE HEALTH CARE PROVIDER INVOLVED IN THE EXPOSURE HAS GIVEN PROMPT NOTICE OF THE EXPOSURE TO THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER WHERE THE EXPOSURE OCCURRED;

(4) THE HEALTH CARE PROVIDER INVOLVED IN THE EXPOSURE HAS GIVEN INFORMED CONSENT AND HAS SUBMITTED A BLOOD SAMPLE TO BE TESTED FOR THE PRESENCE OF HIV; AND

(5) THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER HAS MADE A DETERMINATION THAT THE TESTING OF BLOOD SAMPLES OR OTHER BODY FLUIDS OF THE PATIENT FOR THE PRESENCE OF ANTIBODIES TO THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) WOULD BE HELPFUL IN MANAGING THE RISK OF DISEASE AND HEALTH OUTCOME OF THE HEALTH CARE PROVIDER.

(C) IF THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION ARE SATISFIED, THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER SHALL ORDER TESTS TO BE CONDUCTED FOR THE PRESENCE OF ANTIBODIES TO THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) USING A TEST PROCEDURE APPROVED BY THE DEPARTMENT ON:

(1) BLOOD SAMPLES ALREADY OBTAINED FROM THE PATIENT; OR

(2) BLOOD SAMPLES OR OTHER BODY FLUIDS COLLECTED FOR THE PURPOSE OF HIV TESTING UNDER THIS SECTION.

(D) WHEN THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER OBTAINS THE RESULTS OF AN HIV TEST CONDUCTED IN

(Over)

ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (C) OF THIS SECTION, THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER SHALL DIRECTLY NOTIFY THE PATIENT OF THE RESULTS OF THE HIV TEST AND, TO THE EXTENT POSSIBLE, IN A MANNER THAT WILL PROTECT THE CONFIDENTIALITY OF THE HEALTH CARE PROVIDER AND THE PATIENT.

(E) IF THE RESULTS OF AN HIV TEST CONDUCTED IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (C) OF THIS SECTION ARE POSITIVE, THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE DISEASE OFFICER SHALL PROVIDE OR ARRANGE FOR THE PROVISION OF APPROPRIATE COUNSELING AND TREATMENT RECOMMENDATIONS TO THE HEALTH CARE PROVIDER AND THE PATIENT.

(F) (1) NOTWITHSTANDING THE PROVISIONS OF TITLE 4, SUBTITLE 3 OF THIS ARTICLE, THE MEDICAL RECORDS, INCLUDING ANY PHYSICIAN ORDER FOR AN HIV TEST OR THE RESULTS OF AN HIV TEST CONDUCTED UNDER THIS SECTION, MAY NOT BE DOCUMENTED IN THE MEDICAL RECORD OF THE PATIENT OR HEALTH CARE PROVIDER.

(2) THE HOSPITAL WHERE THE EXPOSURE OCCURRED SHALL MAINTAIN A SEPARATE CONFIDENTIAL RECORD OR INCIDENT REPORT FOR ALL HIV TESTS CONDUCTED UNDER THIS SECTION.

(3) EACH HOSPITAL SHALL ADOPT PROCEDURES FOR THE CONFIDENTIAL HIV TESTING OF BLOOD SAMPLES OR OTHER BODY FLUIDS USED OR COLLECTED FOR PURPOSES OF THIS SECTION.

(4) EXCEPT AS PROVIDED IN PARAGRAPH (5) OF THIS SUBSECTION, THE MEDICAL RECORDS, INCLUDING ANY PHYSICIAN ORDER FOR AN HIV TEST OR THE RESULTS OF ANY HIV TEST CONDUCTED UNDER THIS SECTION, ARE:

(I) CONFIDENTIAL; AND

(II) NOT DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN ANY CRIMINAL, CIVIL, OR ADMINISTRATIVE ACTION.

(5) IF THE IDENTITY OF THE PATIENT OR ANY OTHER INFORMATION THAT COULD BE READILY ASSOCIATED WITH THE IDENTITY OF THE PATIENT IS NOT DISCLOSED, THE RESULTS OF AN HIV TEST CONDUCTED ON A PATIENT FOR PURPOSES OF THIS SECTION MAY BE INTRODUCED INTO EVIDENCE IN ANY CRIMINAL, CIVIL, OR ADMINISTRATIVE ACTION INCLUDING THE ADJUDICATION OF A WORKERS' COMPENSATION CLAIM.

(G) THE COSTS INCURRED IN PERFORMING AN HIV TEST ON A PATIENT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION SHALL BE PAID BY THE HOSPITAL.

(H) EACH HOSPITAL SHALL DEVELOP WRITTEN PROCEDURES TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

(I) A HEALTH CARE PROVIDER OR HOSPITAL OR DESIGNEE OF A HOSPITAL ACTING IN GOOD FAITH TO PROVIDE NOTIFICATION OR MAINTAIN THE CONFIDENTIALITY OF THE RESULTS OF A TEST CONDUCTED UNDER THIS SECTION MAY NOT BE HELD LIABLE IN ANY CAUSE OF ACTION RELATED TO A BREACH OF PATIENT OR HEALTH CARE PROVIDER CONFIDENTIALITY.”.