

ENROLLED BILL

-- Education, Health, and Environmental Affairs/Health and Government Operations --

Introduced by **Senators Middleton, Britt, Colburn, Dyson, and Harris**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Hospitals - HIV Testing - Consent and Public Safety Workers—~~Court Order~~**

3 FOR the purpose of requiring certain individuals in a hospital to order tests on a
4 blood sample already obtained from a patient for the presence of antibodies to
5 the human immunodeficiency virus (HIV) under certain circumstances;
6 requiring certain individuals in a hospital to order tests to be conducted on blood
7 samples of certain public safety workers for the presence of antibodies to the
8 human immunodeficiency virus (HIV) under certain circumstances; requiring
9 that, for a certain test to be conducted, a public safety worker must give certain
10 notice to a certain medical director, give certain informed consent, and submit a
11 certain sample to be tested; requiring a certain medical director to act as a
12 certain intermediary between a certain public safety worker and a certain officer;
13 providing for a certain limitation of liability for certain individuals; authorizing
14 certain individuals to petition a certain court for an order requiring a certain
15 patient to provide a blood sample for HIV testing and disclosure of the test
16 results under certain circumstances; providing that certain individuals in a
17 hospital are not required to notify a certain patient of the results of an HIV test

1 ~~under certain circumstances requiring that certain patients be informed of~~
 2 ~~certain laws under certain circumstances; requiring certain individuals to~~
 3 ~~attempt to notify certain patients of the results of certain tests in a certain~~
 4 ~~manner and provide counseling to certain individuals under certain~~
 5 ~~circumstances; requiring the Department of Health and Mental Hygiene and the~~
 6 ~~Maryland Institute for Emergency Medical Services Systems to jointly develop~~
 7 ~~certain regulations on the collection of certain information; defining a certain~~
 8 ~~term; requiring the Department and the Maryland Institute for Emergency~~
 9 ~~Medical Services Systems to report certain information to the Governor and the~~
 10 ~~General Assembly on or before certain dates; and generally relating to HIV~~
 11 ~~testing on blood samples from individuals in a hospital.~~

12 BY repealing and reenacting, with amendments,
 13 Article - Health - General
 14 Section 18-338.3
 15 Annotated Code of Maryland
 16 (2000 Replacement Volume and 2004 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Health - General**

20 18-338.3.

21 (a) (1) In this section the following words have the meanings indicated.

22 (2) (i) "Body fluids" means:

23 1. Any fluid containing visible blood, semen, or vaginal
 24 secretions; or

25 2. Cerebrospinal fluid, synovial fluid, or amniotic fluid.

26 (ii) "Body fluids" does not include saliva, stool, nasal secretions,
 27 sputum, tears, urine, or vomitus.

28 (3) "Exposure" means as between a patient and a health care provider:

29 (i) Percutaneous contact with blood or body fluids;

30 (ii) Mucocutaneous contact with blood or body fluids;

31 (iii) Open wound, including dermatitis, exudative lesions, or
 32 chapped skin, contact with blood or body fluids for a prolonged period; or

33 (iv) Intact skin contact with large amounts of blood or body fluids
 34 for a prolonged period.

- 1 (4) "First responder" means an individual who:
- 2 (i) Is licensed or certified under § 13-516 of the Education Article;
- 3 and
- 4 (ii) Provides services to an individual before the individual is
- 5 admitted to a hospital.
- 6 (5) (i) "Health care provider" means an individual who is licensed,
- 7 certified, or otherwise authorized under the Health Occupations Article or this article
- 8 to provide health or medical care in:
- 9 1. The ordinary course of business or practice of a profession;
- 10 or
- 11 2. An approved education or training program.
- 12 (ii) "Health care provider" includes any agent or employee of a
- 13 hospital.
- 14 (iii) "Health care provider" does not include an individual who is
- 15 eligible to receive notification under the provisions of § 18-213 of this title, including
- 16 any law enforcement officer or any member of any fire department, ambulance
- 17 company, or rescue squad.
- 18 (6) "HIV" means the human immunodeficiency virus that causes
- 19 acquired immune deficiency syndrome.
- 20 (7) "Hospital" has the meaning stated in § 19-301 of this article.
- 21 (8) "PUBLIC SAFETY WORKER" MEANS:
- 22 (I) A CAREER OR VOLUNTEER MEMBER OF A FIRE, RESCUE, OR
- 23 EMERGENCY MEDICAL SERVICES DEPARTMENT, COMPANY, SQUAD, OR AUXILIARY;
- 24 (II) A LAW ENFORCEMENT OFFICER; OR
- 25 (III) THE STATE FIRE MARSHAL OR A SWORN MEMBER OF THE
- 26 STATE FIRE MARSHAL'S OFFICE.
- 27 (b) Notwithstanding the provisions of § 18-338.1 of this subtitle, the
- 28 designated infectious disease/communicable disease officer of a hospital shall order a
- 29 test for the presence of antibodies to the human immunodeficiency virus (HIV) under
- 30 subsection (d) ~~OR (E)~~ of this section when:
- 31 (1) There has been an exposure in a hospital between a patient and a
- 32 health care provider, ~~or~~ an exposure between the patient and a first responder, OR AN
- 33 EXPOSURE BETWEEN A PATIENT AND A PUBLIC SAFETY WORKER before admission of
- 34 the patient to a hospital, that, in accordance with the Centers for Disease Control and
- 35 Prevention recommendations, would warrant recommending or offering

1 chemoprophylaxis treatment for the health care provider or first responder

2 PROVIDER, FIRST RESPONDER, OR PUBLIC SAFETY WORKER;

3 (2) (I) Informed consent, or substitute consent as required under §
4 18-338.1(c) of this title, of the patient to test a blood sample of the patient for the
5 presence of HIV was sought and the patient was unavailable or unable to consent; OR

6 (II) INFORMED CONSENT, OR SUBSTITUTE CONSENT AS REQUIRED
7 UNDER § 18-338.1(C) OF THIS TITLE, OF THE PATIENT TO TEST A BLOOD SAMPLE
8 ALREADY OBTAINED FROM THE PATIENT FOR THE PRESENCE OF HIV WAS SOUGHT,
9 ~~AND THE PATIENT REFUSED, AND THE PATIENT WAS INFORMED OF THE PROVISIONS~~
10 OF THIS SUBSECTION;

11 ~~(3)~~ THE PATIENT HAS BEEN INFORMED OF THE PROVISIONS OF THIS
12 SUBSECTION;

13 ~~(3)~~ ~~(4)~~ ~~(3)~~ (i) In accordance with hospital procedures, the health
14 care provider involved in the exposure has given prompt notice of the exposure to the
15 designated hospital infectious disease/communicable disease officer where the
16 exposure occurred; or

17 (ii) 1. A. The first responder involved in the exposure has
18 given prompt notice to the medical director with jurisdiction over the first responder;
19 ~~and~~ OR

20 B. THE PUBLIC SAFETY WORKER INVOLVED IN THE
21 EXPOSURE HAS GIVEN PROMPT NOTICE TO THE MEDICAL DIRECTOR WITH
22 JURISDICTION OVER THE PUBLIC SAFETY WORKER; AND

23 2. The medical director has given prompt notice to the
24 designated hospital infectious disease/communicable disease officer where the patient
25 is admitted;

26 ~~(4)~~ ~~(5)~~ ~~(4)~~ The health care provider, ~~or~~ first responder, OR PUBLIC
27 SAFETY WORKER involved in the exposure has given informed consent and has
28 submitted a blood sample to be tested for the presence of HIV; and

29 ~~(5)~~ ~~(6)~~ ~~(5)~~ The designated hospital infectious disease/communicable
30 disease officer has made a determination, in accordance with the Centers for Disease
31 Control and Prevention recommendations, that the testing of blood samples or other
32 body fluids of the patient for the presence of antibodies to the human
33 immunodeficiency virus (HIV) would be helpful in managing the risk of disease and
34 health outcome of the health care provider, ~~or~~ first responder, OR PUBLIC SAFETY
35 WORKER.

36 (c) If there has been an exposure between a first responder and an individual
37 OR A PUBLIC SAFETY WORKER AND AN INDIVIDUAL before the admission of the
38 individual to a hospital:

1 (1) The first responder OR PUBLIC SAFETY WORKER shall give notice to
 2 the first responder's OR PUBLIC SAFETY WORKER'S medical director in accordance
 3 with subsection (b)(3)(ii)1 of this section;

4 (2) The medical director shall act as an intermediary at all times
 5 between the first responder OR PUBLIC SAFETY WORKER and the designated hospital
 6 infectious disease/communicable disease officer; and

7 (3) The medical director and the designated hospital infectious
 8 disease/communicable disease officer shall ensure that all communications and
 9 information related to the exposure of the first responder OR PUBLIC SAFETY
 10 WORKER are confidential.

11 (d) If the requirements of subsections (b) and (c) of this section are satisfied,
 12 the designated hospital infectious disease/communicable disease officer shall order
 13 tests to be conducted for the presence of antibodies to the human immunodeficiency
 14 virus (HIV) using a test procedure approved by the Department on:

15 (1) Blood samples already obtained from the patient; or

16 (2) Blood samples or other body fluids collected for the purpose of HIV
 17 testing under this section.

18 ~~(E) IF A BLOOD SAMPLE ALREADY OBTAINED FROM THE PATIENT IS~~
 19 ~~UNAVAILABLE AND THE PATIENT HAS REFUSED TO CONSENT TO BLOOD TESTING~~
 20 ~~FOR THE PRESENCE OF HIV, THE INDIVIDUAL INVOLVED IN THE EXPOSURE OR THE~~
 21 ~~EMPLOYER OF THE INDIVIDUAL INVOLVED IN THE EXPOSURE MAY PETITION THE~~
 22 ~~CIRCUIT COURT IN THE COUNTY OR CITY IN WHICH THE PATIENT RESIDES OR THE~~
 23 ~~HOSPITAL IN WHICH THE PATIENT IS BEING TREATED FOR AN ORDER REQUIRING~~
 24 ~~THE PATIENT TO:~~

25 ~~(1) PROVIDE A BLOOD SAMPLE; AND~~

26 ~~(2) DISCLOSE THE TEST RESULTS IN ACCORDANCE WITH THIS SECTION.~~

27 ~~{(e)}~~ ~~(F)~~ When the designated hospital infectious disease/communicable
 28 disease officer obtains the results of an HIV test conducted in accordance with the
 29 provisions of subsection (d) ~~OR (E)~~ of this section~~},~~

30 ~~(1)~~ ~~{the}~~ ~~THE~~ designated hospital infectious disease/communicable
 31 disease officer shall ATTEMPT TO directly notify the patient of the results of the HIV
 32 test and, to the extent possible, in a manner that will protect the confidentiality of the
 33 health care provider, ~~or~~ the first responder, OR THE PUBLIC SAFETY WORKER and the
 34 patient; ~~OR.~~

35 ~~(2) THE DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE~~
 36 ~~DISEASE OFFICER IS NOT REQUIRED TO NOTIFY THE PATIENT OF THE RESULTS OF~~
 37 ~~THE HIV TEST IF THE PATIENT HAS DECLINED NOTIFICATION.~~

1 ~~{(f)}~~ ~~(G)~~ ~~{If} EXCEPT AS PROVIDED IN SUBSECTION (F)(2) OF THIS SECTION, IF~~
 2 the results of an HIV test conducted in accordance with the provisions of subsection
 3 ~~(d) OR (E)~~ of this section are positive, the designated hospital infectious
 4 disease/communicable disease officer shall provide or arrange for the provision of
 5 appropriate counseling and treatment recommendations to the health care provider,
 6 ~~or~~ first responder, OR PUBLIC SAFETY WORKER and the patient.

7 ~~{(g)}~~ ~~(H)~~ (1) Notwithstanding the provisions of Title 4, Subtitle 3 of this
 8 article, the medical records, including any physician order for an HIV test or the
 9 results of an HIV test conducted under this section, may not be documented in the
 10 medical record of the patient, health care provider, ~~or~~ first responder, OR PUBLIC
 11 SAFETY WORKER.

12 (2) The hospital where the exposure occurred shall maintain a separate
 13 confidential record or incident report for all HIV tests conducted under this section.

14 (3) Each hospital shall adopt procedures for the confidential HIV testing
 15 of blood samples or other body fluids used or collected for purposes of this section.

16 (4) Except as provided in paragraph (5) of this subsection, the medical
 17 records, including any physician order for an HIV test or the results of any HIV test
 18 conducted under this section, are:

19 (i) Confidential; and

20 (ii) Not discoverable or admissible in evidence in any criminal, civil,
 21 or administrative action.

22 (5) If the identity of the patient or any other information that could be
 23 readily associated with the identity of the patient is not disclosed, the results of an
 24 HIV test conducted on a patient for purposes of this section may be introduced into
 25 evidence in any criminal, civil, or administrative action including the adjudication of
 26 a workers' compensation claim.

27 ~~{(h)}~~ ~~(I)~~ The costs incurred in performing an HIV test on a patient in
 28 accordance with the provisions of this section shall be paid by the hospital.

29 ~~{(i)}~~ ~~(J)~~ Each hospital shall develop written procedures to implement the
 30 provisions of this section.

31 ~~{(j)}~~ ~~(K)~~ A health care provider, first responder, PUBLIC SAFETY WORKER, or
 32 hospital or designee of a hospital acting in good faith to provide notification or
 33 maintain the confidentiality of the results of a test conducted under this section may
 34 not be held liable in any cause of action related to a breach of patient, health care
 35 provider, ~~or~~ first responder, OR PUBLIC SAFETY WORKER confidentiality.

36 SECTION 2. AND BE IT FURTHER ENACTED, That:

37 (a) The Department of Health and Mental Hygiene and the Maryland Institute
 38 for Emergency Medical Services Systems jointly shall develop regulations establishing

1 procedures to collect information by county on exposures, as defined by § 18-338.3(a)
2 of the Health - General Article, and refusals to consent by a patient, as described in §
3 18-338.3(b)(2)(ii) of the Health - General Article, as enacted by Section 1 of this Act.

4 (b) The Department of Health and Mental Hygiene and the Maryland Institute
5 for Emergency Medical Services Systems shall report the information described in
6 subsection (a) of this section to the Governor and, in accordance with § 2-1246 of the
7 State Government Article, to the General Assembly on or before the following dates:

8 (1) December 1, 2005;

9 (2) December 1, 2006;

10 (3) December 1, 2007; and

11 (4) December 1, 2008.

12 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
13 effect October 1, 2005.