PUBLIC SAFETY WORKER PROTECTION AMENDMENTS

2020 FIFTH SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill modifies testing requirements and procedures in relation to public safety workers who have been exposed to a communicable disease.

Highlighted Provisions:

This bill:

- defines terms;
- modifies definitions and procedures to authorize a court to order an individual to submit to medical testing for COVID-19 under certain circumstances; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

78B-8-401, as last amended by Laws of Utah 2017, Chapters 185 and 326

78B-8-402, as last amended by Laws of Utah 2019, Chapter 400

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-8-401** is amended to read:

78B-8-401. Definitions.

[~~For purposes of~~] As used in this part:

(1) "Blood or contaminated body fluids" includes blood, saliva, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and vaginal secretions, and any body fluid visibly contaminated with blood.

(2) "COVID-19" means the same as that term is defined in Section 78B-4-517.

[~~(2)~~] (3) "Disease" means Human Immunodeficiency Virus infection, acute or chronic Hepatitis B infection, Hepatitis C infection, COVID-19 or another infectious disease that may cause Severe Acute Respiratory Syndrome, and any other infectious disease specifically designated by the Labor Commission, in consultation with the Department of Health, for the purposes of this part.

[~~(3)~~] (4) "Emergency services provider" means:

(a) an individual licensed under Section 26-8a-302, a peace officer, local fire department personnel, or personnel employed by the Department of Corrections or by a county jail, who provide prehospital emergency care for an emergency services provider either as an employee or as a volunteer; or

(b) an individual who provides for the care, control, support, or transport of a prisoner.

[~~(4)~~] (5) "First aid volunteer" means a person who provides voluntary emergency assistance or first aid medical care to an injured person prior to the arrival of an emergency medical services provider or peace officer.

[~~(5)~~] (6) "Health care provider" means the same as that term is defined in Section 78B-3-403.

(7) "Medical testing procedure" means a nasopharyngeal swab, a nasal swab, a capillary blood sample, a saliva test, or a blood draw.

[~~(6)~~] (8) "Peace officer" means the same as that term is defined in Section 53-1-102.

[~~(7)~~] (9) "Prisoner" means the same as that term is defined in Section 76-5-101.

[~~(8)~~] (10) "Significant exposure" and "significantly exposed" mean:

(a) exposure of the body of one [~~person~~] individual to the blood or body fluids of

another [~~person~~] individual by:

(i) percutaneous injury, including a needle stick, cut with a sharp object or instrument, or a wound resulting from a human bite, scratch, or similar force; or

(ii) contact with an open wound, mucous membrane, or nonintact skin because of a cut, abrasion, dermatitis, or other damage; [~~or~~]

(b) exposure of the body of one individual to the body fluids, including airborne droplets, of another individual if:

(i) the other individual displays symptoms known to be associated with COVID-19 or another infectious disease that may cause Severe Acute Respiratory Syndrome; or

(ii) other evidence exists that would lead a reasonable person to believe that the other individual may be infected with COVID-19 or another infectious disease that may cause Severe Acute Respiratory Syndrome; or

[~~(b)~~] (c) exposure that occurs by any other method of transmission defined by the Labor Commission, in consultation with the Department of Health, as a significant exposure.

Section 2. Section **78B-8-402** is amended to read:

78B-8-402. Petition -- Disease testing -- Notice -- Payment for testing.

(1) An emergency services provider or first aid volunteer who is significantly exposed during the course of performing the emergency services provider's duties or during the course of performing emergency assistance or first aid, or a health care provider acting in the course and scope of the health care provider's duties as a health care provider may:

(a) request that the person to whom the emergency services provider, first aid volunteer, or health care provider was significantly exposed voluntarily submit to testing; or

(b) petition the district court or a magistrate for an order requiring that the person to whom the emergency services provider, first aid volunteer, or health care provider was significantly exposed submit to testing to determine the presence of a disease[~~, as defined in Section 78B-8-401,~~] and that the results of that test be disclosed to the petitioner by the Department of Health.

(2) (a) A law enforcement agency may submit on behalf of the petitioner by electronic or other means an ex parte request for a warrant ordering a [~~blood draw from~~] medical testing procedure of the respondent.

(b) The court or magistrate shall issue a warrant ordering the respondent to [~~provide a specimen of the respondent's blood~~] submit to a medical testing procedure within two hours, and that reasonable force may be used, if necessary, if the court or magistrate finds that:

(i) the petitioner was significantly exposed during the course of performing the petitioner's duties as an emergency services provider, first aid volunteer, or health care provider;

(ii) the respondent [~~has~~] refused to give consent to the [~~blood draw~~] medical testing procedure or is unable to give consent;

(iii) there may not be an opportunity to obtain a sample at a later date; and

(iv) a delay in administering available FDA-approved post-exposure treatment or prophylaxis could result in a lack of effectiveness of the treatment or prophylaxis.

(c) (i) [~~The~~] If the petitioner requests that the court order the respondent to submit to a blood draw, the petitioner shall request a person authorized under Section 41-6a-523 to perform the blood draw.

(ii) If the petitioner requests that the court order the respondent to submit to a medical testing procedure, other than a blood draw, the petitioner shall request that a qualified medical professional, including a physician, a physician's assistant, a registered nurse, a licensed practical nurse, or a paramedic, perform the medical testing procedure.

(d) (i) A sample drawn in accordance with a warrant following an ex parte request shall be sent to the Department of Health for testing.

(ii) If the Department of Health is unable to perform a medical testing procedure ordered by the court under this section, a qualified medical laboratory may perform the medical testing procedure if:

(A) the Department of Health requests that the medical laboratory perform the medical

testing procedure; and

(B) the result of the medical testing procedure is provided to the Department of Health.

(3) If a petitioner does not seek or obtain a warrant pursuant to Subsection (2), the petitioner may file a petition with the district court seeking an order to submit to testing and to disclose the results in accordance with this section.

(4) (a) The petition described in Subsection (3) shall be accompanied by an affidavit in which the petitioner certifies that the petitioner has been significantly exposed to the individual who is the subject of the petition and describes that exposure.

(b) The petitioner shall submit to testing to determine the presence of a disease, when the petition is filed or within three days after the petition is filed.

(5) The petitioner shall cause the petition required under this section to be served on the person who the petitioner is requesting to be tested in a manner that will best preserve the confidentiality of that person.

(6) (a) The court shall set a time for a hearing on the matter within 10 days after the petition is filed and shall give the petitioner and the individual who is the subject of the petition notice of the hearing at least 72 hours prior to the hearing.

(b) The individual who is the subject of the petition shall also be notified that the individual may have an attorney present at the hearing and that the individual's attorney may examine and cross-examine witnesses.

(c) The hearing shall be conducted in camera.

(7) The district court may enter an order requiring that an individual submit to testing, including [~~blood testing~~] a medical testing procedure, for a disease if the court finds probable cause to believe:

(a) the petitioner was significantly exposed; and

(b) the exposure occurred during the course of the emergency services provider's duties, the provision of emergency assistance or first aid by a first aid volunteer, or the health care provider acting in the course and scope of the provider's duties as a health care provider.

(8) The court may order that the [~~blood specimen be obtained by the use of reasonable force~~] use of reasonable force is permitted to complete an ordered test if the individual who is the subject of the petition is a prisoner.

(9) The court may order that additional, follow-up testing be conducted and that the individual submit to that testing, as it determines to be necessary and appropriate.

(10) The court is not required to order an individual to submit to a test under this section if it finds that there is a substantial reason, relating to the life or health of the individual, not to enter the order.

(11) (a) Upon order of the district court that [~~a person~~] an individual submit to testing for a disease, that [~~person~~] individual shall report to the designated local health department to [~~have the person's blood drawn within 10 days from the issuance of~~] provide the ordered specimen within five days after the day on which the court issues the order, and thereafter as designated by the court, or be held in contempt of court.

(b) The court shall send the order to the Department of Health and to the local health department ordered to [~~draw the blood~~] conduct or oversee the test.

(c) Notwithstanding the provisions of Section 26-6-27, the Department of Health and a local health department may disclose the test results pursuant to a court order as provided in this section.

(d) Under this section, anonymous testing as provided under Section 26-6-3.5 may not satisfy the requirements of the court order.

(12) The local health department or the Department of Health shall inform the subject of the petition and the petitioner of the results of the test and advise both parties that the test results are confidential. That information shall be maintained as confidential by all parties to the action.

(13) The court, the court's personnel, the process server, the Department of Health, local health department, and petitioner shall maintain confidentiality of the name and any other identifying information regarding the individual tested and the results of the test as they relate

to that individual, except as specifically authorized by this chapter.

(14) (a) Except as provided in Subsection (14)(b), the petitioner shall remit payment for [~~the drawing of the blood specimen and the analysis of the specimen for the mandatory disease testing to the entity that draws the blood~~] each test performed in accordance with this section to the entity that performs the procedure.

(b) If the petitioner is an emergency services provider, the agency that employs the emergency services provider shall remit payment for [~~the drawing of the blood specimen and the analysis of the specimen for the mandatory disease testing to the entity that draws the blood~~] each test performed in accordance with this section to the entity that performs the procedure.

(15) The entity that [~~draws the blood~~] obtains a specimen for a test ordered under this section shall cause the [~~blood~~] specimen and the payment for the analysis of the specimen to be delivered to the Department of Health for analysis.

(16) If the individual is incarcerated, the incarcerating authority shall either [~~draw the blood specimen~~] obtain a specimen for a test ordered under this section or shall pay the expenses of having the [~~individual's blood drawn~~] specimen obtained by a qualified individual who is not employed by the incarcerating authority.

(17) The ex parte request or petition shall be sealed upon filing and made accessible only to the petitioner, the subject of the petition, and their attorneys, upon court order.

Section 3. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.