

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "b" to H.P. 1000, L.D. 1392, Bill, "An Act to Require the Release of the Results of an HIV Test to an Emergency Services Worker Who Was Possibly Exposed"

Amend the bill by striking out the title and substituting the following:

'An Act to Permit the Release of the Results of an HIV Test to a Person Who Has Experienced a Bona Fide Occupational Exposure'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 5 MRSA §19203-C, sub-§1, as amended by PL 1995, c. 404, §7, is further amended to read:

1. **Petition.** Any person who experiences a bona fide occupational exposure may petition the District Court with jurisdiction over the facility or other place where the exposure occurred to require the person whose blood or body fluid is the source of the exposure to submit to an HIV test and to require that the results of the test be provided to the petitioner provided that the following conditions have been met:

A. The exposure to blood or body fluids creates a significant risk of HIV infection, as defined by the Bureau of Health through the adoption of rules in accordance with the Maine Administrative Procedure Act, chapter 375;

COMMITTEE AMENDMENT

2 B. The authorized representative of the employer of the
3 person exposed has informed the person whose blood or body
4 fluid is the source of the occupational exposure and has
5 sought to obtain written informed consent from the person
6 whose blood or body fluid is the source of the exposure; and

7 C. Written informed consent was not given by the person
8 whose blood or body fluid is the source of the exposure and
9 that person has refused to be tested.

10 **Sec. 2. 5 MRSA §19203-C, sub-§4,** as amended by PL 1995, c.
11 404, §10, is further amended to read:

12 **4. Determination.** The court may require the person whose
13 blood or body fluid is the source of the exposure to obtain an
14 HIV test only if the petitioner proves, by a preponderance of the
15 evidence, that:

16 A. The exposure to blood or body fluids of the person
17 created a significant risk of HIV infection as defined by
18 the Bureau of Health through the adoption of rules in
19 accordance with the Maine Administrative Procedure Act,
20 chapter 375;

21 B. An authorized representative of the employer of the
22 person exposed has informed the patient of the occupational
23 exposure and has sought to obtain written informed consent
24 from the person whose blood or body fluid is the source of
25 the exposure; and

26 C. Written informed consent was not given by the person
27 whose blood or body fluid is the source of the exposure and
28 that person has refused to be tested.

29 In determining whether to order the test and release the results
30 to the petitioner, the court shall consider the balance of
31 benefit and harm to both individuals if the test is ordered and
32 the results released to the petitioner.'

33 Further amend the bill by inserting at the end before the
34 summary the following:

35 **·FISCAL NOTE**

36 This bill may increase the number of civil suits filed in
37 the court system. The additional workload and administrative
38 costs associated with the minimal number of new cases filed can
39 be absorbed within the budgeted resources of the Judicial
40 Department. The collection of additional filing fees may also
41 increase General Fund revenue by minor amounts.'

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SUMMARY

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6 This amendment is the minority report. It deletes the
8 definition of "emergency services worker" and the provisions
10 entitling emergency services workers to require a person whose
12 blood or bodily fluid is the source of a bona fide occupational
14 exposure to submit to an HIV test and to receive the results of
16 the test.

18 It replaces those provisions with language clarifying that
20 anyone, including those who would be included in the definition
22 in the original bill of "emergency services worker," who
24 experiences a bona fide occupational exposure may receive the
26 results of a court-ordered HIV test on a person whose blood or
bodily fluid is the source of a bona fide occupational exposure,
pursuant to the judicial consent procedures of the Maine Revised
Statutes, Title 5, section 19203-C. This amendment preserves the
current law provisions that give the court discretion in ordering
the test and adds a provision giving the court discretion to
release the results to the person exposed, based upon the balance
of benefit and harm to both the person exposed and the person
tested.

26 This amendment also adds a fiscal note to the bill.