

MAINE STATE LEGISLATURE

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L.D. 1791

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JUDICIARY

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STATE OF MAINE
SENATE
119TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 626, L.D. 1791, Bill, "An Act to Promote Effective Management of Occupational Exposure to HIV"

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 §19201, sub-§§1-A and 1-B, as enacted by PL 1995, c. 404, §1, are amended to read:

1-A. Bona fide occupational exposure. "Bona fide occupational exposure" means skin, eye, mucous membrane or parenteral contact of a person with the potentially infectious blood or other body fluids of another person that results from the performance of duties by the exposed person in the course of employment. It also includes such contact resulting from performance of emergency services by a volunteer firefighter as defined by Title 30-A, section 3151 or by an emergency medical services person licensed under Title 32, chapter 2-B when responding to an emergency as part of a governmental, nonprofit or other organized entity, whether the firefighter or emergency medical services person is compensated for such services or not.

1-B. Employer; employer of the person exposed. "Employer" and "employer of the person exposed" include a self-employed person who is exposed to the potentially infectious blood or other body fluids of another person. It also includes, in the case of a volunteer firefighter or emergency medical services person, the organization for which the services are performed.

Sec. 2. 5 MRSA §19201, sub-§2-A is enacted to read:

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2 2-A. Health care setting. "Health care setting" means any
3 location where there is provision of preventive, diagnostic,
4 therapeutic, rehabilitative, maintenance or palliative care,
5 services, procedures or counseling, including emergency services
6 performed in the field, and appropriate assistance with disease
7 or symptom management and maintenance that affects an
8 individual's physical, mental or behavioral condition, including
9 the process of banking blood, sperm, organs or any other tissue.

10 **Sec. 3. 5 MRSA §19203-A, sub-§4-A is enacted to read:**

12 4-A. Occupational exposure in health care setting. When a
13 bona fide occupational exposure occurs in a health care setting,
14 authorization to test the source patient for HIV must be obtained
15 from that patient if the patient is present or can be contacted
16 at the time of exposure and is capable of providing consent. At
17 the time of exposure, if the source patient is not present and
18 can not be contacted or is incapacitated, then any reasonably
19 available member of the following classes of individuals, in
20 descending order of priority, may authorize an HIV test on a
21 blood or tissue sample from the source patient:

22 A. The patient's legal guardian;

24 B. An individual known to have power of attorney for health
25 care for the patient;

28 C. An adult relative, by blood, marriage or adoption;

30 D. An adult with whom the patient has a meaningful social
31 and emotional relationship; and

32 E. A physician who is familiar with occupational exposures
33 to HIV.

36 The individual authorizing the HIV test must be informed of the
37 nature, reliability and significance of the HIV test and the
38 confidential nature of the test.

40 If the person contacted for authorization refuses to authorize
41 the test, the test may not be conducted unless consent is
42 obtained from the source patient or from the court pursuant to
43 section 19203-C.

44 This subsection does not authorize a person described in
45 paragraphs A to D to receive the test result. Test results must
46 be given to the exposed person, to a personal physician if
47 designated by the exposed person and to either the physician who
48 authorizes the test or the health care provider who manages the
49 occupational exposure.

2 The patient may choose not to be informed about the result of the
4 HIV test. Without express patient authorization, the results of
6 the HIV test and the fact that an HIV test was done as a result
8 of an occupational exposure in a health care setting may not
10 appear in the patient's health care records. The exposed
12 individual's occupational health care record may include
14 documentation of the occupational exposure and, if the record
16 does not reveal the source patient's identity, the results of the
18 source patient's HIV test.

20 **Sec. 4. 5 MRSA §19203-C, sub-§1, ¶C**, as amended by PL 1995, c.
22 404, §7, is further amended to read:

24 C. Written informed consent was not given by the person
26 whose blood or body fluid is the source of the exposure and
28 that person has refused to be tested, or, in the event of an
30 occupational exposure in a health care setting when the
32 source patient was not present and could not be contacted or
34 was incapacitated, the individual contacted for
36 authorization to test the source patient's blood or tissue
38 sample denied the authorization.

40 **Sec. 5. Study.** The Department of Human Services, Bureau of
42 Health, shall convene a study group to examine options for
44 expanding the application of this Act to other groups of
46 employers and employers subject to the federal OSHA regulation on
48 blood-borne pathogens. The group must include representatives of
the Maine HIV Advisory Committee, hospitals and other health care
providers, employers, labor and state or federal officials with
expertise in the OSHA blood-borne pathogen standard.

By December 31, 1999, the department shall present a report
to the Joint Standing Committee on Judiciary with information
regarding various options and a recommendation on expansion of
the application of this Act. The Joint Standing Committee on
Judiciary is authorized to report out legislation to the Second
Regular Session of the 119th Legislature by March 1, 2000 in
response to the report.'

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

FISCAL NOTE

The Department of Human Services will incur some minor
additional costs to convene a study group to examine options for
expanding the application of this Act to other groups of

2 employers and to present a report to the Joint Standing Committee
on Judiciary with information regarding various options, and a
4 recommendation on expansion. These costs can be absorbed within
the department's existing budgeted resources.'

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SUMMARY

10 This amendment is the majority report of the committee. It
clarifies when a patient is unavailable or unable to give
12 consent, specifies who may receive the test results and clarifies
that, if the person contacted for authorization refuses to
14 authorize a test, the source person's consent or judicial
authorization must be obtained.

16 The amendment also clarifies the application to volunteer
emergency services personnel, including volunteer firefighters
18 and licensed emergency medical services persons.

20 The amendment requires the Department of Human Services,
Bureau of Health, to study options for expanding the application
22 of the law to other groups of employers and to report back to the
Joint Standing Committee on Judiciary by December 31, 1999. The
24 committee is authorized to report out legislation in response to
the report.

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The amendment also adds a fiscal note to the bill.