

# MAINE STATE LEGISLATURE

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*R. O. S.*

L.D. 1791

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**STATE OF MAINE  
SENATE  
119TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "B" 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 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 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 or place  
13 subject to federal blood-borne pathogen standard. When a bona  
14 fide occupational exposure occurs in a health care setting or in  
15 a place of employment subject to the federal blood-borne pathogen  
16 regulation under the Occupational Safety and Health Act,  
17 authorization to test the source patient for HIV must be obtained  
18 from that patient if the patient is present or can be contacted  
19 at the time of exposure and is capable of providing consent. At  
20 the time of exposure, if the source patient is not present and  
21 can not be contacted or is incapacitated, then any reasonably  
22 available member of the following classes of individuals, in  
23 descending order of priority, may authorize an HIV test on a  
24 blood or tissue sample from the source patient:

- 26 A. The patient's legal guardian;
- 28 B. An individual known to have power of attorney for health  
30 care for the patient;
- 32 C. An adult relative, by blood, marriage or adoption;
- 34 D. An adult with whom the patient has a meaningful social  
35 and emotional relationship; and
- 36 E. A physician who is familiar with occupational exposures  
37 to HIV.

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

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

48 This subsection does not authorize a person described in  
49 paragraph A, B, C or D to receive the test result. Test results  
50 must be given to the exposed person, to a personal physician if

2 designated by the exposed person and to either the physician who  
 3 authorizes the test or the health care provider who manages the  
 4 occupational exposure.

5 The patient may choose not to be informed about the result of the  
 6 HIV test. Without express patient authorization, the results of  
 7 the HIV test and the fact that an HIV test was done as a result  
 8 of an occupational exposure described in this subsection may not  
 9 appear in the patient's health care records. The exposed  
 10 individual's occupational health care record may include  
 11 documentation of the occupational exposure and, if the record  
 12 does not reveal the source patient's identity, the results of the  
 13 source patient's HIV test.

14  
 15 **Sec. 4. 5 MRSA §19203-C, sub-§1, ¶C,** as amended by PL 1995, c.  
 16 404, §7, is further amended to read:

17 C. Written informed consent was not given by the person  
 18 whose blood or body fluid is the source of the exposure and  
 19 that person has refused to be tested, or, in the event of an  
 20 occupational exposure described in section 19203-A,  
 21 subsection 4-A when the source patient was not present and  
 22 could not be contacted or was incapacitated, the individual  
 23 contacted for authorization to test the source patient's  
 24 available blood or tissue sample denied the authorization.'  
 25

## 28 SUMMARY

29  
 30 This amendment is the minority amendment of the committee.  
 31 It expands the application to all places of employment subject to  
 32 the Occupational Safety and Health Act regulation on blood-borne  
 33 pathogens. A place of employment is subject to that OSHA  
 34 standard if employees there are "reasonably anticipated" to come  
 35 into contact with blood, other body fluids or other infectious  
 36 material.  
 37

38  
 39 This amendment clarifies when a patient is unavailable to  
 40 give consent, specifies who may receive the test results and  
 41 clarifies that if any person refuses to give authorization, the  
 42 test may not be performed without judicial consent or the consent  
 43 of the source patient.  
 44

45 It also clarifies that the law applies to exposures of  
 46 volunteer emergency services personnel, including volunteer  
 47 firefighters and licensed emergency medical services persons.  
 48