

1993 Assembly Bill 552

Date of enactment: April 9, 1994
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1993 WISCONSIN ACT 252

AN ACT *to repeal* 252.15 (2) (a) 5, 252.15 (2) (a) 5m and 252.15 (5) (a) 16; *to renumber* 252.01 (1); *to amend* 252.01 (4), 252.15 (2) (a) 7. a., 252.15 (2) (a) 7. b., 252.15 (2) (a) 7. c., 252.15 (4) (c), 252.15 (5) (a) 18 and 252.15 (9); and *to create* 101.02 (19), 252.01 (1g), 252.14 (1) (ar) 14, 252.15 (1) (ab), 252.15 (1) (ar) 3, 252.15 (2) (a) 7. ai. to av. and 252.15 (2) (a) 7m of the statutes, **relating to:** testing for human immunodeficiency virus when first responders, emergency medical technicians, fire fighters, peace officers, correctional officers, persons who are employed at a secured correctional facility, state patrol officers, health care providers, health care provider employes and staff members of the state crime laboratories are significantly exposed, prohibiting certain discrimination by first responders, changing the definitions of peace officer and requiring submittal of certain information on a report form.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 101.02 (19) of the statutes is created to read:

101.02 (19) (a) The department shall, after consulting with the department of health and social services, develop a report form to document significant exposure to blood or body fluids, for use under s. 252.15 (2) (a) 7. ak. The form shall contain the following language for use by a person who may have been significantly exposed: “REMEMBER — WHEN YOU ARE INFORMED OF AN HIV TEST RESULT BY USING THIS FORM, IT IS A VIOLATION OF THE LAW FOR YOU TO REVEAL TO ANYONE ELSE THE IDENTITY OF THE PERSON WHO IS THE SUBJECT OF THAT TEST RESULT. (PENALTY: POSSIBLE JAIL AND UP TO \$10,000 FINE)”.

(b) The department shall determine whether a report form that is not the report form under par. (a) that is used or proposed for use to document significant exposure to blood or body fluids, is substantially equivalent to the report form under par. (a).

SECTION 2. 252.01 (1) of the statutes, as affected by 1993 Wisconsin Act 27, is renumbered 252.01 (1m).

SECTION 3. 252.01 (1g) of the statutes is created to read:

252.01 (1g) “First responder” means a person who, as a condition of employment or as a member of an organization that provides emergency medical care before hospitalization, provides emergency medical care to a sick, disabled or injured individual before the arrival of an ambulance, but who does not provide transportation for a patient.

SECTION 4. 252.01 (4) of the statutes, as affected by 1993 Wisconsin Act 27, is amended to read:

252.01 (4) “Peace officer” ~~means a sheriff, under-sheriff, deputy sheriff, police officer, constable, marshal or deputy marshal~~ has the meaning given in s. 939.22 (22).

SECTION 4m. 252.14 (1) (ar) 14 of the statutes is created to read:

252.14 (1) (ar) 14. A first responder.

SECTION 5. 252.15 (1) (ab) of the statutes is created to read:

252.15 (1) (ab) “Affected person” means an emergency medical technician, first responder, fire fighter, peace officer, correctional officer, person who is employed at a secured correctional facility, as defined in s. 48.02 (15m), state patrol officer, health care provider,

employe of a health care provider or staff member of a state crime laboratory.

SECTION 5m. 252.15 (1) (ar) 3 of the statutes is created to read:

252.15 (1) (ar) 3. An employe of the Mendota mental health institute or the Winnebago mental health institute.

SECTION 6. 252.15 (2) (a) 5. of the statutes, as affected by 1993 Wisconsin Act 27, is repealed.

SECTION 7. 252.15 (2) (a) 5m of the statutes, as affected by 1993 Wisconsin Act 27, is repealed.

SECTION 8. 252.15 (2) (a) 7. a. of the statutes, as affected by 1993 Wisconsin Act 27, is amended to read:

252.15 (2) (a) 7. a. ~~An If all of the conditions under subd. 7. ai. to c. are met, an emergency medical technician, first responder, fire fighter, peace officer, correctional officer, person who is employed at a secured correctional facility, as defined in s. 48.02 (15m), or state patrol officer who provides, during the course of providing care or services to an individual, who, or a health care provider or an employe of a health care provider who, during the course of providing care or treatment to an individual or handling or processing specimens of body fluids or tissues of an individual; or a staff member of a state crime laboratory who, during the course of handling or processing specimens of body fluids or tissues of an individual;~~ is significantly exposed to the individual ~~and who, at the time of exposure, was using recommended universal precautions, if any, against exposure, may request the district attorney to apply to the circuit court for his or her county to order the individual to submit may subject the individual's blood to a test or a series of tests for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and to disclose may receive disclosure of the results to the emergency medical technician, fire fighter, peace officer, correctional officer or state patrol officer. The emergency medical technician, fire fighter, peace officer, correctional officer or state patrol officer may not make the request unless he or she accompanies the request with an affidavit that certifies that he or she has been significantly exposed to the individual.~~

SECTION 9. 252.15 (2) (a) 7. ai. to av. of the statutes are created to read:

252.15 (2) (a) 7. ai. The affected person uses universal precautions, if any, against significant exposure, and was using universal precautions at the time that he or she was significantly exposed, except in those emergency circumstances in which the time necessary for use of the universal precautions would endanger the life of the individual.

ak. A physician, based on information provided to the physician, determines and certifies in writing that the affected person has been significantly exposed. The certification shall accompany the request for testing and disclosure. If the affected person who is significantly exposed is a physician, he or she may not make this deter-

mination or certification. The information that is provided to a physician to document the occurrence of a significant exposure and the physician's certification that an affected person has been significantly exposed, under this subd. 7. ak., shall be provided on a report form that is developed by the department of industry, labor and human relations under s. 101.02 (19) (a) or on a report form that the department of industry, labor and human relations determines, under s. 101.02 (19) (b), is substantially equivalent to the report form that is developed under s. 101.02 (19) (a).

am. The affected person submits to a test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, as soon as feasible or within a time period established by the department after consulting guidelines of the centers for disease control of the federal public health service, whichever is earlier.

ap. Except as provided in subd. 7. av. to c., the test is performed on blood that is drawn for a purpose other than testing for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.

ar. The individual, if capable of consenting, has been given an opportunity to be tested with his or her consent and has not consented.

at. The individual has been informed that his or her blood may be tested for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV; that the test results may be disclosed to no one, including that individual, without his or her consent, except to the person who is certified to have been significantly exposed; that, if the person knows the identity of the individual, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed; and that a record may be kept of the test results only if the record does not reveal the individual's identity.

av. If blood that is specified in subd. 7. ap. is unavailable, the person who is certified under subd. 7. ak. to have been significantly exposed may request the district attorney to apply to the circuit court for his or her county to order the individual to submit to a test or a series of tests for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and to disclose the results to that person. The person who is certified under subd. 7. ak. to have been significantly exposed shall accompany the request with the certification under subd. 7. ak.

SECTION 10. 252.15 (2) (a) 7. b. of the statutes, as affected by 1993 Wisconsin Act 27, is amended to read:

252.15 (2) (a) 7. b. Upon receipt of a request and affidavit certification under subd. 7. a. ~~the requirements of this subdivision,~~ a district attorney shall, as soon as possible so as to enable the court to provide timely notice, apply to the circuit court for his or her county to order the individual to submit to a test or a series of tests as specified in subd. 7. a., administered by a health care profes-

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sional, and to disclose the results of the test or tests as specified in subd. 7. c.

SECTION 11. 252.15 (2) (a) 7. c. of the statutes, as affected by 1993 Wisconsin Act 27, is amended to read:

252.15 (2) (a) 7. c. The court shall set a time for a hearing on the matter under subd. 7. a. within 20 days after receipt of ~~an application~~ a request under subd. 7. b. The court shall give the district attorney and the individual from whom a test is sought notice of the hearing at least 72 hours prior to the hearing. The individual may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the individual has significantly exposed the ~~emergency medical technician, fire fighter, peace officer, correctional officer or state patrol officer~~ affected person, the court shall, except as provided in subd. 7. d., order the individual to submit to a test or a series of tests for the presence of HIV, antigen or nonantigenic products of HIV; or an antibody to HIV or a sexually transmitted disease. The court shall require the health care professional who performs the test or series of tests to refrain from disclosing the test results to the individual and to disclose the test results ~~of the test~~ to the ~~emergency medical technician, fire fighter, peace officer, correctional officer or state patrol officer~~ affected person and his or her health care professional. No sample used for laboratory test purposes under this subd. 7. c. may disclose the name of the test subject.

SECTION 12. 252.15 (2) (a) 7m of the statutes is created to read:

252.15 (2) (a) 7m. The test results of an individual under subd. 7 may be disclosed only to the individual, if he or she so consents, to anyone authorized by the indi-

vidual and to the affected person who was certified to have been significantly exposed. A record may be retained of the test results only if the record does not reveal the individual's identity. If the affected person knows the identity of the individual whose blood was tested, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed.

SECTION 13. 252.15 (4) (c) of the statutes, as affected by 1993 Wisconsin Act 27, is amended to read:

252.15 (4) (c) Maintain a record of the test results obtained. A record that is made under the circumstances described in sub. (2) (a) ~~5m~~ 7m may not reveal the identity of the test subject.

SECTION 14. 252.15 (5) (a) 16. of the statutes, as affected by 1993 Wisconsin Act 27, is repealed.

SECTION 15. 252.15 (5) (a) 18. of the statutes, as affected by 1993 Wisconsin Act 27, is amended to read:

252.15 (5) (a) 18. To an ~~emergency medical technician, fire fighter, peace officer, correctional officer or state patrol officer~~ affected person, under the requirements of sub. (2) (a) 7.

SECTION 16. 252.15 (9) of the statutes, as affected by 1993 Wisconsin Act 27, is amended to read:

252.15 (9) CRIMINAL PENALTY. Whoever intentionally discloses the results of a blood test in violation of sub. (2) (a) ~~5m~~ 7m, (5) (a) or (5m) and thereby causes bodily harm or psychological harm to the subject of the test may be fined not more than \$10,000 or imprisoned not more than 9 months or both.

SECTION 17. Effective date. This act takes effect on the day after publication or on January 1, 1994, whichever is later.