

2001 ASSEMBLY BILL 156

March 1, 2001 – Introduced by Representatives WADE, HUNDERTMARK, KESTELL, MUSSER, M. LEHMAN, GRONEMUS, MILLER, OLSEN, FREESE, ALBERS, GUNDERSON, SHILLING and SYKORA, cosponsored by Senators WELCH and ROESSLER. Referred to Committee on Public Health.

1 **AN ACT to renumber and amend** 252.15 (5m) (intro.), 252.15 (5m) (a), 252.15
2 (5m) (b) and 252.15 (5m) (c); **to amend** 252.15 (2) (a) 7. a., 252.15 (2) (a) 7. ai.
3 and 252.15 (8) (a); and **to create** 252.15 (5m) (bg) and 252.15 (8) (c) of the
4 statutes; **relating to:** permitting certain individuals to subject another
5 individual's blood to a test for the human immunodeficiency virus, requiring
6 the withdrawal and preservation of a blood specimen from certain corpses,
7 permitting certain persons to subject a corpse or blood specimen withdrawn
8 from a corpse to a test for the presence of the human immunodeficiency virus
9 or other blood-borne pathogens, the recovery of costs of certain tests for the
10 presence of the human immunodeficiency virus, and requiring a funeral
11 director to obtain a release before embalming certain corpses.

Analysis by the Legislative Reference Bureau

Current law generally prohibits testing of an individual for the human immunodeficiency virus (HIV) unless the individual provides his or her informed consent. Current law does, however, provide several exceptions to this prohibition. One exception permits certain persons, such as health care providers, law

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enforcement officers, and fire fighters, to submit the individual's blood to a test for HIV without receiving the individual's consent if certain requirements are met. These requirements include all of the following:

1. The person seeking the test has been significantly exposed to the individual. A person is "significantly exposed" if the person is exposed to the individual in a manner that carries a potential for transmission of HIV.

2. A physician certifies in writing that the exposed person was significantly exposed.

3. The exposed person submits to an HIV test.

4. The individual whose blood will be tested is given the opportunity to consent to the test for HIV and is informed that his or her blood may be tested for HIV and that the results of the test may not be disclosed without his or her consent to anyone other than the exposed person.

5. The test is performed on a sample of the individual's blood that is drawn for a purpose other than testing for HIV or, if a blood sample is not available, the test is performed on a sample of the individual's blood that is obtained as a result of a court order.

6. The exposed person used universal precautions at the time of the exposure to the individual unless the time that it would have taken the person to use universal precautions would have endangered the life of the individual. "Universal precautions" are measures taken by a person, in accordance with federal guidelines, to prevent the transmission of HIV.

This bill expands the exception to the prohibition against testing an individual for HIV without his or her consent to permit a person who provides emergency care to the victim of an emergency or accident, who is exempt from civil liability under Wisconsin's Good Samaritan law for his or her acts or omissions in providing the emergency care and who, during the course of providing the emergency care, is significantly exposed to the victim to subject the victim's blood to a test for HIV without the victim's consent. To be eligible for the exception, a Good Samaritan must meet all of the current law requirements for the exception except for the requirement that universal precautions be used when providing emergency care to the individual.

Current law also permits a person who provides emergency care to the victim of an emergency or accident, including a Good Samaritan, a funeral director, a medical examiner, a coroner, a person who prepares a corpse for burial or autopsy or who performs or assists in performing an autopsy on a corpse, a health care provider, or an agency or employee of a health care provider to subject a corpse to a test for the presence of HIV and to receive the test results if all of the following requirements are met:

1. The person seeking the test has been significantly exposed to a corpse or to an individual who dies prior to testing for HIV.

2. A physician certifies in writing that the person seeking the test was significantly exposed.

3. The physician's written certification accompanies the request for testing and disclosure.

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Current law also requires that a coroner or medical examiner receive notice of certain deaths, including a death that follows an accident, regardless of whether the accident is the primary cause of death.

This bill requires a coroner, medical examiner, physician designated by the coroner or medical examiner, or person designated by the physician to withdraw a blood specimen of ten cubic centimeters from the corpse of an individual whose death must be reported to a coroner or medical examiner because the death followed an accident. The coroner or medical examiner must preserve the blood specimen for 72 hours or until the coroner or medical examiner receives notification that a HIV test has been ordered for the specimen, whichever is earlier. Upon receipt of notification, the specimen must be forwarded to a laboratory designated to test the specimen. If the coroner does not receive notification within 72 hours, the coroner or medical examiner must dispose of the specimen.

The bill also permits a person currently authorized to subject a corpse to a test for the presence of HIV to subject a blood specimen that is authorized under the bill to be withdrawn to a test for the presence of HIV if the current law requirements for subjecting a corpse to a HIV test are met.

Under the bill, a funeral director is required to obtain a release from the coroner or medical examiner prior to embalming a corpse from which a blood specimen must be withdrawn.

Finally, under the bill, if a person violates any of the requirements for testing a corpse or a blood specimen, or for withdrawing a blood specimen, and the violation prevents a HIV test from being performed on the corpse or blood specimen or prevents a reliable test result from being obtained, the individual for whom the HIV test was ordered may recover any reasonable costs incurred in testing the individual for HIV.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 252.15 (2) (a) 7. a. of the statutes is amended to read:
2 252.15 (2) (a) 7. a. If all of the conditions under subd. 7. ai. to c. are met, an
3 emergency medical technician, first responder, fire fighter, peace officer, correctional
4 officer, person who is employed at a secured correctional facility, as defined in s.
5 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a
6 secured group home, as defined in s. 938.02 (15p), state patrol officer, jailer or keeper
7 of a jail or person designated with custodial authority by the jailer or keeper who,

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1 during the course of providing care or services to an individual; or a peace officer,
2 correctional officer, state patrol officer, jailer or keeper of a jail or person designated
3 with custodial authority by the jailer or keeper who, while searching or arresting an
4 individual or while controlling or transferring an individual in custody; or a health
5 care provider or an employee of a health care provider who, during the course of
6 providing care or treatment to an individual or handling or processing specimens of
7 body fluids or tissues of an individual; or a staff member of a state crime laboratory
8 who, during the course of handling or processing specimens of body fluids or tissues
9 of an individual; or a person who is exempt from civil liability under s. 895.48 for his
10 or her acts or omissions in providing emergency care to an individual during an
11 emergency or accident and who, during the course of providing the emergency care;
12 is significantly exposed to the individual may subject the individual's blood to a test
13 or a series of tests for the presence of HIV, antigen or nonantigenic products of HIV
14 or an antibody to HIV and may receive disclosure of the results.

15 **SECTION 2.** 252.15 (2) (a) 7. ai. of the statutes is amended to read:

16 252.15 (2) (a) 7. ai. The affected person uses universal precautions, if any,
17 against significant exposure, and was using universal precautions at the time that
18 he or she was significantly exposed, except in those emergency circumstances in
19 which the time necessary for use of the universal precautions would endanger the
20 life of the individual and in those circumstances in which the emergency caregiver
21 is a person exempted from civil liability under the conditions specified under s.
22 895.48.

23 **SECTION 3.** 252.15 (5m) (intro.) of the statutes is renumbered 252.15 (5m) (am)
24 (intro.) and amended to read:

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1 252.15 (5m) (am) (intro.) Notwithstanding s. 157.05, a corpse ~~may, or a blood~~
2 ~~specimen that is withdrawn under par. (bg), shall~~ be subjected to a test for the
3 presence of HIV, antigen or nonantigenic products of HIV ~~or~~ an antibody to HIV, ~~or~~
4 ~~other blood-borne pathogen~~ and the test results disclosed to the person individual
5 who has been significantly exposed under any of the following conditions:

6 **SECTION 4.** 252.15 (5m) (a) of the statutes is renumbered 252.15 (5m) (am) 1.
7 and amended to read:

8 252.15 (5m) (am) 1. ~~If a person~~ an individual, including ~~a person~~ an individual
9 exempted from civil liability under the conditions specified under s. 895.48, who
10 renders to the victim of an emergency or accident emergency care during the course
11 of which the emergency caregiver is significantly exposed to the emergency or
12 accident victim and the emergency or accident victim subsequently dies prior to
13 testing for the presence of HIV, antigen or nonantigenic products of HIV ~~or~~ an
14 antibody to HIV, or other blood-borne pathogen, and if a physician, based on
15 information provided to the physician, determines and certifies in writing that the
16 emergency caregiver has been significantly exposed and if the certification
17 accompanies the request for testing and disclosure. ~~Testing of a corpse under this~~
18 ~~paragraph shall be ordered by the~~ The coroner, medical examiner or physician who
19 certifies the victim's cause of death under s. 69.18 (2) (b), (c) or (d) shall order the
20 testing of the corpse or the blood specimen that is withdrawn under par. (bg).

21 **SECTION 5.** 252.15 (5m) (b) of the statutes is renumbered 252.15 (5m) (am) 2.
22 and amended to read:

23 252.15 (5m) (am) 2. If a funeral director, coroner, medical examiner or
24 appointed assistant to a coroner or medical examiner who prepares the corpse of a
25 decedent for burial or other disposition or ~~a person~~ an individual who performs an

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1 autopsy or assists in performing an autopsy is significantly exposed to the corpse,
2 and if a physician, based on information provided to the physician, determines and
3 certifies in writing that the funeral director, coroner, medical examiner or appointed
4 assistant has been significantly exposed and if the certification accompanies the
5 request for testing and disclosure. ~~Testing of a corpse under this paragraph shall be~~
6 ~~ordered by the~~ The attending physician of the funeral director, coroner, medical
7 examiner or appointed assistant who is so exposed shall order the testing of the
8 corpse or the blood specimen that is withdrawn under par. (bg).

9 **SECTION 6.** 252.15 (5m) (bg) of the statutes is created to read:

10 252.15 **(5m)** (bg) 1. Notwithstanding s. 157.05, in cases involving a death that
11 must be reported under s. 979.01 (1g) (f), the coroner or medical examiner of the
12 county where the death occurred shall withdraw a blood specimen of 10 cubic
13 centimeters from the body of the decedent or shall require a physician designated by
14 the coroner or medical examiner or a qualified person at the direction of the physician
15 to withdraw a blood specimen of 10 cubic centimeters from the body of the decedent.
16 The coroner or medical examiner shall preserve the blood specimen for the 72 hours
17 immediately following the time the blood specimen was withdrawn or until the
18 coroner or medical examiner receives notification under subd. 2., whichever is
19 earlier. Upon receipt of notification under subd. 2., the coroner shall forward the
20 blood specimen to a laboratory designated to conduct the test. If the coroner does not
21 receive notification under subd. 2. within the 72 hours immediately following the
22 time the blood specimen was withdrawn, the coroner shall dispose of the specimen.

23 2. A person under par. (am) who orders the testing of a blood specimen that is
24 withdrawn under this paragraph shall notify the coroner or medical examiner who
25 is preserving the specimen that a test for presence of HIV, antigen or nonantigenic

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1 products of HIV, an antibody to HIV, or other blood-borne pathogen has been
2 ordered.

3 3. A funeral director shall obtain a release from the coroner or medical
4 examiner of the county where the accident occurred, as provided in s. 979.01 (4), prior
5 to proceeding with embalming a corpse that is subject to this paragraph.

6 **SECTION 7.** 252.15 (5m) (c) of the statutes is renumbered 252.15 (5m) (am) 3.
7 and amended to read:

8 252.15 (5m) (am) 3. If a health care provider or an agent or employee of a health
9 care provider is significantly exposed to the corpse or to a patient who dies
10 subsequent to the exposure and prior to testing for the presence of HIV, antigen or
11 nonantigenic products of HIV ~~or, an antibody to HIV, or other blood-borne pathogen,~~
12 and if a physician who is not the health care provider, based on information provided
13 to the physician, determines and certifies in writing that the health care provider,
14 agent or employee has been significantly exposed and if the certification
15 accompanies the request for testing and disclosure. ~~Testing of a corpse under this~~
16 ~~paragraph shall be ordered by the~~ The physician who certifies that the significant
17 exposure has occurred shall order the testing of the corpse or the blood specimen that
18 is withdrawn under par. (bg).

19 **SECTION 8.** 252.15 (8) (a) of the statutes, as affected by 1999 Wisconsin Act 79,
20 is amended to read:

21 252.15 (8) (a) Any person violating sub. (2), (5) (a), (5m) (am), (6) or (7) (c) is
22 liable to the subject of the test for actual damages, costs and reasonable actual
23 attorney fees, plus exemplary damages of up to \$1,000 for a negligent violation and
24 up to \$25,000 for an intentional violation.

25 **SECTION 9.** 252.15 (8) (c) of the statutes is created to read:

