

2001 DRAFTING REQUEST

Bill

Received: **01/29/2001**

Received By: **isagerro**

Wanted: **As time permits**

Identical to LRB:

For: **Joan Wade (608) 266-7746**

By/Representing: **Herself**

This file may be shown to any legislator: **NO**

Drafter: **isagerro**

May Contact:

Alt. Drafters:

Subject: **Health - AIDS**

Extra Copies: **DAK**

Pre Topic:

No specific pre topic given

Topic:

Testing of corpses for HIV; permitting good samaritans to request HIV test of victim

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	isagerro 01/31/2001			_____			S&L
/1			pgreensl 02/01/2001	_____	lrb_docadmin 02/01/2001	lrb_docadmin 02/02/2001	

FE Sent For:

<END>

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1?	isagerro	1/31 jw	2/1 DG	2/1 pg/lb			

FE Sent For:

<END>

* Meeting w/ Rep Spillner, Constituent; Jason Weyhull
- 6/20/00 9:30 (cards)

(Good Samaritan)

* constituent (exposed to accident victim, victim
dies)

* constituent requests testing for HIV, body
of victim embalmed before blood sample
taken

* Draft to:

- require testing of deceased accident
victims for HIV if haven't been
tested prior to death

* Require blood sample taken from
deceased accident victims for HIV testing
* Model after Blood Alcohol Content testing
requirements

- 252.15 (5m)

- 979.01

Rep. Wade, John, Jasem 1/24/01 11:00 AM mtg.
- HIV testing

- put 2 requests in one bill - 99-4971: 99-4401

- only require coroner to hold blood for
72 hrs.

- require testing for all other blood-borne
pathogens

- but don't require testing, only permit

RMnetrun

1999 BILL

Serum
if possible
in 01/31/01
Thanks.

Reger

permitting certain individuals to subject another individual's blood to a test for the human immunodeficiency virus

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 (8) (a); and to create 252.15 (5m)
3 (bg) of the statutes; relating to: requiring the withdrawal and preservation of
4 a blood specimen from certain corpses, permitting certain persons to subject
5 ~~remain~~ blood specimens to a test for the presence of the human
6 immunodeficiency virus and requiring a funeral director to obtain a release
7 before embalming certain corpses.

- 3
- 4
- 5
- 6

corpse or withdrawal from a corpse
or other blood-borne pathogens
the recovery of
of certain tests for the presence of the human immunodeficiency virus

Insert A-1

Analysis by the Legislative Reference Bureau

Current law ^{also} permits a person who provides emergency care to the victim of an emergency or accident, 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 the human immunodeficiency virus (HIV) and to receive the test results if all of the following requirements are met:

including a Good Samaritan

- 1. The person seeking the test has been significantly exposed to an individual who dies prior to testing for HIV ~~or a corpse~~. A person is "significantly exposed" if the person is exposed to an individual or a corpse in a manner that carries a potential for the transmission of HIV.

BILL

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.

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 ^{designated} 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 ~~90 days~~ ^{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 ~~90 days after the date on which the blood specimen is withdrawn~~ ^{72 hours}, the coroner or medical examiner must dispose of the specimen.

This bill also permits a person currently authorized to subject a corpse to a test for the presence of HIV to subject ~~the~~ blood specimen to a test for the presence of HIV if the current law requirements for subjecting a corpse to a HIV test are met.

~~When this bill requires~~ a funeral director to obtain a release from the coroner or medical examiner prior to embalming a corpse from which a blood specimen must be withdrawn.

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 (5m) (intro.) of the statutes is renumbered 252.15 (5m) (am)

2 (intro.) and amended to read:

3 252.15 (5m) (am) (intro.) Notwithstanding s. 157.05, a corpse ^{may} or a blood

4 specimen that is withdrawn under par. (bg) ^{shall} ~~may~~ be subjected to a test for the

5 presence of HIV, antigen or nonantigenic products of HIV ^{or} (an antibody to HIV) and

6 the test results disclosed to the ^{individual} ~~person~~ who has been significantly exposed under any

7 of the following conditions:

Under the

Insert A-2

Insert 1-1

that is authorized under the bill to be withdrawn

is required

may

shall

or other blood-borne pathogen

individual

BILL

1 SECTION 2. 252.15 (5m) (a) of the statutes is renumbered 252.15 (5m) (am) 1.
2 and amended to read:

3 252.15 (5m) (am) 1. If ~~a person~~ ^{an individual}, including ~~a person~~ ^{an individual} exempted from civil liability
4 under the conditions specified under s. 895.48, who renders to the victim of an
5 emergency or accident emergency care during the course of which the emergency
6 caregiver is significantly exposed to the emergency or accident victim and the
7 emergency or accident victim subsequently dies prior to testing for the presence of
8 HIV, antigen or nonantigenic products of HIV ~~or~~ ^{or} ~~an antibody to HIV~~ ^{or other blood-} and if a ~~physician~~ ^{bone}
9 physician, based on information provided to the physician, determines and certifies ~~and~~ ^{pathogen}
10 in writing that the emergency caregiver has been significantly exposed and if the
11 certification accompanies the request for testing and disclosure. ~~Testing of a corpse~~
12 ~~under this paragraph shall be ordered by the~~ The coroner, medical examiner or
13 physician who certifies the victim's cause of death under s. 69.18 (2) (b), (c) or (d) shall
14 order the testing of the corpse or ~~the~~ blood specimen that is withdrawn under par. (bg).

15 SECTION 3. 252.15 (5m) (b) of the statutes is renumbered 252.15 (5m) (am) 2.
16 and amended to read:

17 252.15 (5m) (am) 2. If a funeral director, coroner, medical examiner or
18 appointed assistant to a coroner or medical examiner who prepares the corpse of a
19 decedent for burial or other disposition or ~~a person~~ ^{an individual} who performs an autopsy or
20 assists in performing an autopsy is significantly exposed to the corpse, and if a
21 physician, based on information provided to the physician, determines and certifies
22 in writing that the funeral director, coroner, medical examiner or appointed assistant
23 has been significantly exposed and if the certification accompanies the request for
24 testing and disclosure. ~~Testing of a corpse under this paragraph shall be ordered by~~
25 ~~the~~ The attending physician of the funeral director, coroner, medical examiner or

BILL

the

1 appointed assistant who is so exposed shall order the testing of the corpse or blood
2 specimen that is withdrawn under par. (bg).

3 SECTION 4. 252.15 (5m) (bg) of the statutes is created to read:

4 252.15 (5m) (bg) 1. Notwithstanding s. 157.05, in cases involving a death that
5 must be reported under s. 979.01 (1g) (f), the coroner or medical examiner of the
6 county where the death occurred shall withdraw a blood specimen of 10 cubic
7 centimeters from the body of the decedent or shall require a physician designated by
8 the coroner or medical examiner or a qualified person at the direction of the physician
9 to withdraw a blood specimen of 10 cubic centimeters from the body of the decedent.

10 The coroner or medical examiner shall preserve the blood specimen for ~~72 hours~~ *the 72 hours immediately following the*
11 until the coroner or medical examiner receives notification under subd. 2., whichever *time the*
12 is earlier. Upon receipt of notification under subd. 2., the coroner shall forward the *blood specimen*
13 blood specimen to a laboratory designated to conduct the test. *was* *withdrawn*
14 receive notification under subd. 2. within ~~72 hours~~ *the 72 hours immediately following*
15 specimen was withdrawn, the coroner shall dispose of the specimen. *the* *time*

16 2. A person under par. (am) who orders the testing of a blood specimen that is
17 withdrawn under this paragraph shall notify the coroner or medical examiner who
18 is preserving the specimen that ~~an HIV test~~ *a test for presence of HIV, antigen or immunogenic*
products of HIV, an antibody
to HIV, or other blood-
19 3. A funeral director shall obtain a release from the coroner or medical *borne*
20 examiner of the county where the accident occurred, as provided in s. 979.01 (4), prior *pathogens*
21 to proceeding with embalming a corpse that is subject to this paragraph.

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

24 252.15 (5m) (am) 3. If a health care provider or an agent or employe^e of a health
25 care provider is significantly exposed to the corpse or to a patient who dies

BILL

1 subsequent to the exposure and prior to testing for the presence of HIV, antigen or
 2 nonantigenic products of HIV ⁽²⁾ or ² an antibody to HIV, ^{on other blood-borne pathogen} and if a physician who is not the
 3 health care provider, based on information provided to the physician, determines and
 4 certifies in writing that the health care provider, agent or employe^e has been
 5 significantly exposed and if the certification accompanies the request for testing and
 6 disclosure. ~~Testing of a corpse under this paragraph shall be ordered by the~~ The
 7 physician who certifies that the significant exposure has occurred shall order the
 8 testing of the corpse or ^{the} blood specimen that is withdrawn under par. (bg).

9 **SECTION 6.** 252.15 (8) (a) of the statutes, as affected by 1999 Wisconsin Act 79,
 10 is amended to read:

11 252.15 (8) (a) Any person violating sub. (2), (5) (a), (5m) (am), (6) or (7) (c) is
 12 liable to the subject of the test for actual damages, costs and reasonable actual
 13 attorney fees, plus exemplary damages of up to \$1,000 for a negligent violation and
 14 up to \$25,000 for an intentional violation.

*Insert
5-15* →

(END)

1999 BILL

1 AN ACT to amend 252.15 (2) (a) 7. a. and 252.15 (2) (a) 7. ai. of the statutes;
 2 relating to: permitting certain individuals to subject another individual's
 3 blood to a test for the human immunodeficiency virus.

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 ~~for the testing~~. Current law does, however, provide several exceptions to this prohibition. One exception permits certain persons, such as health care providers, law enforcement officers ⁽²⁾ and fire fighters, who are significantly exposed to an individual ~~in a manner which carries a potential for a transmission of HIV~~ 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. ~~2. A physician certifies in writing that the exposed person was significantly exposed to the individual in a manner which carries a potential for a transmission of HIV.~~

* 3. ~~2~~ The exposed person submits to an HIV test.

4. ~~3~~ 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. ~~4~~ 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

④ 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 which carries a potential for transmission of HIV. that

BILL

Insert A-1 (cont)

is performed on a sample of the individual's blood that is obtained as a result of a court order.

* ~~6.2~~ The exposed person used universal precautions at the time of the exposure, 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.

to the individual

to the prohibition against testing an individual for HIV without his or her consent

This bill expands the exception 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 except for the requirement that universal precautions be used when providing emergency care to the individual.

for the exception

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

end ins A-1

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

SECTION 1. 252.15 (2) (a) 7. a. of the statutes, as affected by 1999 Wisconsin Act 9, is amended to read:

252.15 (2) (a) 7. a. 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. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper who, during the course of providing care or services to an individual; or a peace officer, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper who, while searching or arresting an individual or while controlling or transferring an individual in custody; or a health care provider or an employe of a health care provider who, during the course of

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2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2304/lins
ISR:.....

Insert A-2

↓ or for withdrawing a blood specimen,
S
Finally, under the bill, if a person violates any of the requirements for testing a corpse or a blood specimen ~~that must be withdrawn~~ 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.

Insert 1-1

SECTION 1. 252.15 (2) (a) 7. a. ^X of the statutes is amended to read:

252.15 (2) (a) 7. a. 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. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper who, during the course of providing care or services to an individual; or a peace officer, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper who, while searching or arresting an individual or while controlling or transferring an individual in custody; or a health care provider or an employee 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; or a person who is exempt from civil liability under s. 895.48 for his or her acts or omissions in providing emergency care to an individual during an emergency or accident and who, during the course of providing the emergency care:

is significantly exposed to the individual 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 may receive disclosure of the results.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; s. 13.93 (2) (c).

SECTION 2. 252.15 (2) (a) 7. ai. of the statutes is amended 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 and in those circumstances in which the emergency caregiver is a person exempted from civil liability under the conditions specified under s. 895.48.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; s. 13.93 (2) (c).

Insert 5-15

SECTION 3. 252.15 (8) (c) of the statutes is created to read:

* 252.15 (8) (c) If a person's violation of ^{any of} the requirements of sub. (5m) prevent a test ordered under sub. (5m) from being performed or a reliable test result from being obtained, the individual for whom the test was ordered may recover any reasonable costs incurred by the individual in testing the individual's blood for the presence of HIV, antigen or nonantigenic products of HIV, an antibody to HIV, or other blood-borne pathogen.



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

February 1, 2001

MEMORANDUM

To: Representative Wade

From: Ivy G. Sager-Rosenthal, Legislative Attorney

Re: LRB-2304 Testing of corpses for HIV; permitting good samaritans to request HIV test of victim

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 261-4455 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.