

AN ACT

ENTITLED, An Act to establish a process for persons exposed to certain blood-borne infections to require testing for blood-borne pathogens and to provide for the confidentiality of the source individual.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 23A-35B-1 be amended to read as follows:

23A-35B-1. Terms used in this chapter mean:

- (1) "Assault," an offense described in § 22-18-1, in which the facts show a possibility of exchange of bodily fluids;
- (2) "Blood-borne pathogens," any of a family of pathogenic micro-organisms that are present in and may be transmitted by human blood, including hepatitis B and HIV;
- (3) "Crime of violence," any of the offenses described in subdivision 22-1-2(9);
- (4) "Defendant," a person as described in subdivision 23A-45-9(4);
- (5) "Emergency medical services person," a person who renders emergency care or assistance including:
 - (a) A person employed or receiving compensation to provide out-of-hospital emergency medical services such as a firefighter, paramedic, emergency medical technician, licensed nurse, rescue squad person, or other person who serves as an employee or volunteer of an ambulance service or other first responder, who provides out-of-hospital emergency medical services during the performance of the person's duties;
 - (b) A person employed as a law enforcement officer;
 - (c) A person employed as a coroner or a funeral director;
 - (d) A person employed as a forensic crime laboratory worker while working outside

- the laboratory and involved in a criminal investigation; or
- (e) A person who renders emergency care or assistance at the scene of an emergency or while an injured person is being transported to receive medical care and who is acting as an unpaid volunteer also known as a good samaritan;
 - (6) "HIV," the human immunodeficiency virus or any other identified causative agent of acquired immune deficiency syndrome (AIDS);
 - (7) "Juvenile," a minor charged in juvenile court with being a delinquent child as the result of actions that would constitute a sexual assault, an assault or a crime of violence in criminal court;
 - (8) "Law enforcement officer," any person described in subdivision 23A-45-9(9) or (14);
 - (9) "Sexual assault," an offense described in chapter 22-22 in which the facts show a possibility of exchange of bodily fluids;
 - (10) "Source individual," any person, living or dead, whose blood, tissue, or potentially infectious body fluids may be a source of blood-borne pathogen exposure to an emergency medical services person;
 - (11) "Test," "testing," any medically recognized test for determining the presence of blood-borne pathogens; and
 - (12) "Victim," any person who is the direct subject of an alleged act which would constitute a crime of violence as defined by subdivision 22-1-2(9), a violation of chapter 22-22, an assault as defined by § 22-18-1, a violation of § 22-18-26, or a motor vehicle accident which involved a violation of chapter 32-23 or the parent or guardian of such a person if the person is under age eighteen. Except for § 23A-35B-3, a victim also includes any emergency medical services person who has potentially been exposed to a blood-borne pathogen while rendering aid to a source individual. If a victim is unable to make a

request, a member of the victim's immediate family may make such request upon the victim's behalf.

Section 2. That chapter 23A-35B be amended by adding thereto a NEW SECTION to read as follows:

An emergency medical services person who is a victim may request in writing to the source individual, or if the source individual is deceased, to a relative of the source individual or to the source individual's estate, for medical records or information concerning blood-borne pathogens. If the source individual, a relative, or the estate denies the request or does not provide a response within three business days, the emergency medical services person may file a petition with the circuit court to require the source individual to provide the information or to be tested for blood-borne pathogens by the Department of Health and that an order be obtained for the purpose of taking a blood sample from the source individual for testing. The petition shall state that the emergency medical services person believes there was an exchange of blood, semen, or other bodily fluids from the source individual to the emergency medical services person and shall state the factual basis for believing there was such an exchange. The court shall hold a hearing at which both the emergency medical services person and the source individual, a relative, or the estate may be present. If the court finds probable cause to believe that there was an exchange of blood, semen, or other bodily fluids from the source individual to the emergency medical services person, the court may issue an order for the purpose of taking a blood sample from the source individual for testing for blood-borne pathogens. If the source individual is not available for testing, the court may order a release of medical information from the source individual's medical providers to the emergency medical services person.

Section 3. That § 23A-35B-5 be amended to read as follows:

23A-35B-5. All persons involved in carrying out the provisions of this chapter shall act in a

manner that will protect the confidentiality of the victim, the source individual, and the defendant or juvenile, including sealing relevant court records. The results of the test for infection by blood-borne pathogens may not be used to establish a defendant's guilt or innocence of the charge and may not be used to determine a juvenile's status as a delinquent child.

An Act to establish a process for persons exposed to certain blood-borne infections to require testing for blood-borne pathogens and to provide for the confidentiality of the source individual.

=====

I certify that the attached Act originated in the

HOUSE as Bill No. 1064

Chief Clerk

=====

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1064
File No. _____
Chapter No. _____

=====

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State