

(b) A hospital performing duties under this section, or an employee, doctor, or other medical professional working at the hospital who is a mandated reporter under section 626.556, is immune from any criminal or civil liability that otherwise might result from the failure to make a report under that section if the person is acting in good faith in complying with this section.

Sec. 2. [260C.217] SAFE PLACE FOR NEWBORNS.

Subdivision 1. DUTY TO ATTEMPT REUNIFICATION, DUTY TO SEARCH FOR RELATIVES, AND PREFERENCES NOT APPLICABLE. A local social service agency taking custody of a child after discharge from a hospital that received a child under section 145.902 is not required to attempt to reunify the child with the child's parents. Additionally, the agency is not required to search for relatives of the child as a placement or permanency option under section 260C.212, subdivision 5, or to implement other placement requirements that give a preference to relatives if the agency does not have information as to the identity of the child, the child's mother, or the child's father.

Subd. 2. STATUS OF CHILD. For purposes of proceedings under this chapter and adoption proceedings, a newborn left at a hospital under section 145.902 is considered an abandoned child.

Sec. 3. [609.3785] UNHARMED NEWBORNS LEFT AT HOSPITALS; AVOIDANCE OF PROSECUTION.

A person may leave a newborn with a hospital employee at a hospital in this state without being subjected to prosecution for that act, provided that:

(1) the newborn was born within 72 hours of being left at the hospital, as determined within a reasonable degree of medical certainty;

(2) the newborn is left in an unharmed condition; and

(3) in cases where the person leaving the newborn is not the newborn's mother, the person has the mother's approval to do so.

Sec. 4. EFFECTIVE DATE.

This act is effective the day following final enactment.

Presented to the governor April 14, 2000

Signed by the governor April 18, 2000, 10:36 a.m.

CHAPTER 422—S.F.No. 1202

An act relating to health; establishing protocol for occupational exposure to bloodborne pathogens in certain settings; providing criminal penalties; amending Minnesota Statutes 1998, sections 144.4804, by adding a subdivision; 214.18, subdivision 5, and by adding a subdivision; 214.19; 214.20; 214.22; 214.23, subdivisions 1 and 2; 214.25, subdivision 2; and 611A.19,

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subdivisions 1 and 2; Minnesota Statutes 1999 Supplement, sections 13.99, subdivision 38, and by adding a subdivision; and 72A.20, subdivision 29; proposing coding for new law in Minnesota Statutes, chapters 144; 241; and 246; repealing Minnesota Statutes 1998, sections 144.761; 144.762; 144.763; 144.764; 144.765; 144.766; 144.767; 144.768; 144.769; and 144.7691.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1999 Supplement, section 13.99, subdivision 38, is amended to read:

Subd. 38. **HEALTH TEST RESULTS.** Health test results obtained under chapter 144 are classified under section ~~144.768~~ 144.7411.

Sec. 2. Minnesota Statutes 1999 Supplement, section 13.99, is amended by adding a subdivision to read:

Subd. 65f. **BLOOD TEST RESULTS.** (a) Blood test results obtained under sections 241.33 to 241.342 are classified under section 241.339.

(b) Blood test results obtained under sections 246.71 to 246.722 are classified under section 246.719.

Sec. 3. Minnesota Statutes 1999 Supplement, section 72A.20, subdivision 29, is amended to read:

Subd. 29. **HIV TESTS; CRIME VICTIMS AND EMERGENCY MEDICAL SERVICE PERSONNEL.** No insurer regulated under chapter 61A, 62B, or 62S, or providing health, medical, hospitalization, long-term care insurance, or accident and sickness insurance regulated under chapter 62A, or nonprofit health service plan corporation regulated under chapter 62C, health maintenance organization regulated under chapter 62D, or fraternal benefit society regulated under chapter 64B, may:

(1) obtain or use the performance of or the results of a test to determine the presence of the human immunodeficiency virus (HIV) antibody performed on an offender under section 611A.19 or performed on a crime victim who was exposed to or had contact with an offender's bodily fluids during commission of a crime that was reported to law enforcement officials, in order to make an underwriting decision, cancel, fail to renew, or take any other action with respect to a policy, plan, certificate, or contract;

(2) obtain or use the performance of or the results of a test to determine the presence of the ~~human immunodeficiency virus (HIV) antibody~~ bloodborne pathogen performed on a ~~patient pursuant to sections 144.761 to 144.7691, or performed on emergency medical services personnel pursuant to the protocol under section 144.762, subdivision 2,~~ individual according to sections 144.7401 to 144.7415, 241.33 to 241.342, or 246.71 to 246.722 in order to make an underwriting decision, cancel, fail to renew, or take any other action with respect to a policy, plan, certificate, or contract; for purposes of this clause, "patient" and "emergency medical services personnel" have the meanings given in section ~~144.761~~; or

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(3) ask an applicant for coverage or a person already covered whether the person has: (i) had a test performed for the reason set forth in clause (1) or (2); or (ii) been the victim of an assault or any other crime which involves bodily contact with the offender.

A question that purports to require an answer that would provide information regarding a test performed for the reason set forth in clause (1) or (2) may be interpreted as excluding this test. An answer that does not mention the test is considered to be a truthful answer for all purposes. An authorization for the release of medical records for insurance purposes must specifically exclude any test performed for the purpose set forth in clause (1) or (2) and must be read as providing this exclusion regardless of whether the exclusion is expressly stated. This subdivision does not affect tests conducted for purposes other than those described in clause (1) or (2), including any test to determine the presence of the human immunodeficiency virus (HIV) antibody if such test was performed at the insurer's direction as part of the insurer's normal underwriting requirements.

Sec. 4. Minnesota Statutes 1998, section 144.4804, is amended by adding a subdivision to read:

Subd. 8. TUBERCULOSIS NOTIFICATION. If an emergency medical services person, as defined in section 144.7401, subdivision 4, is exposed to a person with active tuberculosis during the performance of duties, the treatment facility's designated infection control coordinator shall notify the emergency medical services agency's exposure control officer by telephone and by written correspondence. The facility's designated infection control coordinator shall provide the emergency medical services person with information about screening and, if indicated, follow-up.

Sec. 5. [144.7401] DEFINITIONS.

Subdivision 1. SCOPE OF DEFINITIONS. For purposes of sections 144.7401 to 144.7415, the following terms have the meanings given them.

Subd. 2. BLOODBORNE PATHOGENS. "Bloodborne pathogens" means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

Subd. 3. EMERGENCY MEDICAL SERVICES AGENCY. "Emergency medical services agency" means an agency, entity, or organization that employs or uses emergency medical services persons as employees or volunteers.

Subd. 4. EMERGENCY MEDICAL SERVICES PERSON. "Emergency medical services person" means:

(1) an individual 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 individual who serves as an employee or volunteer of an ambulance service as defined under chapter 144E or a member of an organized first responder squad that is formally recognized by a political

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subdivision in the state, who provides out-of-hospital emergency medical services during the performance of the individual's duties;

(2) an individual employed as a licensed peace officer under section 626.84, subdivision 1;

(3) an individual employed as a crime laboratory worker while working outside the laboratory and involved in a criminal investigation;

(4) any individual 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 a good samaritan under section 604A.01; and

(5) any individual who, in the process of executing a citizen's arrest under section 629.30, may have experienced a significant exposure to a source individual.

Subd. 5. SOURCE INDIVIDUAL. "Source individual" means an individual, living or dead, whose blood, tissue, or potentially infectious body fluids may be a source of bloodborne pathogen exposure to an emergency medical services person. Examples include, but are not limited to, a victim of an accident, injury, or illness or a deceased person.

Subd. 6. SIGNIFICANT EXPOSURE. "Significant exposure" means contact likely to transmit a bloodborne pathogen, in a manner supported by the most current guidelines and recommendations of the United States Public Health Service at the time an evaluation takes place, that includes:

(1) percutaneous injury, contact of mucous membrane or nonintact skin, or prolonged contact of intact skin; and

(2) contact, in a manner that may transmit a bloodborne pathogen, with blood, tissue, or potentially infectious body fluids.

Subd. 7. FACILITY. "Facility" means a hospital licensed under sections 144.50 to 144.56 or a freestanding emergency medical care facility licensed under Laws 1988, chapter 467, that receives an emergency medical services person for evaluation for significant exposure or a source individual cared for by an emergency medical services person.

Sec. 6. [144.7402] CONDITIONS FOR APPLICABILITY OF PROCEDURES.

Subdivision 1. REQUEST FOR PROCEDURES. An emergency medical services person or emergency medical services agency may request that a facility follow the procedures of sections 144.7401 to 144.7415 when an emergency medical services person may have experienced a significant exposure to a source individual.

Subd. 2. CONDITIONS. A facility shall follow the procedures outlined in sections 144.7401 to 144.7415 when all of the following conditions are met:

(1) the facility determines that significant exposure has occurred, following the protocol under section 144.7414;

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(2) the licensed physician for the emergency medical services person needs the source individual's bloodborne pathogen test results to begin, continue, modify, or discontinue treatment, in accordance with the most current guidelines of the United States Public Health Service, because of possible exposure to a bloodborne pathogen; and

(3) the emergency medical services person consents to provide a blood sample for testing for a bloodborne pathogen. If the emergency medical services person consents to blood collection, but does not consent at that time to bloodborne pathogen testing, the facility shall preserve the sample for at least 90 days. If the emergency medical services person elects to have the sample tested within 90 days, the testing shall be done as soon as feasible.

Subd. 3. LOCATING SOURCE INDIVIDUAL. If the source individual is not received by a facility but the facility is providing treatment to the emergency medical services person, the emergency medical services agency shall make reasonable efforts to locate the source individual and inform the facility of the source individual's identity and location. The facility shall make a reasonable effort to contact the source individual in order to follow the procedures in sections 144.7401 to 144.7415. The emergency medical services agency and facilities may exchange private data about the source individual as necessary to fulfill their responsibilities under this subdivision, notwithstanding any provision of law to the contrary.

Sec. 7. [144.7403] INFORMATION REQUIRED TO BE GIVEN TO INDIVIDUALS.

Subdivision 1. INFORMATION TO SOURCE INDIVIDUAL. (a) Before seeking any consent required by the procedures under sections 144.7401 to 144.7415, a facility shall inform the source individual that the source individual's bloodborne pathogen test results, without the individual's name, address, or other uniquely identifying information, shall be reported to the emergency medical services person if requested, and that test results collected under sections 144.7401 to 144.7415 are for medical purposes as set forth in section 144.7409 and may not be used as evidence in any criminal proceedings or civil proceedings, except for procedures under sections 144.4171 to 144.4186.

(b) The facility shall inform the source individual of the insurance protections in section 72A.20, subdivision 29.

(c) The facility shall inform the source individual that the individual may refuse to provide a blood sample and that the source individual's refusal may result in a request for a court order to require the source individual to provide a blood sample.

(d) The facility shall inform the source individual that the facility will advise the emergency medical services person of the confidentiality requirements and penalties before disclosing any test information.

Subd. 2. INFORMATION TO EMS PERSON. (a) Before disclosing any information about the source individual, the facility shall inform the emergency medical services person of the confidentiality requirements of section 144.7411 and

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that the person may be subject to penalties for unauthorized release of information about the source individual under section 144.7412.

(b) The facility shall inform the emergency medical services person of the insurance protections in section 72A.20, subdivision 29.

Sec. 8. [144.7404] DISCLOSURE OF POSITIVE BLOODBORNE PATHOGEN TEST RESULTS.

If the conditions of sections 144.7402 and 144.7403 are met, the facility shall ask the source individual and the emergency medical services person if they have ever had a positive test for a bloodborne pathogen. The facility must attempt to get existing test results under this section before taking any steps to obtain a blood sample or to test for bloodborne pathogens. The facility shall disclose the source individual's bloodborne pathogen test results to the emergency medical services person without the source individual's name, address, or other uniquely identifying information.

Sec. 9. [144.7405] CONSENT PROCEDURES GENERALLY.

(a) For purposes of sections 144.7401 to 144.7415, whenever the facility is required to seek consent, the facility shall follow its usual procedure for obtaining consent from an individual or an individual's representative consistent with other law applicable to consent.

(b) Consent from a source individual's representative for bloodborne pathogen testing of an existing blood sample obtained from the source individual is not required if the facility has made reasonable efforts to obtain the representative's consent and consent cannot be obtained within 24 hours of a significant exposure.

(c) If testing of the source individual's blood occurs without consent because the source individual is unable to provide consent or has left the facility and cannot be located, and the source individual's representative cannot be located, the facility shall provide the information required in section 144.7403 to the source individual or representative whenever it is possible to do so.

(d) If a source individual dies before an opportunity to consent to blood collection or testing under sections 144.7401 to 144.7415, the facility does not need consent of the deceased person's representative for purposes of sections 144.7401 to 144.7415.

Sec. 10. [144.7406] TESTING OF AVAILABLE BLOOD.

Subdivision 1. PROCEDURES WITH CONSENT. If the source individual is or was under the care or custody of the facility and a sample of the source individual's blood is available with the consent of the source individual, the facility shall test that blood for bloodborne pathogens with the consent of the source individual, provided the conditions in sections 144.7402 and 144.7403 are met.

Subd. 2. PROCEDURES WITHOUT CONSENT. If the source individual has provided a blood sample with consent but does not consent to bloodborne pathogen testing, the facility shall test for bloodborne pathogens if the emergency medical

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services person or emergency medical services agency requests the test, provided all of the following criteria are met:

(1) the emergency medical services person or emergency medical services agency has documented exposure to blood or body fluids during performance of that person's occupation or while acting as a good samaritan under section 604A.01 or executing a citizen's arrest under section 629.30;

(2) the facility has determined that a significant exposure has occurred and a licensed physician for the emergency medical services person has documented in the emergency medical services person's medical record that bloodborne pathogen test results are needed for beginning, modifying, continuing, or discontinuing medical treatment for the emergency medical services person under section 144.7414, subdivision 2;

(3) the emergency medical services person provides a blood sample for testing for bloodborne pathogens as soon as feasible;

(4) the facility asks the source individual to consent to a test for bloodborne pathogens and the source individual does not consent;

(5) the facility has provided the source individual with all of the information required by section 144.7403; and

(6) the facility has informed the emergency medical services person of the confidentiality requirements of section 144.7411 and the penalties for unauthorized release of source information under section 144.7412.

Subd. 3. FOLLOW-UP. The facility shall inform the source individual and the emergency medical services person of their own test results. The facility shall inform the emergency medical services person of the source individual's test results without the source individual's name, address, or other uniquely identifying information.

Sec. 11. [144.7407] BLOOD SAMPLE COLLECTION FOR TESTING.

Subdivision 1. PROCEDURES WITH CONSENT. (a) If a blood sample is not otherwise available, the facility shall obtain consent from the source individual before collecting a blood sample for testing for bloodborne pathogens. The consent process shall include informing the source individual that the individual may refuse to provide a blood sample and that the source individual's refusal may result in a request for a court order under subdivision 2 to require the source individual to provide a blood sample.

(b) If the source individual consents to provide a blood sample, the facility shall collect a blood sample and test the sample for bloodborne pathogens.

(c) The facility shall inform the emergency medical services person about the source individual's test results without the individual's name, address, or other uniquely identifying information. The facility shall inform the source individual of the test results.

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(d) If the source individual refuses to provide a blood sample for testing, the facility shall inform the emergency medical services person of the source individual's refusal.

Subd. 2. PROCEDURES WITHOUT CONSENT. (a) An emergency medical services agency, or, if there is no agency, an emergency medical services person, may bring a petition for a court order to require a source individual to provide a blood sample for testing for bloodborne pathogens. The petition shall be filed in the district court in the county where the source individual resides or is hospitalized. The petitioner shall serve the petition on the source individual at least three days before a hearing on the petition. The petition shall include one or more affidavits attesting that:

(1) the facility followed the procedures in sections 144.7401 to 144.7415 and attempted to obtain bloodborne pathogen test results according to those sections;

(2) it has been determined under section 144.7414, subdivision 2, that a significant exposure has occurred to the emergency medical services person; and

(3) a physician with specialty training in infectious diseases, including HIV, has documented that the emergency medical services person has provided a blood sample and consented to testing for bloodborne pathogens and bloodborne pathogen test results are needed for beginning, continuing, modifying, or discontinuing medical treatment for the emergency medical services person.

(b) Facilities shall cooperate with petitioners in providing any necessary affidavits to the extent that facility staff can attest under oath to the facts in the affidavits.

(c) The court may order the source individual to provide a blood sample for bloodborne pathogen testing if:

(1) there is probable cause to believe the emergency medical services person has experienced a significant exposure to the source individual;

(2) the court imposes appropriate safeguards against unauthorized disclosure that must specify the persons who have access to the test results and the purposes for which the test results may be used;

(3) a licensed physician for the emergency medical services person needs the test results for beginning, continuing, modifying, or discontinuing medical treatment for the emergency medical services person; and

(4) the court finds a compelling need for the test results. In assessing compelling need, the court shall weigh the need for the court-ordered blood collection and test results against the interests of the source individual, including, but not limited to, privacy, health, safety, or economic interests. The court shall also consider whether the involuntary blood collection and testing would serve the public interest.

(d) The court shall conduct the proceeding in camera unless the petitioner or the source individual requests a hearing in open court and the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

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(e) The source individual has the right to counsel in any proceeding brought under this subdivision.

Sec. 12. [144.7408] NO DISCRIMINATION.

A facility shall not base decisions about admission to a facility or the provision of care or treatment on any requirement that the source individual consent to bloodborne pathogen testing under sections 144.7401 to 144.7415.

Sec. 13. [144.7409] USE OF TEST RESULTS.

Bloodborne pathogen test results of a source individual obtained under sections 144.7401 to 144.7415 are for diagnostic purposes and to determine the need for treatment or medical care specific to a bloodborne pathogen-related illness of an emergency medical services person. The test results may not be used as evidence in any criminal proceedings or civil proceedings, except for procedures under sections 144.4171 to 144.4186.

Sec. 14. [144.7411] TEST INFORMATION CONFIDENTIALITY.

Subdivision 1. PRIVATE DATA. Information concerning test results obtained under sections 144.7401 to 144.7415 is information protected from disclosure without consent under section 144.335 with respect to private facilities and private data as defined in section 13.02, subdivision 12, with respect to public facilities.

Subd. 2. CONSENT TO RELEASE INFORMATION. No facility, individual, or employer shall disclose to an emergency medical services person the name, address, or other uniquely identifying information about a source individual without a written release signed by the source individual or the source individual's legally authorized representative. The facility shall not record the name, address, or other uniquely identifying information about the source individual's test results in the emergency medical services person's medical records.

Sec. 15. [144.7412] PENALTY FOR UNAUTHORIZED RELEASE OF INFORMATION.

Unauthorized release by an individual, facility, or agency of a source individual's name, address, or other uniquely identifying information under sections 144.7401 to 144.7415 is subject to the remedies and penalties under sections 13.08 and 13.09. This section does not preclude private causes of action against an individual, state agency, statewide system, political subdivision, or person responsible for releasing private data or information protected from disclosure.

Sec. 16. [144.7413] RESPONSIBILITY FOR TESTING AND TREATMENT; COSTS.

(a) The facility shall ensure that tests under sections 144.7401 to 144.7415 are performed if requested by the emergency medical services person or emergency medical services agency, provided the conditions set forth in sections 144.7401 to 144.7415 are met.

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(b) The emergency medical services agency that employs the emergency medical services person who requests testing under sections 144.7401 to 144.7415 must pay or arrange payment for the cost of counseling, testing, and treatment of the emergency medical services person and costs associated with the testing of the source individual.

(c) A facility shall have a protocol that states whether the facility will pay for the cost of counseling, testing, or treatment of a person executing a citizen's arrest under section 629.30 or acting as a good samaritan under section 604A.01.

Sec. 17. [144.7414] PROTOCOLS FOR EXPOSURE TO BLOODBORNE PATHOGENS.

Subdivision 1. EMS AGENCY REQUIREMENTS. The emergency medical services agency shall have procedures for an emergency medical services person to notify a facility that the person may have experienced a significant exposure from a source individual. The emergency medical services agency shall also have a protocol to locate the source individual if the facility has not received the source individual and the emergency medical services agency knows the source individual's identity.

Subd. 2. FACILITY PROTOCOL REQUIREMENTS. Every facility shall adopt and follow a postexposure protocol for emergency medical services persons who have experienced a significant exposure. The postexposure protocol must adhere to the most current recommendations of the United States Public Health Service and include, at a minimum, the following:

(1) a process for emergency medical services persons to report an exposure in a timely fashion;

(2) a process for an infectious disease specialist, or a licensed physician who is knowledgeable about the most current recommendations of the United States Public Health Service in consultation with an infectious disease specialist, (i) to determine whether a significant exposure to one or more bloodborne pathogens has occurred and (ii) to provide, under the direction of a licensed physician, a recommendation or recommendations for follow-up treatment appropriate to the particular bloodborne pathogen or pathogens for which a significant exposure has been determined;

(3) if there has been a significant exposure, a process to determine whether the source individual has a bloodborne pathogen through disclosure of test results, or through blood collection and testing as required by sections 144.7401 to 144.7415;

(4) a process for providing appropriate counseling prior to and following testing for a bloodborne pathogen regarding the likelihood of bloodborne pathogen transmission and follow-up recommendations according to the most current recommendations of the United States Public Health Service, recommendations for testing, and treatment to the emergency medical services person;

(5) a process for providing appropriate counseling under clause (4) to the emergency medical services person and the source individual; and

(6) compliance with applicable state and federal laws relating to data practices, confidentiality, informed consent, and the patient bill of rights.

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Sec. 18. **[144.7415] PENALTIES AND IMMUNITY.**

Subdivision 1. **PENALTIES.** Any facility or person who willfully violates the provisions of sections 144.7401 to 144.7415 is guilty of a misdemeanor.

Subd. 2. **IMMUNITY.** A facility, licensed physician, and designated health care personnel are immune from liability in any civil, administrative, or criminal action relating to the disclosure of test results to an emergency medical services person or emergency medical services agency and the testing of a blood sample from the source individual for bloodborne pathogens if a good faith effort has been made to comply with sections 144.7401 to 144.7415.

Sec. 19. Minnesota Statutes 1998, section 214.18, is amended by adding a subdivision to read:

Subd. 3a. **HCV.** “HCV” means the hepatitis C virus.

Sec. 20. Minnesota Statutes 1998, section 214.18, subdivision 5, is amended to read:

Subd. 5. **REGULATED PERSON.** “Regulated person” means a licensed dental hygienist, dentist, physician, nurse who is currently registered as a registered nurse or licensed practical nurse, podiatrist, a registered dental assistant, a physician’s assistant, and for purposes of sections 214.19, subdivisions 4 and 5; 214.20, paragraph (a); and 214.24, a chiropractor.

Sec. 21. Minnesota Statutes 1998, section 214.19, is amended to read:

214.19 **REPORTING OBLIGATIONS.**

Subdivision 1. **PERMISSION TO REPORT.** A person with actual knowledge that a regulated person has been diagnosed as infected with HIV or, HBV, or HCV may file a report with the commissioner.

Subd. 2. **SELF-REPORTING.** A regulated person who is diagnosed as infected with HIV or, HBV, or HCV shall report that information to the commissioner promptly, and as soon as medically necessary for disease control purposes but no more than 30 days after learning of the diagnosis or 30 days after becoming licensed or registered by the state.

Subd. 3. **MANDATORY REPORTING.** A person or institution required to report HIV or, HBV, or HCV status to the commissioner under Minnesota Rules, parts 4605.7030, subparts 1 to 4 and 6, and 4605.7040, shall, at the same time, notify the commissioner if the person or institution knows that the reported person is a regulated person.

Subd. 4. **INFECTION CONTROL REPORTING.** A regulated person shall, within ten days, report to the appropriate board personal knowledge of a serious failure or a pattern of failure by another regulated person to comply with accepted and prevailing infection control procedures related to the prevention of HIV and, HBV, and HCV transmission. In lieu of reporting to the board, the regulated person may make the report to a designated official of the hospital, nursing home, clinic, or other institution

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or agency where the failure to comply with accepted and prevailing infection control procedures occurred. The designated official shall report to the appropriate board within 30 days of receiving a report under this subdivision. The report shall include specific information about the response by the institution or agency to the report. A regulated person shall not be discharged or discriminated against for filing a complaint in good faith under this subdivision.

Subd. 5. **IMMUNITY.** A person is immune from civil liability or criminal prosecution for submitting a report in good faith to the commissioner or to a board under this section.

Sec. 22. Minnesota Statutes 1998, section 214.20, is amended to read:

214.20 GROUNDS FOR DISCIPLINARY OR RESTRICTIVE ACTION.

A board may refuse to grant a license or registration or may impose disciplinary or restrictive action against a regulated person who:

(1) fails to follow accepted and prevailing infection control procedures, including a failure to conform to current recommendations of the Centers for Disease Control for preventing the transmission of HIV and, HBV, and HCV, or fails to comply with infection control rules promulgated by the board. Injury to a patient need not be established;

(2) fails to comply with any requirement of sections 214.17 to 214.24; or

(3) fails to comply with any monitoring or reporting requirement.

Sec. 23. Minnesota Statutes 1998, section 214.22, is amended to read:

214.22 NOTICE; ACTION.

If the board has reasonable grounds to believe a regulated person infected with HIV or, HBV, or HCV has done or omitted doing any act that would be grounds for disciplinary action under section 214.20, the board may take action after giving notice three business days before the action, or a lesser time if deemed necessary by the board. The board may:

(1) temporarily suspend the regulated person's right to practice under section 214.21;

(2) require the regulated person to appear personally at a conference with representatives of the board and to provide information relating to the regulated person's health or professional practice; and

(3) take any other lesser action deemed necessary by the board for the protection of the public.

Sec. 24. Minnesota Statutes 1998, section 214.23, subdivision 1, is amended to read:

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Subdivision 1. **COMMISSIONER OF HEALTH.** The board shall enter into a contract with the commissioner to perform the functions in subdivisions 2 and 3. The contract shall provide that:

(1) unless requested to do otherwise by a regulated person, a board shall refer all regulated persons infected with HIV or, HBV, or HCV to the commissioner;

(2) the commissioner may choose to refer any regulated person who is infected with HIV or, HBV, or HCV as well as all information related thereto to the person's board at any time for any reason, including but not limited to: the degree of cooperation and compliance by the regulated person; the inability to secure information or the medical records of the regulated person; or when the facts may present other possible violations of the regulated persons practices act. Upon request of the regulated person who is infected with HIV or, HBV, or HCV the commissioner shall refer the regulated person and all information related thereto to the person's board. Once the commissioner has referred a regulated person to a board, the board may not thereafter submit it to the commissioner to establish a monitoring plan unless the commissioner of health consents in writing;

(3) a board shall not take action on grounds relating solely to the HIV or, HBV, or HCV status of a regulated person until after referral by the commissioner; and

(4) notwithstanding sections 13.39 and 13.41 and chapters 147, 147A, 148, 150A, 153, and 214, a board shall forward to the commissioner any information on a regulated person who is infected with HIV or, HBV, or HCV that the department of health requests.

Sec. 25. Minnesota Statutes 1998, section 214.23, subdivision 2, is amended to read:

Subd. 2. **MONITORING PLAN.** After receiving a report that a regulated person is infected with HIV or, HBV, or HCV, the board or the commissioner acting on behalf of the board shall evaluate the past and current professional practice of the regulated person to determine whether there has been a violation under section 214.20. After evaluation of the regulated person's past and current professional practice, the board or the commissioner, acting on behalf of the board, shall establish a monitoring plan for the regulated person. The monitoring plan may:

(1) address the scope of a regulated person's professional practice when the board or the commissioner, acting on behalf of the board, determines that the practice constitutes an identifiable risk of transmission of HIV or, HBV, or HCV from the regulated person to the patient;

(2) include the submission of regular reports at a frequency determined by the board or the commissioner, acting on behalf of the board, regarding the regulated person's health status; and

(3) include any other provisions deemed reasonable by the board or the commissioner of health, acting on behalf of the board.

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The board or commissioner, acting on behalf of the board, may enter into agreements with qualified persons to perform monitoring on its behalf. The regulated person shall comply with any monitoring plan established under this subdivision.

Sec. 26. Minnesota Statutes 1998, section 214.25, subdivision 2, is amended to read:

Subd. 2. **COMMISSIONER OF HEALTH DATA.** (a) All data collected or maintained as part of the commissioner of health's duties under sections 214.19, 214.23, and 214.24 shall be classified as investigative data under section 13.39, except that inactive investigative data shall be classified as private data under section 13.02, subdivision 12, or nonpublic data under section 13.02, subdivision 9, in the case of data not on individuals.

(b) Notwithstanding section 13.05, subdivision 9, data addressed in this subdivision shall not be disclosed except as provided in this subdivision or section 13.04; except that the commissioner may disclose to the boards under section 214.23.

(c) The commissioner may disclose data addressed under this subdivision as necessary: to identify, establish, implement, and enforce a monitoring plan; to investigate a regulated person; to alert persons who may be threatened by illness as evidenced by epidemiologic data; to control or prevent the spread of HIV or HBV, or HCV disease; or to diminish an imminent threat to the public health.

Sec. 27. **[241.33] DEFINITIONS.**

Subdivision 1. **SCOPE OF DEFINITIONS.** For purposes of sections 241.33 to 241.342, the following terms have the meaning given them.

Subd. 2. **BLOODBORNE PATHOGENS.** "Bloodborne pathogens" means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

Subd. 3. **INMATE.** "Inmate" means an individual who is in the custody or under the jurisdiction of the commissioner of corrections or a local correctional authority and is confined in a state or local correctional facility either before or after conviction.

Subd. 4. **CORRECTIONAL FACILITY.** "Correctional facility" means a state or local correctional facility.

Subd. 5. **CORRECTIONS EMPLOYEE.** "Corrections employee" means an employee of a state or local correctional agency.

Subd. 6. **SIGNIFICANT EXPOSURE.** "Significant exposure" means contact likely to transmit a bloodborne pathogen, in a manner supported by the most current guidelines and recommendations of the United States Public Health Service at the time an evaluation takes place, that includes:

(1) percutaneous injury, contact of mucous membrane or nonintact skin, or prolonged contact of intact skin; and

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(2) contact, in a manner that may transmit a bloodborne pathogen, with blood, tissue, or potentially infectious body fluids.

Sec. 28. [241.331] CONDITIONS FOR APPLICABILITY OF PROCEDURES.

Subdivision 1. REQUEST FOR PROCEDURES. A corrections employee may request that the procedures of sections 241.33 to 241.342 be followed when the corrections employee may have experienced a significant exposure to an inmate.

Subd. 2. CONDITIONS. The correctional facility shall follow the procedures in sections 241.33 to 241.342 when all of the following conditions are met:

(1) a licensed physician determines that a significant exposure has occurred following the protocol under section 241.341;

(2) the licensed physician for the corrections employee needs the inmate's bloodborne pathogens test results to begin, continue, modify, or discontinue treatment in accordance with the most current guidelines of the United States Public Health Service, because of possible exposure to a bloodborne pathogen; and

(3) the corrections employee consents to providing a blood sample for testing for a bloodborne pathogen.

Sec. 29. [241.332] INFORMATION REQUIRED TO BE GIVEN TO INDIVIDUALS.

Subdivision 1. INFORMATION TO INMATE. (a) Before seeking any consent required by the procedures under sections 241.33 to 241.342, a correctional facility shall inform the inmate that the inmate's bloodborne pathogen test results, without the inmate's name or other uniquely identifying information, shall be reported to the corrections employee if requested and that test results collected under sections 241.33 to 241.342 are for medical purposes as set forth in section 241.338 and may not be used as evidence in any criminal proceedings or civil proceedings, except for procedures under sections 144.4171 to 144.4186.

(b) The correctional facility shall inform the inmate of the insurance protections in section 72A.20, subdivision 29.

(c) The correctional facility shall inform the inmate that the inmate may refuse to provide a blood sample and that the inmate's refusal may result in a request for a court order to require the inmate to provide a blood sample.

(d) The correctional facility shall inform the inmate that the correctional facility will advise the corrections employee of the confidentiality requirements and penalties before the employee's health care provider discloses any test results.

Subd. 2. INFORMATION TO CORRECTIONS EMPLOYEE. (a) Before disclosing any information about the inmate, the correctional facility shall inform the corrections employee of the confidentiality requirements of section 241.339 and that the person may be subject to penalties for unauthorized release of test results about the inmate under section 241.34.

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(b) The correctional facility shall inform the corrections employee of the insurance protections in section 72A.20, subdivision 29.

Sec. 30. [241.333] DISCLOSURE OF POSITIVE BLOODBORNE PATHOGEN TEST RESULTS.

If the conditions of sections 241.331 and 241.332 are met, the correctional facility shall ask the inmate if the inmate has ever had a positive test for a bloodborne pathogen. The correctional facility must attempt to get existing test results under this section before taking any steps to obtain a blood sample or to test for bloodborne pathogens. The correctional facility shall disclose the inmate's bloodborne pathogen test results to the corrections employee without the inmate's name or other uniquely identifying information.

Sec. 31. [241.334] CONSENT PROCEDURES GENERALLY.

(a) For purposes of sections 241.33 to 241.342, whenever the correctional facility is required to seek consent, the correctional facility shall obtain consent from an inmate or an inmate's representative consistent with other law applicable to consent.

(b) Consent is not required if the correctional facility has made reasonable efforts to obtain the representative's consent and consent cannot be obtained within 24 hours of a significant exposure.

(c) If testing of available blood occurs without consent because the inmate is unconscious or unable to provide consent, and a representative cannot be located, the correctional facility shall provide the information required in section 241.332 to the inmate or representative whenever it is possible to do so.

(d) If an inmate dies before an opportunity to consent to blood collection or testing under sections 241.33 to 241.342, the correctional facility does not need consent of the inmate's representative for purposes of sections 241.33 to 241.342.

Sec. 32. [241.335] TESTING OF AVAILABLE BLOOD.

Subdivision 1. PROCEDURES WITH CONSENT. If a sample of the inmate's blood is available, the correctional facility shall ensure that blood is tested for bloodborne pathogens with the consent of the inmate, provided the conditions in sections 241.331 and 241.332 are met.

Subd. 2. PROCEDURES WITHOUT CONSENT. If the inmate has provided a blood sample, but does not consent to bloodborne pathogens testing, the correctional facility shall ensure that the blood is tested for bloodborne pathogens if the corrections employee requests the test, provided all of the following criteria are met:

(1) the corrections employee and correctional facility have documented exposure to blood or body fluids during performance of the employee's work duties;

(2) a licensed physician has determined that a significant exposure has occurred under section 241.341 and has documented that bloodborne pathogen test results are needed for beginning, modifying, continuing, or discontinuing medical treatment for

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the corrections employee as recommended by the most current guidelines of the United States Public Health Service;

(3) the corrections employee provides a blood sample for testing for bloodborne pathogens as soon as feasible;

(4) the correctional facility asks the inmate to consent to a test for bloodborne pathogens and the inmate does not consent;

(5) the correctional facility has provided the inmate and the corrections employee with all of the information required by section 241.332; and

(6) the correctional facility has informed the corrections employee of the confidentiality requirements of section 241.339 and the penalties for unauthorized release of inmate information under section 241.34.

Subd. 3. FOLLOW-UP. The correctional facility shall inform the inmate whose blood was tested of the results. The correctional facility shall inform the corrections employee's health care provider of the inmate's test results without the inmate's name or other uniquely identifying information.

Sec. 33. [241.336] BLOOD SAMPLE COLLECTION FOR TESTING.

Subdivision 1. PROCEDURES WITH CONSENT. (a) If a blood sample is not otherwise available, the correctional facility shall obtain consent from the inmate before collecting a blood sample for testing for bloodborne pathogens. The consent process shall include informing the inmate that the inmate may refuse to provide a blood sample and that the inmate's refusal may result in a request for a court order under subdivision 2 to require the inmate to provide a blood sample.

(b) If the inmate consents to provide a blood sample, the correctional facility shall collect a blood sample and ensure that the sample is tested for bloodborne pathogens.

(c) The correctional facility shall inform the corrections employee's health care provider about the inmate's test results without the inmate's name or other uniquely identifying information. The correctional facility shall inform the inmate of the test results.

(d) If the inmate refuses to provide a blood sample for testing, the correctional facility shall inform the corrections employee of the inmate's refusal.

Subd. 2. PROCEDURES WITHOUT CONSENT. (a) A correctional facility or a corrections employee may bring a petition for a court order to require an inmate to provide a blood sample for testing for bloodborne pathogens. The petition shall be filed in the district court in the county where the inmate is confined. The correctional facility shall serve the petition on the inmate three days before a hearing on the petition. The petition shall include one or more affidavits attesting that:

(1) the correctional facility followed the procedures in sections 241.33 to 241.342 and attempted to obtain bloodborne pathogen test results according to those sections;

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(2) a licensed physician knowledgeable about the most current recommendations of the United States Public Health Service has determined that a significant exposure has occurred to the corrections employee under section 241.341; and

(3) a physician has documented that the corrections employee has provided a blood sample and consented to testing for bloodborne pathogens and bloodborne pathogen test results are needed for beginning, continuing, modifying, or discontinuing medical treatment for the corrections employee under section 241.341.

(b) Facilities shall cooperate with petitioners in providing any necessary affidavits to the extent that facility staff can attest under oath to the facts in the affidavits.

(c) The court may order the inmate to provide a blood sample for bloodborne pathogen testing if:

(1) there is probable cause to believe the corrections employee has experienced a significant exposure to the inmate;

(2) the court imposes appropriate safeguards against unauthorized disclosure that must specify the persons who have access to the test results and the purposes for which the test results may be used;

(3) a licensed physician for the corrections employee needs the test results for beginning, continuing, modifying, or discontinuing medical treatment for the corrections employee; and

(4) the court finds a compelling need for the test results. In assessing compelling need, the court shall weigh the need for the court-ordered blood collection and test results against the interests of the inmate, including, but not limited to, privacy, health, safety, or economic interests. The court shall also consider whether involuntary blood collection and testing would serve the public interests.

(d) The court shall conduct the proceeding in camera unless the petitioner or the inmate requests a hearing in open court and the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

(e) The inmate may arrange for counsel in any proceeding brought under this subdivision.

Sec. 34. [241.337] NO DISCRIMINATION.

A correctional facility shall not withhold care or treatment on the requirement that the inmate consent to bloodborne pathogen testing under sections 241.33 to 241.342.

Sec. 35. [241.338] USE OF TEST RESULTS.

Bloodborne pathogen test results of an inmate obtained under sections 241.33 to 241.342 are for diagnostic purposes and to determine the need for treatment or medical care specific to a bloodborne pathogen-related illness. The test results may not be used as evidence in any criminal proceedings or civil proceedings, except for procedures under sections 144.4171 to 144.4186.

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Sec. 36. [241.339] TEST INFORMATION CONFIDENTIALITY.

Test results obtained under sections 241.33 to 241.342 are private data as defined in sections 13.02, subdivision 12, and 13.85, subdivision 2, but shall be released as provided by sections 241.33 to 241.342.

Sec. 37. [241.34] PENALTY FOR UNAUTHORIZED RELEASE OF INFORMATION.

Unauthorized release of the inmate's name or other uniquely identifying information under sections 241.33 to 241.342 is subject to the remedies and penalties under sections 13.08 and 13.09. This section does not preclude private causes of action against an individual, state agency, statewide system, political subdivision, or person responsible for releasing private data, or confidential or private information on the inmate.

Sec. 38. [241.341] PROTOCOL FOR EXPOSURE TO BLOODBORNE PATHOGENS.

(a) Correctional facilities shall follow applicable Occupational Safety and Health Administration guidelines under Code of Federal Regulations, title 29, part 1910.1030, for bloodborne pathogens.

(b) Every correctional facility shall adopt and follow a postexposure protocol for corrections employees who have experienced a significant exposure. The postexposure protocol must adhere to the most current recommendations of the United States Public Health Service and include, at a minimum, the following:

(1) a process for corrections employees to report an exposure in a timely fashion;

(2) a process for an infectious disease specialist, or a licensed physician who is knowledgeable about the most current recommendations of the United States Public Health Service in consultation with an infectious disease specialist, (i) to determine whether a significant exposure to one or more bloodborne pathogens has occurred, and (ii) to provide, under the direction of a licensed physician, a recommendation or recommendations for follow-up treatment appropriate to the particular bloodborne pathogen or pathogens for which a significant exposure has been determined;

(3) if there has been a significant exposure, a process to determine whether the inmate has a bloodborne pathogen through disclosure of test results, or through blood collection and testing as required by sections 241.33 to 241.342;

(4) a process for providing appropriate counseling prior to and following testing for a bloodborne pathogen regarding the likelihood of bloodborne pathogen transmission and follow-up recommendations according to the most current recommendations of the United States Public Health Service, recommendations for testing, and treatment;

(5) a process for providing appropriate counseling under clause (4) to the corrections employee and inmate; and

(6) compliance with applicable state and federal laws relating to data practices, confidentiality, informed consent, and the patient bill of rights.

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Sec. 39. [241.342] IMMUNITY.

A correctional facility, licensed physician, and designated health care personnel are immune from liability in any civil, administrative, or criminal action relating to the disclosure of test results of an inmate to a corrections employee and the testing of a blood sample from the inmate for bloodborne pathogens if a good faith effort has been made to comply with sections 241.33 to 241.342.

Sec. 40. [246.71] DEFINITIONS.

Subdivision 1. SCOPE. For purposes of sections 246.71 to 246.722, the following terms have the meaning given them.

Subd. 2. BLOODBORNE PATHOGENS. "Bloodborne pathogens" means pathogenic microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

Subd. 3. PATIENT. "Patient" means any person who is receiving treatment from or committed to a secure treatment facility.

Subd. 4. EMPLOYEE OF A SECURE TREATMENT FACILITY OR EMPLOYEE. "Employee of a secure treatment facility" or "employee" means an employee of the Minnesota security hospital or the Minnesota sexual psychopathic personality treatment center.

Subd. 5. SECURE TREATMENT FACILITY. "Secure treatment facility" means the Minnesota security hospital or the Minnesota sexual psychopathic personality treatment center.

Subd. 6. SIGNIFICANT EXPOSURE. "Significant exposure" means contact likely to transmit a bloodborne pathogen, in a manner supported by the most current guidelines and recommendations of the United States Public Health Service at the time an evaluation takes place, that includes:

(1) percutaneous injury, contact of mucous membrane or nonintact skin, or prolonged contact of intact skin; and

(2) contact, in a manner that may transmit a bloodborne pathogen, with blood, tissue, or potentially infectious body fluids.

Sec. 41. [246.711] CONDITIONS FOR APPLICABILITY OF PROCEDURES.

Subdivision 1. REQUEST FOR PROCEDURES. An employee of a secure treatment facility may request that the procedures of sections 246.71 to 246.722 be followed when the employee may have experienced a significant exposure to a patient.

Subd. 2. CONDITIONS. The secure treatment facility shall follow the procedures in sections 246.71 to 246.722 when all of the following conditions are met:

(1) a licensed physician determines that a significant exposure has occurred following the protocol under section 246.721;

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(2) the licensed physician for the employee needs the patient's bloodborne pathogens test results to begin, continue, modify, or discontinue treatment in accordance with the most current guidelines of the United States Public Health Service, because of possible exposure to a bloodborne pathogen; and

(3) the employee consents to providing a blood sample for testing for a bloodborne pathogen.

Sec. 42. [246.712] INFORMATION REQUIRED TO BE GIVEN TO INDIVIDUALS.

Subdivision 1. INFORMATION TO PATIENT. (a) Before seeking any consent required by the procedures under sections 246.71 to 246.722, a secure treatment facility shall inform the patient that the patient's bloodborne pathogen test results, without the patient's name or other uniquely identifying information, shall be reported to the employee if requested and that test results collected under sections 246.71 to 246.722 are for medical purposes as set forth in section 246.718 and may not be used as evidence in any criminal proceedings or civil proceedings, except for procedures under sections 144.4171 to 144.4186.

(b) The secure treatment facility shall inform the patient of the insurance protections in section 72A.20, subdivision 29.

(c) The secure treatment facility shall inform the patient that the patient may refuse to provide a blood sample and that the patient's refusal may result in a request for a court order to require the patient to provide a blood sample.

(d) The secure treatment facility shall inform the patient that the secure treatment facility will advise the employee of a secure treatment facility of the confidentiality requirements and penalties before the employee's health care provider discloses any test results.

Subd. 2. INFORMATION TO SECURE TREATMENT FACILITY EMPLOYEE. (a) Before disclosing any information about the patient, the secure treatment facility shall inform the employee of a secure treatment facility of the confidentiality requirements of section 246.719 and that the person may be subject to penalties for unauthorized release of test results about the patient under section 246.72.

(b) The secure treatment facility shall inform the employee of the insurance protections in section 72A.20, subdivision 29.

Sec. 43. [246.713] DISCLOSURE OF POSITIVE BLOODBORNE PATHOGEN TEST RESULTS.

If the conditions of sections 246.711 and 246.712 are met, the secure treatment facility shall ask the patient if the patient has ever had a positive test for a bloodborne pathogen. The secure treatment facility must attempt to get existing test results under this section before taking any steps to obtain a blood sample or to test for bloodborne pathogens. The secure treatment facility shall disclose the patient's bloodborne pathogen test results to the employee without the patient's name or other uniquely identifying information.

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Sec. 44. [246.714] CONSENT PROCEDURES GENERALLY.

(a) For purposes of sections 246.71 to 246.722, whenever the secure treatment facility is required to seek consent, the secure treatment facility shall obtain consent from a patient or a patient's representative consistent with other law applicable to consent.

(b) Consent is not required if the secure treatment facility has made reasonable efforts to obtain the representative's consent and consent cannot be obtained within 24 hours of a significant exposure.

(c) If testing of available blood occurs without consent because the patient is unconscious or unable to provide consent, and a representative cannot be located, the secure treatment facility shall provide the information required in section 246.712 to the patient or representative whenever it is possible to do so.

(d) If a patient dies before an opportunity to consent to blood collection or testing under sections 246.71 to 246.722, the secure treatment facility does not need consent of the patient's representative for purposes of sections 246.71 to 246.722.

Sec. 45. [246.715] TESTING OF AVAILABLE BLOOD.

Subdivision 1. PROCEDURES WITH CONSENT. If a sample of the patient's blood is available, the secure treatment facility shall ensure that blood is tested for bloodborne pathogens with the consent of the patient, provided the conditions in sections 246.711 and 246.712 are met.

Subd. 2. PROCEDURES WITHOUT CONSENT. If the patient has provided a blood sample, but does not consent to bloodborne pathogens testing, the secure treatment facility shall ensure that the blood is tested for bloodborne pathogens if the employee requests the test, provided all of the following criteria are met:

(1) the employee and secure treatment facility have documented exposure to blood or body fluids during performance of the employee's work duties;

(2) a licensed physician has determined that a significant exposure has occurred under section 246.711 and has documented that bloodborne pathogen test results are needed for beginning, modifying, continuing, or discontinuing medical treatment for the employee as recommended by the most current guidelines of the United States Public Health Service;

(3) the employee provides a blood sample for testing for bloodborne pathogens as soon as feasible;

(4) the secure treatment facility asks the patient to consent to a test for bloodborne pathogens and the patient does not consent;

(5) the secure treatment facility has provided the patient and the employee with all of the information required by section 246.712; and

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(6) the secure treatment facility has informed the employee of the confidentiality requirements of section 246.719 and the penalties for unauthorized release of patient information under section 246.72.

Subd. 3. FOLLOW-UP. The secure treatment facility shall inform the patient whose blood was tested of the results. The secure treatment facility shall inform the employee's health care provider of the patient's test results without the patient's name or other uniquely identifying information.

Sec. 46. [246.716] BLOOD SAMPLE COLLECTION FOR TESTING.

Subdivision 1. PROCEDURES WITH CONSENT. (a) If a blood sample is not otherwise available, the secure treatment facility shall obtain consent from the patient before collecting a blood sample for testing for bloodborne pathogens. The consent process shall include informing the patient that the patient may refuse to provide a blood sample and that the patient's refusal may result in a request for a court order under subdivision 2 to require the patient to provide a blood sample.

(b) If the patient consents to provide a blood sample, the secure treatment facility shall collect a blood sample and ensure that the sample is tested for bloodborne pathogens.

(c) The secure treatment facility shall inform the employee's health care provider about the patient's test results without the patient's name or other uniquely identifying information. The secure treatment facility shall inform the patient of the test results.

(d) If the patient refuses to provide a blood sample for testing, the secure treatment facility shall inform the employee of the patient's refusal.

Subd. 2. PROCEDURES WITHOUT CONSENT. (a) A secure treatment facility or an employee of a secure treatment facility may bring a petition for a court order to require a patient to provide a blood sample for testing for bloodborne pathogens. The petition shall be filed in the district court in the county where the patient is receiving treatment from the secure treatment facility. The secure treatment facility shall serve the petition on the patient three days before a hearing on the petition. The petition shall include one or more affidavits attesting that:

(1) the secure treatment facility followed the procedures in sections 246.71 to 246.722 and attempted to obtain bloodborne pathogen test results according to those sections;

(2) a licensed physician knowledgeable about the most current recommendations of the United States Public Health Service has determined that a significant exposure has occurred to the employee of a secure treatment facility under section 246.721; and

(3) a physician has documented that the employee has provided a blood sample and consented to testing for bloodborne pathogens and bloodborne pathogen test results are needed for beginning, continuing, modifying, or discontinuing medical treatment for the employee under section 246.721.

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(b) Facilities shall cooperate with petitioners in providing any necessary affidavits to the extent that facility staff can attest under oath to the facts in the affidavits.

(c) The court may order the patient to provide a blood sample for bloodborne pathogen testing if:

(1) there is probable cause to believe the employee of a secure treatment facility has experienced a significant exposure to the patient;

(2) the court imposes appropriate safeguards against unauthorized disclosure that must specify the persons who have access to the test results and the purposes for which the test results may be used;

(3) a licensed physician for the employee of a secure treatment facility needs the test results for beginning, continuing, modifying, or discontinuing medical treatment for the employee; and

(4) the court finds a compelling need for the test results. In assessing compelling need, the court shall weigh the need for the court-ordered blood collection and test results against the interests of the patient, including, but not limited to, privacy, health, safety, or economic interests. The court shall also consider whether involuntary blood collection and testing would serve the public interests.

(d) The court shall conduct the proceeding in camera unless the petitioner or the patient requests a hearing in open court and the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

(e) The patient may arrange for counsel in any proceeding brought under this subdivision.

Sec. 47. [246.717] NO DISCRIMINATION.

A secure treatment facility shall not withhold care or treatment on the requirement that the patient consent to bloodborne pathogen testing under sections 246.71 to 246.722.

Sec. 48. [246.718] USE OF TEST RESULTS.

Bloodborne pathogen test results of a patient obtained under sections 246.71 to 246.722 are for diagnostic purposes and to determine the need for treatment or medical care specific to a bloodborne pathogen-related illness. The test results may not be used as evidence in any criminal proceedings or civil proceedings, except for procedures under sections 144.4171 to 144.4186.

Sec. 49. [246.719] TEST INFORMATION CONFIDENTIALITY.

Test results obtained under sections 246.71 to 246.722 are private data as defined in sections 13.02, subdivision 12, and 13.85, subdivision 2, but shall be released as provided by sections 246.71 to 246.722.

Sec. 50. [246.72] PENALTY FOR UNAUTHORIZED RELEASE OF INFORMATION.

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Unauthorized release of the patient's name or other uniquely identifying information under sections 246.71 to 246.722 is subject to the remedies and penalties under sections 13.08 and 13.09. This section does not preclude private causes of action against an individual, state agency, statewide system, political subdivision, or person responsible for releasing private data, or confidential or private information on the inmate.

Sec. 51. [246.721] PROTOCOL FOR EXPOSURE TO BLOODBORNE PATHOGENS.

(a) A secure treatment facility shall follow applicable Occupational Safety and Health Administration guidelines under Code of Federal Regulations, title 29, part 1910.1030, for bloodborne pathogens.

(b) Every secure treatment facility shall adopt and follow a postexposure protocol for employees at a secure treatment facility who have experienced a significant exposure. The postexposure protocol must adhere to the most current recommendations of the United States Public Health Service and include, at a minimum, the following:

(1) a process for employees to report an exposure in a timely fashion;

(2) a process for an infectious disease specialist, or a licensed physician who is knowledgeable about the most current recommendations of the United States Public Health Service in consultation with an infectious disease specialist, (i) to determine whether a significant exposure to one or more bloodborne pathogens has occurred, and (ii) to provide, under the direction of a licensed physician, a recommendation or recommendations for follow-up treatment appropriate to the particular bloodborne pathogen or pathogens for which a significant exposure has been determined;

(3) if there has been a significant exposure, a process to determine whether the patient has a bloodborne pathogen through disclosure of test results, or through blood collection and testing as required by sections 246.71 to 246.722;

(4) a process for providing appropriate counseling prior to and following testing for a bloodborne pathogen regarding the likelihood of bloodborne pathogen transmission and follow-up recommendations according to the most current recommendations of the United States Public Health Service, recommendations for testing, and treatment;

(5) a process for providing appropriate counseling under clause (4) to the employee of a secure treatment facility and to the patient; and

(6) compliance with applicable state and federal laws relating to data practices, confidentiality, informed consent, and the patient bill of rights.

Sec. 52. [246.722] IMMUNITY.

A secure treatment facility, licensed physician, and designated health care personnel are immune from liability in any civil, administrative, or criminal action relating to the disclosure of test results of a patient to an employee of a secure treatment

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facility and the testing of a blood sample from the patient for bloodborne pathogens if a good faith effort has been made to comply with sections 246.71 to 246.722.

Sec. 53. Minnesota Statutes 1998, section 611A.19, subdivision 1, is amended to read:

Subdivision 1. **TESTING ON REQUEST OF VICTIM.** (a) Upon the request or with the consent of the victim, the prosecutor shall make a motion in camera and the sentencing court shall issue an order requiring an adult convicted of or a juvenile adjudicated delinquent for violating section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or any other violent crime, as defined in section 609.1095, to submit to testing to determine the presence of human immunodeficiency virus (HIV) antibody if:

(1) the crime involved sexual penetration, however slight, as defined in section 609.341, subdivision 12; or

(2) evidence exists that the broken skin or mucous membrane of the victim was exposed to or had contact with the offender's semen or blood during the commission of the crime in a manner which has been demonstrated epidemiologically to transmit the human immunodeficiency virus (HIV).

(b) When the court orders an offender to submit to testing under paragraph (a), the court shall order that the test be performed by an appropriate health professional who is trained to provide the counseling described in section ~~144.763~~ 144.7414, and that no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services.

Sec. 54. Minnesota Statutes 1998, section 611A.19, subdivision 2, is amended to read:

Subd. 2. **DISCLOSURE OF TEST RESULTS.** The date and results of a test performed under subdivision 1 are private data as defined in section 13.02, subdivision 12, when maintained by a person subject to chapter 13, or may be released only with the subject's consent, if maintained by a person not subject to chapter 13. The results are available, on request, to the victim or, if the victim is a minor, to the victim's parent or guardian and positive test results shall be reported to the commissioner of health. Any test results given to a victim or victim's parent or guardian shall be provided by a health professional who is trained to provide the counseling described in section ~~144.763~~ 144.7414. Data regarding administration and results of the test are not accessible to any other person for any purpose and shall not be maintained in any record of the court or court services or any other record. After the test results are given to the victim or the victim's parent or guardian, data on the test must be removed from any medical data or health records maintained under section 13.42 or 144.335 and destroyed.

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Sec. 55. **REPEALER.**

Minnesota Statutes 1998, sections 144.761; 144.762; 144.763; 144.764; 144.765; 144.766; 144.767; 144.768; 144.769; and 144.7691, are repealed.

Presented to the governor April 14, 2000

Signed by the governor April 18, 2000, 10:39 a.m.

CHAPTER 423—S.F.No. 1733

An act relating to alcoholic beverages; imposing civil third-party liability for damages caused by intoxication of persons under age 21; prohibiting certain subrogation claims; excluding certain homeowner's insurance coverage; proposing coding for new law in Minnesota Statutes, chapter 340A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

SOCIAL HOST LIABILITY

Section 1. **[340A.90] CIVIL ACTION; INTOXICATION OF PERSON UNDER AGE 21.**

Subdivision 1. **RIGHT OF ACTION.** (a) A spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss, by an intoxicated person under 21 years of age or by the intoxication of another person under 21 years of age, has for all damages sustained a right of action in the person's own name against a person who is 21 years or older who:

(1) had control over the premises and, being in a reasonable position to prevent the consumption of alcoholic beverages by that person, knowingly or recklessly permitted that consumption and the consumption caused the intoxication of that person; or

(2) sold, bartered, furnished or gave to, or purchased for a person under the age of 21 years alcoholic beverages that caused the intoxication of that person.

This paragraph does not apply to sales licensed under this chapter.

(b) All damages recovered by a minor under this section must be paid either to the minor or to the minor's parent, guardian, or next friend as the court directs.

(c) An intoxicated person under the age of 21 years who caused the injury has no right of action under this section.

Subd. 2. **SUBROGATION CLAIMS DENIED.** There shall be no recovery by any insurance company for any subrogation claim pursuant to any subrogation clause of the uninsured, underinsured, collision, or other first-party coverages of a motor vehicle insurance policy as a result of payments made by the company to persons who have claims that arise in whole or in part under this section.

New language is indicated by underline, deletions by ~~strikeout~~.