

CHAPTER 208
SB 59 - FINAL VERSION

02/23/2017 0499s
20Apr2017... 1094h
1Jan2017... 1830h
06/08/2017 2360EBA

2017 SESSION

17-0767
08/04

SENATE BILL **59**

AN ACT relative to blood testing orders.

SPONSORS: Sen. D'Allesandro, Dist 20; Sen. Bradley, Dist 3; Sen. Carson, Dist 14; Rep. Goley, Hills. 8; Rep. White, Graf. 13; Rep. Proulx, Hills. 44; Rep. Soucy, Merr. 16; Rep. O'Brien, Hills. 36

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

 This bill creates a process for certain individuals to request a blood testing order when they have been exposed to another individual's bodily fluids.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struck through.]~~
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

CHAPTER 208
SB 59 - FINAL VERSION

02/23/2017 0499s
20Apr2017... 1094h
1Jan2017... 1830h
06/08/2017 2360EBA

17-0767
08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT relative to blood testing orders.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 208:1 New Subdivision; First Responder Exposure Blood Testing. Amend RSA 141-G by
2 inserting after section 7 the following new subdivision:

3 First Responder and Healthcare Provider Exposure Blood Testing

4 141-G:8 Definitions. As used in this subdivision:

5 I. "Advanced practice registered nurse" means a registered nurse licensed by the state of
6 New Hampshire pursuant to RSA 326-B:18.

7 II. "Applicant" means a person who applies for a testing order or on whose behalf an
8 application for a testing order is made.

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

12 IV. "Court" means the district division of the circuit court.

13 V. "Commissioner" means the commissioner of the department of health and human
14 services.

15 VI. "Healthcare provider" means all persons working in a healthcare setting who have the
16 potential for exposure to infectious materials, including, but not limited to, body substances.

17 VII. "Physician" means a medical practitioner licensed by the state of New Hampshire
18 pursuant to RSA 329:12.

19 VIII. "Physician assistant" means a physician assistant licensed by the state of New
20 Hampshire pursuant to RSA 328-D:2.

21 IX. "Source individual" means any person whose blood, body fluids, tissue, or organs were
22 specifically identified as the source of a bloodborne pathogen exposure to an applicant under this
23 subdivision.

24 X. "Test results" means results of an analysis conducted for the purposes referred to in this
25 subdivision.

26 XI. "Testing order" means an order under RSA 141-G:11, I.

27 XII. "Unprotected exposure" includes instances of commingling of blood or other potentially
28 infectious material of a source individual and an applicant, which is capable of transmitting a

CHAPTER 208
SB 59 - FINAL VERSION
- Page 2 -

1 bloodborne pathogen or any other such type of exposure that may be designated by the
2 commissioner by rule adopted under RSA 141-G:19.

3 141-G:9 Notice of Intention. A person who intends to apply under RSA 141-G:10, I for a testing
4 order after an unprotected exposure to a source individual shall provide notice of that intention to
5 the source individual in accordance with rules adopted under RSA 141-G:19.

6 141-G:10 Application for Testing Order.

7 I. Subject to RSA 141-G:9, a person may apply to the court for a testing order if such person
8 has had an unprotected exposure to blood or body fluids from a source individual in any of the
9 following circumstances:

10 (a) While providing or receiving emergency health services; or

11 (b) While performing his or her duties as a firefighter, emergency medical technician,
12 paramedic or other emergency medical care provider, police officer, probation officer, peace officer,
13 person who gives aid at the scene of an emergency or to the victim of crime under RSA 508:12, or
14 healthcare provider; or

15 (c) While being involved in activities defined in rules adopted under RSA 141-G:19.

16 II. If a person who had an unprotected exposure to blood or body fluids from a source
17 individual in a circumstance referred to in paragraph I is unable to apply for a testing order under
18 paragraph I, a representative of the person may apply on behalf of the person.

19 III. An application for a testing order shall:

20 (a) Include a medical evaluation, including a blood test, by a physician, physician
21 assistant, or advanced practice registered nurse confirming that the exposure to the source
22 individual puts the applicant at reasonable risk for possible exposure to a bloodborne pathogen;

23 (b) Be made within 20 days of the date of the exposure referred to in paragraph I;

24 (c) Be made in accordance with the rules adopted under this subdivision; and

25 (d) Be served on the source individual at least 4 days before the court hears the
26 application.

27 IV. The court shall hear an application for a testing order as soon as practicable and may,
28 on application or on the court's own motion, order that the public is excluded from all or part of a
29 hearing.

30 V. If giving notice is impossible or impracticable, the court may hear ex parte an application
31 made under paragraph I without notice to the source individual if the applicant satisfies the court
32 by a preponderance of the evidence that complying with paragraph II or subparagraph III(d) within
33 a reasonable time is impossible or impracticable and is necessary to decrease or eliminate the risk to
34 the health of the applicant as a result of the exposure.

35 141-G:11 Testing Order.

36 I. On an application made under RSA 141-G:10, I, the court may issue an order requiring
37 testing if the court, having considered the medical evaluation and any other evidence the court

CHAPTER 208
SB 59 - FINAL VERSION
- Page 3 -

considers relevant, is satisfied of the following:

(a) The applicant has complied with RSA 141-G:9 and RSA 141-G:10;

(b) The applicant has had an unprotected exposure to blood or bodily fluids from the source individual in one of the circumstances set out in RSA 141-G:10, I;

(c) There are reasonable grounds to believe that the applicant may have been exposed, as a result of the exposure, to a bloodborne pathogen that causes a communicable disease;

(d) An analysis of the applicant's blood and bodily fluids would not determine, in a timely manner, whether the applicant has been infected by a bloodborne pathogen;

(e) Taking a blood sample from the source individual would not endanger the source individual's life or health;

(f) The information to be obtained under the testing order cannot reasonably be obtained in any other manner; and

(g) The testing order is necessary to decrease or eliminate the risk to the health of the applicant as a result of the exposure.

II. A testing order:

(a) Shall require the source individual, within the time specified in the order, to attend the health facility identified in the order so that a blood sample may be taken from the source individual for the purpose of determining whether the source individual is infected with a bloodborne pathogen that causes a communicable disease listed in rules adopted under RSA 141-G:19.

(b) Shall require the health facility identified in the order to ensure that a blood sample from the source individual is taken.

(c) Shall require the applicant to have the testing order served and any other information required by rules, within the time specified in the order, on the source individual and the health facility identified in the order.

(d) Shall not require testing for any substance in the blood other than bloodborne pathogens.

III. If the source individual named in a testing order is a minor or an incapacitated adult, the testing order shall require the guardian of the minor or the person responsible for the incapacitated adult under rules adopted by the commissioner under RSA 141-G:19 to take all reasonable steps to ensure that the source individual complies with the testing order.

IV. The blood sample taken in compliance with an order issued under this section shall not be tested at any time for any civil or criminal matter or for any purpose not authorized in this subdivision.

V. A decision of the court under paragraph I may be appealed to the superior court.

141-G:12 Obligations of Person Who Takes Sample. A person at a health facility who, pursuant to a testing order, takes from the source individual a blood sample shall:

CHAPTER 208
SB 59 - FINAL VERSION
- Page 4 -

1 (a) Deliver the sample, a copy of the testing order, and any other required information
2 to a laboratory licensed under RSA 151 for the purpose of having the sample analyzed; and

3 (b) Not use the sample for any purpose or test the sample for any organisms or
4 substances other than those stated in the order.

5 141-G:13 Test Results.

6 I. Test results shall be promptly provided by the licensed laboratory in a written report to
7 the applicant's physician, physician assistant, or advanced practice registered nurse and the source
8 individual's physician, physician assistant, or advanced practice registered nurse.

9 II. The applicant's physician, physician assistant, or advanced practice registered nurse
10 shall notify the applicant of the test results.

11 III. The source individual's physician, physician assistant, or advanced practice registered
12 nurse shall notify the source individual of the test results.

13 141-G:14 Confidentiality.

14 I. No person shall use or disclose any information concerning an applicant or a source
15 individual if that information becomes known to the person in the course of carrying out his or her
16 responsibilities under this subdivision or as a result of obtaining a testing order.

17 II. Paragraph I shall not apply to disclosure in the following circumstances:

18 (a) In the course of carrying out a duty imposed or exercising a power conferred under
19 this subdivision.

20 (b) As required by law.

21 (c) With the consent of the person who is the subject of the information.

22 (d) In the course of a consultation between qualified health professionals.

23 (e) In the case of information about a minor to a guardian of that minor.

24 (f) As provided in rules adopted under RSA 141-G:19.

25 III. No person who is subpoenaed or otherwise compelled to give evidence in a legal
26 proceeding, other than a proceeding for the purposes of RSA 141-G:11, I or an appeal under RSA
27 141-G:11, V, shall disclose information described in paragraph I, unless the court first examines the
28 information, with the public excluded, and determines that the information may be disclosed. The
29 court shall consider:

30 (a) The probative value of the information;

31 (b) The relevance of the information to the proceeding; and

32 (c) The effect of the disclosure on the privacy of the person who is the subject of the
33 information.

34 141-G:15 Costs. Subject to rules adopted by the commissioner under RSA 141-G:19, an
35 applicant's workers' compensation insurance carrier shall be responsible for paying the costs
36 relating to a testing order. Subject to rules adopted by the commissioner under RSA 141-G:19, the
37 private health or automobile insurance of an applicant who does not have access to workers'

CHAPTER 208
SB 59 - FINAL VERSION
- Page 5 -

1 compensation insurance which would cover medication for prophylaxis against potential bloodborne
2 pathogens shall be responsible for paying the costs relating to a testing order. An applicant without
3 insurance coverage may request testing under this subdivision, however, he or she shall be
4 responsible for paying for the testing order and may be required to pay for testing in advance.

5 141-G:16 Immunity. No legal proceeding for damages may be commenced or maintained
6 against a person who in good faith, and not in a wanton or reckless manner, engages in any act or
7 omission:

8 I. In the exercise or intended exercise of any power under this subdivision;

9 II. In the performance or intended performance of any duty under this subdivision; or

10 III. In the taking, under a testing order, of a sample from a source individual.

11 141-G:17 Notice and Service.

12 I. All documents or notifications required to be given to or served on a person shall be given
13 or served in accordance with the rules adopted by the commissioner, in collaboration with the
14 judicial branch, under RSA 141-G:19.

15 II. If a person is required under this subdivision to provide a notice to or serve a document
16 on another person, notice or service may be made on an authorized representative of the source
17 individual.

18 141-G:18 Penalties.

19 I. Any source individual who purposely contravenes a testing order shall be guilty of a
20 violation.

21 II. Any person who purposely violates the provisions of RSA 141-G:14, shall be guilty of a
22 misdemeanor.

23 III. If an offense under this subdivision continues for more than one day, a fine may be
24 imposed for each day the offense continues, provided that the sum of such fines shall not exceed the
25 maximum fine for the offense.

26 141-G:19 Rules.

27 I. The commissioner shall be responsible for the statewide supervision of first responder
28 and healthcare provider exposure blood testing.

29 II. The commissioner shall adopt rules under RSA 541-A, relative to:

30 (a) Defining diseases or conditions as bloodborne pathogens for the purposes of this
31 subdivision.

32 (b) Providing the notice required under RSA 141-G:9, including developing forms for
33 that purpose.

34 (c) Identifying circumstances and activities eligible for a blood testing order under RSA
35 141-G:10, I.

36 (d) Developing applications for testing orders, including forms for that purpose.

37 (e) Medical evaluation reports pursuant to RSA 141-G:10, III(a).

CHAPTER 208
SB 59 - FINAL VERSION
- Page 6 -

1 (f) The taking and analysis of blood samples under the authority of a testing order.

2 (g) Identifying eligible health facilities.

3 (h) Information required for completing a testing order.

4 (i) The reporting procedures for test results if the applicant's or source individual's
5 physician, physician assistant, or advanced practice registered nurse is not known or the applicant
6 or source individual does not have one.

7 (j) Circumstances when confidential information under this subdivision may be
8 disclosed.

9 (k) Circumstances in which workers' compensation insurance, the government, and
10 private health or automobile insurance shall be responsible for paying the costs referred to in RSA
11 141-G:15.

12 (l) Notice and service, including identifying authorized persons who may be notified or
13 served instead of the source individual of the notice or service.

14 208:2 Workers' Compensation; Medical, Hospital, and Remedial Care. Amend RSA 281-A:23,
15 VI to read as follows:

16 VI. An employer subject to this chapter, or the employer's insurance carrier, may furnish or
17 cause to be furnished, testing for the presence of a bloodborne disease when a critical exposure that
18 arises out of and in the course of employment occurs. Such testing shall be provided without
19 prejudice as to the issue of the causal relationship of any subsequently diagnosed bloodborne
20 disease to the employee's work and without prejudice to the compensability of the bloodborne
21 disease as an occupational disease or an accidental injury for the purposes of RSA 281-A.
22 ***Notwithstanding the foregoing, any costs for testing associated with a testing order issued***
23 ***pursuant to RSA 141-G:11 shall be paid for by the employer's insurance carrier. Such***
24 ***payment shall be provided without prejudice as to the issue of the causal relationship of***
25 ***any subsequently diagnosed disease or injury.***

208:3 Effective Date. This act shall take effect 60 days after its passage.

Approved: July 10, 2017

Effective Date: September 08, 2017