An Act

ENROLLED HOUSE
BILL NO. 4041

By: McCall of the House

and

Bullard of the Senate

An Act relating to public health; amending 59 O.S. 2011, Section 396.27, which relates to notification to employees of risk exposure; requiring certain employee and transporter notification; amending 63 O.S. 2011, Section 1-502.3, which relates to confidential records and testing of persons with human immunodeficiency virus; requiring release of certain records and information to funeral directors and embalmers; providing for release of liability; amending 63 O.S. 2011, Section 1-523, which relates to institutions and treatment of infected inmates; requiring release of certain records and information; amending 63 O.S. 2011, Section 1-525, which relates to disclosure of confidential information; updating statutory references; providing for confidentiality of certain records; requiring certain notification; providing for codification; and providing an effective date.

SUBJECT: Public health

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2011, Section 396.27, is amended to read as follows:

Section 396.27 A. In handling and preparing dead human remains for final disposition, any person who comes in direct contact with an unembalmed dead human body or who enters a room where dead human bodies are being embalmed shall exercise all reasonable precautions to minimize the risk of transmitting any communicable disease from the body in accordance with federal regulations regarding the

control of infectious diseases and occupational and workplace health and safety.

B. Each funeral director shall notify employees concerning risk exposures pursuant to Section 1-502.3 of Title 63 of the Oklahoma Statutes and the rules and guidelines promulgated by the State Board of Health.

C. If a funeral director or embalmer has been notified that a deceased person has tested positive for human immunodeficiency virus (HIV), MRSA, hepatitis or any other communicable disease the funeral director or embalmer shall notify any person who may be transporting the body or preparing the body for burial or other disposition of the positive test.

SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-502.3, is amended to read as follows:

Section 1-502.3 A. No person who withdraws or tests blood for human immunodeficiency virus (HIV), methicillin-resistant staphylococcus aureus (MRSA), hepatitis or any other communicable disease or employer of such person ~~nor~~ or any hospital or health care facility where blood is withdrawn or tested for ~~human immunodeficiency virus~~ HIV, MRSA, hepatitis or any other communicable disease shall incur any civil or criminal liability as a result of the proper withdrawal of blood or testing for ~~human immunodeficiency virus~~ HIV, MRSA, hepatitis or any other communicable disease when acting in compliance with the provisions of this section. The withdrawal or testing shall be performed in a reasonable manner, according to generally accepted standards of clinical practice. The person, employer or facility shall be presented with:

1. A written statement by the person whose blood is to be withdrawn and tested; or

2. A written statement from a health care or emergency care worker verifying that the health care or emergency care worker in an occupational setting has been exposed to the bodily fluids of the person whose blood is to be withdrawn and tested, which exposure placed the health care or emergency care worker at risk for transfer of the bodily fluids; or

3. An order from a court of competent jurisdiction that blood be withdrawn and tested.

When presented with such a statement or court order, the person authorized to withdraw the blood, the employer and the hospital or other health care facility where the withdrawal or testing occurs may rely on such statement or order as evidence that the person has consented to or has been required to submit to the clinical procedure and shall not be required to obtain any additional consent, acknowledgement or waiver form. In such case, the person authorized to perform the procedure, the employer of such person, and the hospital or other health care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

B. No person specified in this section shall incur any civil or criminal liability for:

1. Providing results of the testing to:

a. the person whose blood was tested,

b. the person incurring the exposure, ~~or~~

c. the funeral director or embalmer who will be or is preparing the body of a person who has been tested pursuant to this section for burial or other disposition, or

d. the State Department of Health or such agency it may designate;

2. Not providing the results of the testing to any other person; or

3. Failing to diagnose or falsely diagnosing the presence of ~~the human immunodeficiency virus~~ HIV, MRSA, hepatitis or any other communicable disease where the procedure was performed in a reasonable manner according to generally accepted standards of clinical practice.

C. For the purposes of this section:

1. "Bodily fluids" means fluids which have been medically proven and medically accepted as transmitters or conductors of ~~human immunodeficiency virus~~ HIV, MRSA, hepatitis or any other communicable disease; and

2. "Health care worker" or "emergency care worker" means one of the persons specified in subsection A of Section 1-502.1 of this title.

SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-523, is amended to read as follows:

Section 1-523. A. 1. Any and all institutions in this state, whether penal or eleemosynary, public or private, and free or for pay, shall make, and preserve for a period of at least one (1) year, a record showing the name, age, sex, race, nationality and place of residence of any ~~infected~~ inmate infected with a communicable disease of such institution who may come to their knowledge.

2. The institution shall make available such record at all reasonable hours for inspection by the State Commissioner of Health or the local health officer.

3. Such institutions shall further furnish a physician and all proper medicines, instruments and apparatus for the proper treatment of such infected inmate.

B. Each institution and each Department of Corrections district office, and each county or municipal jail shall notify their correctional officers, probation and parole officers, and any jailor, or other employee or any employee of the Pardon and Parole Board, who has or will have direct contact with an inmate, when such inmate is infected with ~~the~~ human immunodeficiency virus (HIV) ~~or has the~~, Acquired Immune Deficiency Syndrome (AIDS), methicillin-resistant staphylococcus aureus (MRSA), hepatitis or any other communicable disease.

C. 1. If an officer or employee of the State of Oklahoma, or any other person comes into contact with the bodily fluids of an inmate in a state correctional facility, the Director of the Department of Corrections or designee, under such rules as the Director shall promulgate to carry out the provisions of this section, shall cause such inmate to be tested for such disease, if no prior record of the existence of such disease exists. If an officer or employee of a county jail, or any other person, comes into contact with the bodily fluids of an inmate in a county jail, the sheriff or designee, under policies the sheriff shall promulgate to carry out the provisions of this section, shall cause the inmate to be tested for such disease, if no prior record of the existence of such disease exists.

2. The Director or designee shall promptly communicate in writing the results of the test to the person so exposed and refer the employee to the Department of Correction's Employee Assistance Program for appropriate referrals for counseling, health care, and support services for the person so exposed. If the exposure occurs within a county jail, the sheriff or designee shall promptly communicate in writing the results of the test to the person so exposed and refer the employee to the employee assistance program of the county for appropriate referrals for counseling, health care, and support services for the person so exposed.

3. As used in this section, the term "serious transmissible disease" means the human immunodeficiency virus (HIV) ~~and~~, MRSA, hepatitis or any other communicable disease.

D. In the event a person who has tested positive for a serious transmissible disease dies, each institution in this state, whether penal or eleemosynary, and whether public or private, shall notify the funeral director or embalmer who will be preparing the body for burial or other disposition by written notice as to the positive test upon first call, as defined in Section 396.2 of Title 59 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 63 O.S. 2011, Section 1-525, is amended to read as follows:

Section 1-525. A. 1. Except as otherwise provided by law, the prescription and records required by ~~the foregoing provisions~~ Sections 1-522 and 1-523 of this title to be filed and ~~kept~~ maintained shall not be ~~exposed~~ released to or opened by any person other than the State Commissioner of Health or local health officer, or in the event a person has tested positive for human immunodeficiency virus (HIV), methicillin-resistant staphylococcus aureus (MRSA), hepatitis or any other communicable disease to the funeral director or embalmer who will be or is preparing the body for burial or other disposition, or when properly ordered by a court of competent jurisdiction to be used as evidence in such court~~, and no~~.

2. No information ~~whatever~~ shall be given to any person concerning any infected person except to ~~appropriate~~ persons ~~for use in the proper courts of this state~~ authorized pursuant to Sections 1-502.1 and 1-523 of this title to receive such information.

~~Provided, that records~~ 3. Records of diagnosis and treatment may be transmitted to physicians and to health authorities in this and other states upon written request of the person affected. ~~Provided further, results~~

B. 1. Results of examinations conducted on persons arrested by lawful warrant for the offense of first or second degree rape, forcible sodomy, or intentional infection or attempted infection of a person with the human immunodeficiency virus, shall be provided to the alleged victim of the crime upon the request of the victim, the parent of the victim if the victim is a minor, or upon request of the legal guardian or custodian of the victim.

2. The name of the arrested and examined person shall not be disclosed on the transmitted record. The State Department of Health shall provide to the victims the positive test results.

3. The Department shall provide free testing to the alleged victim for any sexually transmitted infection (STI) or communicable disease for which the arrestee tests positive, as indicated in the transmitted record of diagnosis.

4. Such testing shall be accompanied with pretest and ~~post-test~~ posttest counseling. Such counseling shall include the provision of information to the victim or the parent, legal guardian or custodian of the victim concerning the ~~venereal~~ STI or communicable disease indicated in the transmitted record and the location of public and private facilities in the vicinity offering tests and counseling for persons who have the sexually transmitted infection (STI) or communicable disease.

~~B.~~ C. The State Board of Health shall promulgate rules ~~and regulations~~ for the examination authorized or required by Section 1-524 of this title and for the release of records containing results of examinations authorized by ~~subsection~~ subsections A and B of this section. The rules ~~and regulations~~ shall establish procedural guidelines which respect the rights of the person arrested for the alleged offense and the victim of the alleged offense.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-502.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any hospital, physician or other person who is responsible for the release of the body of a person who has tested positive for

human immunodeficiency virus (HIV), methicillin-resistant staphylococcus aureus (MRSA), hepatitis or any other communicable disease to a funeral director or embalmer who will be preparing the body for burial or other disposition shall notify, in writing, the funeral director or embalmer of the positive test upon first call, as the term is defined by the Funeral Services Licensing Act.

SECTION 6. This act shall become effective November 1, 2020.

Passed the House of Representatives the 9th day of March, 2020.

Presiding Officer of the House
of Representatives

Passed the Senate the 4th day of May, 2020.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 4th

day of May, 20 20, at 5:39 o'clock p. M.

By: Jamie Curry

Approved by the Governor of the State of Oklahoma this 7th

day of May, 20 20, at 8:15 o'clock a. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 7th

day of May, 20 20, at 9:15 o'clock A. M.

By: Michael Rogers