

2004 Bill 204

Fourth Session, 25th Legislature, 53 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 204

BLOOD SAMPLES ACT

MR. LUKASZUK

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 204

2004

BLOOD SAMPLES ACT

(Assented to _____, 2004)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “Chief Medical Officer” means the Chief Medical Officer appointed under the *Public Health Act*;
- (b) “Deputy Chief Medical Officer” means the Deputy Chief Medical Officer appointed under the *Public Health Act*;
- (c) “firefighter” means a person employed by, or volunteering for, a municipality or Metis settlement who is assigned to fire protection and fire prevention duties and whose duties may include the performance of ambulance or rescue services;
- (d) “medical officer of health” means a physician appointed by a regional health authority or designated by the Minister under this Act or the *Public Health Act* as a medical officer of health;
- (e) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (f) “peace officer” means a peace officer as defined in the *Police Act*;

- (g) “physician report” means a report made by a physician who is informed in respect of matters related to occupational and environmental health and all protocols and standards of practice in respect of blood-borne pathogens, which report assesses the risk to the health of an applicant described in section 4 as a result of the applicant coming into contact with a bodily substance of another person in the circumstances described in section 4;
- (h) “police officer” means a police officer as defined in the *Police Act*;
- (i) “prescribed”, with respect to a form, means
 - (i) in the form prescribed in the regulations, or
 - (ii) in a form approved by the Chief Medical Officer, where no form has been prescribed in the regulations;
- (j) “prescribed communicable disease” means a disease prescribed as a communicable disease in the regulations;
- (k) “regional health authority” means a regional health authority established under the *Regional Health Authorities Act*.

Designation of medical officers of health

- 2(1)** A regional health authority shall appoint a person as a medical officer of health for the purpose of carrying out this Act.
- (2)** The Minister may designate a physician as a medical officer of health for a regional health authority under this Act if the regional health authority fails to do so.
- (3)** A medical officer of health appointed under the *Public Health Act* shall be deemed to be a medical officer of health for the purposes of this Act.

Powers of Chief Medical Officer

- 3** The Chief Medical Officer and the Deputy Chief Medical Officer have the same powers and duties as outlined in the *Public Health Act* for the purpose of carrying out this Act.

Blood samples

- 4(1)** An application for an order under this section must be submitted to a medical officer of health.

(2) Upon receiving an application under subsection (1), a medical officer of health may make a written order described in subsection (4) if he or she is of the opinion, on reasonable and probable grounds, that the following conditions exist:

- (a) the applicant has come into contact with a bodily substance of another person
 - (i) while providing emergency health care services or emergency first aid to the person, if the person is ill, injured or unconscious as a result of an accident or other emergency, or
 - (ii) while fulfilling duties as
 - (A) a firefighter,
 - (B) a peace officer, or
 - (C) a police officer;
- (b) the applicant may have become infected with a virus that causes a prescribed communicable disease as a result of coming into contact with the bodily substance;
- (c) by reason of the lengthy incubation periods for the prescribed communicable diseases and the methods available for ascertaining the presence in the human body of the viruses that cause them, an analysis of the applicant's blood would not accurately determine, in a timely manner, whether the applicant had become infected with a virus that causes a prescribed communicable disease as a result of coming into contact with the bodily substance;
- (d) taking a sample of blood from the person mentioned in clause (a) would not endanger that person's life or health;
- (e) the applicant has submitted to the medical officer of health a physician report on the applicant made within 7 days after the applicant came into contact with the bodily substance; and
- (f) having regard to the physician report mentioned in clause (e), the order is necessary to decrease or eliminate the risk to the health of the applicant as a result of the applicant coming into contact with the bodily substance.

(3) A physician who makes a physician report required under this Act may require the applicant to submit to an examination, base line testing, counselling or treatment for the purpose of making the report.

(4) An order made under this section shall

- (a) require the person mentioned in subsection (2)(a) to allow a physician, or another legally qualified health practitioner named in the order and authorized by the regulations, to take a sample of blood from the person to determine whether the person carries a virus that causes a prescribed communicable disease;
- (b) require the physician or health practitioner named in the order to whom the person mentioned in subsection (2)(a) goes for the taking of a sample of blood, to take the sample of blood and to deal with it in the manner specified in the order, including
 - (i) to have it delivered to an analyst or a member of a class of analysts specified in the order to have the sample analyzed, and
 - (ii) to provide the applicable analyst with the addresses for service of the following persons, if the medical officer of health has those addresses: the applicant, the physician of the applicant, the person from whom the sample was taken and that person's physician; and
- (c) require the analyst who receives the sample of blood to
 - (i) analyze it in accordance with the requirements specified in the order,
 - (ii) make reasonable attempts to deliver a report on the results of the analysis to the physician of the person from whom the sample was taken,
 - (iii) make reasonable attempts to deliver, to the person from whom the sample was taken, a notice that the analyst delivered the report mentioned in subclause (ii) if the analyst succeeded in delivering the report under that subclause,

- (iv) make reasonable attempts to deliver a report on the results of the analysis to the physician of the applicant, and
 - (v) make reasonable attempts to deliver to the applicant
 - (A) a notice that the analyst has made reasonable attempts to deliver a report on the results of the analysis to the physician of the applicant, and
 - (B) a recommendation in writing that the applicant consult his or her physician for a proper interpretation of the results of the analysis.
- (5) The medical officer of health may hold a hearing of all persons who may be affected by the making of an order under this section, but is not required to do so.
- (6) A medical officer of health who makes an order under this section shall provide the applicant's address for service to the analyst who receives a sample of blood for analysis under subsection (4)(c).
- (7) If the medical officer of health refuses to grant the application for an order under this section, the applicant may appeal the refusal to the Chief Medical Officer within the time prescribed by the regulations and in accordance with the manner prescribed by the regulations.
- (8) If a person does not comply with an order made by a medical officer of health under this section within the time specified in the order, the officer or the Minister may apply to a judge of the Court of Queen's Bench for an order requiring the person to
- (a) comply with the order of the officer within the time specified in the order of the court, and
 - (b) take whatever other action the court considers appropriate in the circumstances to protect the interests of the applicant mentioned in that subsection.
- (9) A person who takes a sample of blood under subsection (4)(b) shall not use it in any way except as required in the order mentioned in that clause.
- (10) An analyst who receives a sample of blood for analysis under subsection (4)(c)

- (a) shall ensure that the sample is not used for any purpose other than the analysis and the reporting of results described in that subsection;
- (b) shall not release the sample to any person other than for the purpose of that subsection or the retention of the sample by a person acting on behalf of the analyst as long as no person other than the analyst has access to the sample;
- (c) shall not disclose the results to any person other than in accordance with that subsection.

(11) The results of the analysis are not admissible in evidence in a criminal proceeding.

Confidentiality

5 Except as expressly authorized by this Act, no person shall disclose to any other person the name of or any other information that will or is likely to identify a person in respect of whom an application, order or physician report is made under this Act.

Protection from liability

6 No action for damages may be commenced against

- (a) the Minister,
- (b) a member, employee or agent of a regional health authority,
- (c) an employee under the administration of the Minister,
- (d) the Chief Medical Officer, the Deputy Chief Medical Officer or a medical officer of health,

or

- (e) a physician or other legally qualified health practitioner

for anything done or not done by that person in good faith while carrying out duties or exercising powers under this Act or the regulations.

Service of documents

7 Where this Act or the regulations require or permit the service of an order, notice or other document on a person, then unless

otherwise provided, the order, notice or other document is sufficiently served if it is

- (a) served personally on the person, or
- (b) sent by registered mail to the person at the person's last known address.

Validity of documents

8 A certificate, notice, order or other form issued under this Act or the regulations shall not be held to be insufficient or invalid by reason only of any irregularity, informality or insufficiency in it or in any proceedings in connection with its issuance.

Offence and penalty

9(1) Any person who contravenes this Act, the regulations or an order of a medical officer of health under section 4 is guilty of an offence.

(2) A person who contravenes this Act or the regulations is liable to a fine of not more than \$2000 in the case of a first offence and \$5000 in the case of a subsequent offence.

(3) Where a person is convicted of an offence under this Act, the judge, in addition to any other penalty the judge may impose, may order the person to comply with the provisions of this Act or the regulations or the order for the contravention of which the person was convicted.

Regulations

10 The Lieutenant Governor in Council may make regulations

- (a) specifying diseases as communicable diseases for the purposes of this Act;
- (b) governing an application for an order, and any appeals relating to that application, made under section 4;
- (c) prescribing the information that a physician report under section 4 must contain;
- (d) prescribing a form for a physician report under section 4;

- (e) authorizing a type or class of health practitioner for the purpose of obtaining and analyzing blood samples under section 4;
- (f) specifying restrictions or conditions on the use that any person may make of the sample of blood described in section 4 and on the use or disclosure of any information derived from the sample of blood.

Health Information Act

11 If there is a conflict or inconsistency between this Act and the *Health Information Act*, this Act prevails despite the *Health Information Act*.

Coming into force

12 This Act comes into force on Proclamation.