

SENATE No. 801

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to infectious disease control.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 111 of the General Laws is hereby amended by adding the
2 following new section: Section 111N. (a) Notwithstanding the provisions of any general or
3 special law to the contrary, any person exposed to the blood or other bodily fluid of an offending
4 person may petition the superior court for an order compelling: (1) the production of medical,
5 insurance, or other records to determine the presence of any infectious disease, as defined by the
6 department of public health, in the blood or other bodily fluid of the offending person; and (2)
7 the testing of the offender’s blood for infectious disease. (b) The court shall order the
8 production of the medical, insurance, or other records and may order the testing of the offender’s
9 blood if: (1) exposure to the blood or other bodily fluid of the offending person substantially
10 threatens the health of the petitioner; (2) the exposure to the blood or other bodily fluid is a direct
11 result of conduct by the offending person; and (3) reasonable suspicion exists to believe that the
12 conduct is or may be a violation of state or federal criminal law, even if a criminal investigation
13 or prosecution relating to the conduct has not been or will not be commenced in the matter.
14 (c) The order of production shall direct the custodian of the medical, insurance, or other

15 records to produce immediately them for in camera inspection by the court. After conducting the
16 inspection of the records and blood test results, the court shall notify the petitioner immediately
17 of the presence or absence of an infectious disease in the blood or other bodily fluid of the
18 offending person. The petitioner shall not disclose the identity of the offender, nor shall the
19 petitioner disclose the results of the test to any person, except as otherwise necessary for the
20 petitioner to receive medical treatment. (d) The court shall seal the records of the
21 proceedings, including any judicial decision, upon the conclusion of the proceedings. The clerk
22 shall take all necessary steps to ensure the confidentiality of the sealed records. The court may
23 allow publication of its decision if it has removed the names of the petitioner and the offending
24 person from the decision. (e) The court may enter an order of production only after the
25 offending person is given notice and an opportunity to be heard in the matter. The hearing on the
26 petition for the order may not commence without the offender receiving notice of the hearing, or
27 no earlier than 48 hours after the offender receives the notice, unless the petitioner demonstrates
28 delay will result in immediate and irreparable harm to the petitioner's health or the infeasibility
29 of providing notice to the offender. (f) An order granting or denying the production of medical,
30 insurance, or other records or an order disclosing or refusing to disclose the contents of the
31 records to the petitioner is immediately subject to appeal and stays or injunctions pending appeal
32 as authorized by law. (g) The court may award reasonable attorney fees, costs, and expert
33 witness expenses to any prevailing party in any action or proceeding under this act. In awarding
34 attorney fees and expert witness expenses, the court shall take into account whether the
35 offending party, prior to the commencement of the hearing, voluntarily produced all medical,
36 insurance, or other records for the court's in camera inspection to determine the presence of an
37 infectious disease. (h) The testing on the offender shall be performed under the direction of

38 the department of public health. The results of an infectious disease test performed on the
39 offender pursuant to this section shall not be admissible in any criminal or juvenile proceeding
40 arising out of the alleged offense. The identity of the offender subject to testing shall be kept
41 confidential in accordance with the provisions of section 70 of chapter 111. (i)

42 Notwithstanding the provisions of any general law or special law to the contrary, no hospital, or
43 agent, employee, administrator, doctor, official or other representative of a reporting institution
44 shall be held jointly or severally liable either as an institution, or personally, for reporting in
45 good faith pursuant to the requirements of this section. All parties, provided they have operated
46 in good faith, shall otherwise be afforded total immunity from civil or criminal liability as a
47 result of fulfilling the provisions of this section.