

BILL

No. 102 of 2004-05

An Act respecting the Mandatory Testing of Bodily Substances for Communicable Diseases and the Disclosure of the Analyses of Test Samples

TABLE OF CONTENTS

1	Short title	11	Assistance of peace officer
2	Interpretation	12	Costs
3	Application for testing order	13	Appeal to Court of Appeal
4	Physician report	14	Service of documents
5	Testing order	15	Confidentiality
6	Responsibilities of medical health officer	16	Subpoena
7	Responsibilities of chief medical health officer	17	Immunity
8	Responsibilities of qualified health professional	18	Regulations
9	Responsibilities of qualified analyst	19	Offence and penalty
10	Results of analysis	20	Limitation
		21	Act prevails
		22	Coming into force

(Assented to _____, 2005)

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

Short title

1 This Act may be cited as *The Mandatory Testing and Disclosure (Bodily Substances) Act*.

Interpretation

2 In this Act:

- (a) **“applicant”** means an individual who applies for a testing order pursuant to section 3;
- (b) **“chief medical health officer”** means the chief medical health officer designated pursuant to *The Public Health Act, 1994*;
- (c) **“court”** means the Court of Queen’s Bench;
- (d) **“department”** means the department over which the minister presides;
- (e) **“guardian”**, in relation to an individual, includes a person who stands in the place of the individual;
- (f) **“health region”** means a health region as defined in *The Regional Health Services Act*;
- (g) **“jurisdictional area”** means the area within Saskatchewan in which a local authority has jurisdiction for the purposes of *The Public Health Act, 1994*;

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- (h) **“local authority”** means a local authority as defined in *The Public Health Act, 1994*, and includes the Athabasca Health Authority;
- (i) **“medical health officer”** means a medical health officer designated pursuant to *The Public Health Act, 1994*;
- (j) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (k) **“minor”** means an individual who:
- (i) is less than 14 years of age; or
 - (ii) is 14 years of age or more but less than 18 years of age and, in the opinion of the court, is unable to understand the nature and effect of a testing order;
- (l) **“physician report”** means a report described in section 4;
- (m) **“prescribed”** means prescribed in the regulations;
- (n) **“qualified analyst”** means, with respect to the conduct of any analysis required by a testing order, a person who:
- (i) holds the prescribed qualifications for conducting that type of analysis; and
 - (ii) in the case of any type of analysis that must, by law, be carried out by a licensed professional, holds a valid licence to practise that profession in Saskatchewan;
- (o) **“qualified health professional”** means a member of a prescribed health profession who holds a valid licence to practise that profession in Saskatchewan;
- (p) **“regional health authority”** means a regional health authority as defined in *The Regional Health Services Act*;
- (q) **“source individual”** means an individual from whom a sample of a bodily substance is sought for the purposes of testing;
- (r) **“testing order”** means an order described in subsection 5(2).

Application for testing order

3(1) An individual may apply to the court for a testing order if:

- (a) the individual has come into contact with a bodily substance of another individual:
 - (i) as a result of being a victim of crime;
 - (ii) while providing emergency health care services or emergency first aid to that individual; or
 - (iii) while performing any prescribed function in relation to that individual;
 - (b) as a result of that contact the individual may become infected with a micro-organism or pathogen that causes a prescribed communicable disease; and
 - (c) the source individual has refused to be voluntarily tested.
- (2) Subject to subsection (3), an application must be made on at least three days' notice to the source individual.

- (3) An applicant may apply for a testing order without notice to the source individual if the applicant satisfies the court that, in the circumstances of the case, giving notice to the source individual within a reasonable time is impossible or impracticable.
- (4) An application:
 - (a) must set out the circumstances in which the applicant came into contact with a bodily substance of the source individual;
 - (b) must be accompanied by a physician report; and
 - (c) must meet any other prescribed requirements.
- (5) The hearing of an application or any part of a hearing held pursuant to this section must be held in private unless otherwise ordered by the court.
- (6) The local registrar of the court shall keep the source individual's personal information confidential.
- (7) The court may make an order prohibiting the publication of a report of a hearing or any part of a hearing if the court believes that the publication of the report:
 - (a) would not be in the best interests of the applicant or the source individual; or
 - (b) would be likely to identify, have an adverse effect on or cause hardship to the applicant or source individual.

Physician report

- 4(1) A physician report required for the purposes of section 3:
 - (a) must be made by a physician who possesses the prescribed qualifications;
 - (b) must assess the risk to the health of the applicant as a result of the applicant's contact with a bodily substance of the source individual;
 - (c) must assess whether a testing order is necessary to decrease or eliminate the risk to the health of the applicant resulting from the contact; and
 - (d) must meet any other prescribed requirements.
- (2) For the purposes of preparing a physician report, a physician may require the applicant to submit to an examination, testing, counselling or treatment.

Testing order

- 5(1) On an application pursuant to section 3, the court may make a testing order if the court is satisfied that:
 - (a) the applicant has come into contact with a bodily substance of the source individual in one of the circumstances described in clause 3(1)(a);
 - (b) there are reasonable grounds to believe that the applicant may become infected with a micro-organism or pathogen that causes a prescribed communicable disease as a result of the contact;
 - (c) having regard to the incubation periods for the prescribed communicable disease and the methods available for ascertaining the presence of the micro-organisms or pathogens in the human body, an analysis of the applicant's bodily substances would not accurately determine in a timely manner whether, as a result of the contact, the applicant has become infected with a micro-organism or pathogen that causes a prescribed communicable disease;

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- (d) taking a sample of a bodily substance from the source individual would not endanger the source individual's life or health;
 - (e) the information to be obtained by the proposed testing cannot reasonably be obtained in any other manner; and
 - (f) having regard to the physician report submitted by the applicant, the testing order is necessary to decrease or eliminate the risk to the health of the applicant resulting from the contact.
- (2) A testing order must require the source individual:
- (a) within the time specified in the order, to allow a qualified health professional to take from the source individual a sample of any bodily substance specified in the order for the purpose of determining whether the source individual is infected with a micro-organism or pathogen that causes a prescribed communicable disease; and
 - (b) for the purposes of fulfilling the requirement described in clause (a), to comply with any directions of a medical health officer pursuant to clause 6(2)(b).
- (3) If the source individual named in a testing order is a minor, the testing order must require a parent or guardian of the source individual to take all reasonable steps to ensure that the source individual complies with the testing order.
- (4) A testing order may contain any additional directions that the court considers necessary.
- (5) If the court makes a testing order, the applicant shall immediately forward a copy of the order and all documents relating to the application:
- (a) to the medical health officer of the health region in which the source individual resides; or
 - (b) if the place of residence of the source individual is not known, to the chief medical health officer.

Responsibilities of medical health officer

- 6(1)** On receiving a testing order pursuant to clause 5(5)(a), a medical health officer shall:
- (a) designate a qualified health professional or a class of qualified health professionals to take from the source individual a sample of any bodily substance specified in the testing order;
 - (b) designate one or more qualified analysts or classes of qualified analysts to conduct tests on the sample obtained from the source individual and specify the tests to be conducted; and
 - (c) provide directions to the persons designated pursuant to clauses (a) and (b).
- (2) Subject to subsection (3), the applicant shall serve the source individual with a copy of the testing order and a notice prepared by the medical health officer that:
- (a) sets out the name and address of the qualified health professional designated by the medical health officer; and
 - (b) gives directions to the source individual respecting the manner in which he or she must comply with the testing order.
- (3) If a source individual is a minor, the applicant shall serve a parent or guardian of the source individual with a copy of the testing order and the notice described in subsection (2).

Responsibilities of chief medical health officer

- 7(1) On receiving a testing order pursuant to clause 5(5)(b), the chief medical health officer may designate any medical health officer to carry out the responsibilities of a medical health officer pursuant to section 6 with respect to that order.
- (2) If the applicant is unable to serve the source individual with a testing order and notice in accordance with subsection 6(2), or the parent or guardian of a source individual who is a minor in accordance with subsection 6(3):
- (a) the medical health officer shall advise the chief medical health officer of that fact; and
 - (b) the chief medical health officer may designate any other medical health officer to carry out the responsibilities of a medical health officer pursuant to section 6 with respect to that order.
- (3) A medical health officer acting pursuant to subsection (1) or (2) may exercise the powers of a medical health officer anywhere in Saskatchewan.
- (4) If the applicant and the chief medical officer are unable to locate the source individual, the applicant may apply to the court for further direction.

Responsibilities of qualified health professional

- 8(1) A qualified health professional designated by a medical health officer pursuant to clause 6(1)(a) who takes from the source individual a sample of any bodily substance specified in the testing order must:
- (a) deal with the sample in the manner directed by the medical health officer; and
 - (b) deliver the sample to a qualified analyst designated by the medical health officer for the purpose of having the sample analysed.
- (2) A qualified health professional who takes a sample of a bodily substance from any individual pursuant to a testing order shall not use the sample in any manner other than the manner specified in the order or for any purpose other than the purposes of the order.

Responsibilities of qualified analyst

- 9(1) A qualified analyst designated by a medical health officer pursuant to clause 6(1)(b) who receives a sample delivered pursuant to clause 8(1)(b) must:
- (a) in accordance with any directions of the medical health officer, conduct an analysis of the sample; and
 - (b) promptly provide a written record of the results of the analysis to the medical health officer.
- (2) A qualified analyst who receives a sample pursuant to clause 8(1)(b):
- (a) must ensure that the sample is not used for any purpose other than the analysis required by the testing order;

- (b) shall not release the sample to any person unless:
 - (i) the sample is released to a person who is acting on behalf of the analyst for the purposes of:
 - (A) carrying out the analysis required by the testing order; or
 - (B) retention of the sample; and
 - (ii) the qualified analyst ensures that no other person has access to the sample while it is in the custody of that person; and
- (c) shall not disclose the results of the analysis except in accordance with this Act.

Results of analysis

10(1) As soon as possible after receiving the results of an analysis, a medical health officer shall make reasonable efforts to furnish a copy of the results to:

- (a) the applicant;
 - (b) the applicant's physician; and
 - (c) the source individual or, in the case of a source individual who is a minor, a parent or guardian of the source individual.
- (2) The results of an analysis are not admissible in evidence in any criminal or civil proceeding other than in accordance with this Act.

Assistance of peace officer

11(1) A medical health officer or a qualified health professional may call for the assistance of a peace officer in carrying out any of his or her responsibilities pursuant to this Act.

(2) A peace officer who is called on pursuant to subsection (1) may render the assistance requested.

Costs

12 The costs of an application for a testing order, the costs of any appeal conducted pursuant to this Act, the costs of preparing the physician's report, the costs of conducting any analysis required by a testing order and the costs of serving or attempting to serve any documents shall be borne by the applicant.

Appeal to Court of Appeal

13(1) An appeal lies to the Court of Appeal on a question of law from a decision of the court respecting an application for a testing order.

(2) An appellant pursuant to subsection (1) may apply to a judge of the Court of Appeal for an order staying a testing order until the appeal is determined.

Service of documents

14(1) Any document that is required to be served pursuant to this Act or the regulations must be served on the person to whom it is directed.

(2) A document may be served personally or mailed by registered mail to the person being served.

(3) A document served by registered mail is deemed to have been received on the seventh day following the day of its mailing unless the person to whom it was mailed establishes that, through no fault of that person, the person did not receive the document or received it at a later date.

Confidentiality

15(1) Subject to subsection (2), no person shall disclose any information that comes to the person's knowledge pursuant to this Act or the regulations concerning an applicant or a source individual.

- (2) A person may disclose information described in subsection (1) if the disclosure:
- (a) is required to administer this Act or the regulations;
 - (b) is required to carry out a responsibility imposed or to exercise a power conferred by this Act or the regulations;
 - (c) is required by law;
 - (d) is requested or approved by the individual who is the subject of the information;
 - (e) is ordered by the minister where it is determined to be necessary for the purpose of protecting the public health; or
 - (f) is made on a need to know basis:
 - (i) to a member of a health profession who holds a valid licence to practise that profession in Saskatchewan in the course of a professional consultation regarding the treatment of the applicant;
 - (ii) between solicitor and client;
 - (iii) in the case of information pertaining to a minor, to a parent or guardian of the individual; or
 - (iv) in prescribed circumstances.

Subpoena

16(1) No person who is subpoenaed or otherwise compelled to give evidence in a legal proceeding is required or allowed to answer any question or to produce any document that reveals information that is made confidential by this Act unless the judge or other person presiding over the proceeding first examines the information, with the public excluded, to determine whether the information should be disclosed.

(2) In making a ruling pursuant to subsection (1), the judge or other person presiding over the proceeding shall consider the relevance to the proceeding and the probative value of the information to be disclosed and the invasion of privacy of the person who is the subject of the information.

Immunity

17(1) No action or proceeding lies or shall be commenced against the Crown, the minister, the department, an officer, employee or agent of the department, a medical health officer, the chief medical health officer, a local authority, a regional health authority, an officer, employee or agent of a local authority or a regional health authority or a peace officer for anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by that person or by any of those persons pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any order or direction made pursuant to this Act or any duty imposed by this Act or the regulations.

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- (2) No action or proceeding lies or shall be commenced against:
- (a) a physician who in good faith makes a physician report;
 - (b) a qualified health professional who in good faith takes a sample of a bodily substance from an individual pursuant to this Act; or
 - (c) a qualified analyst who in good faith performs an analysis of a sample of a bodily substance delivered by a qualified health professional pursuant to this Act, or any person acting in good faith on behalf of a qualified analyst pursuant to subclause 9(2)(b)(i).

Regulations

18 The Lieutenant Governor in Council may make regulations:

- (a) prescribing diseases as communicable diseases for the purposes of this Act;
- (b) for the purposes of the definition of qualified analyst, prescribing the qualifications for conducting types of analysis;
- (c) for the purposes of the definition of qualified health professional, prescribing the health professions whose members are eligible to be qualified health professionals;
- (d) for the purposes of subclause 3(1)(a)(iii), prescribing functions that, if performed in relation to an individual, give rise to grounds for an application for a testing order if the individual performing the function comes into contact with a bodily substance of the individual in relation to whom the function is performed;
- (e) governing applications for testing orders;
- (f) prescribing the qualifications of physicians who may make a physician report;
- (g) for the purposes of clause 4(1)(d):
 - (i) governing the information to be furnished in a physician report; and
 - (ii) prescribing a form for a physician report and requiring that a physician report be made in the prescribed form;
- (h) for the purposes of subclause 15(2)(f)(iv), prescribing circumstances in which confidential information may be disclosed.

Offence and penalty

19 Every person who contravenes any provision of this Act or the regulations or an order made pursuant to this Act is guilty of an offence and liable on summary conviction:

- (a) for a first offence:
 - (i) to a fine not exceeding \$5,000; and
 - (ii) to a further fine of \$500 for each day or part of a day in which the offence continues; and
- (b) for a second or subsequent offence:
 - (i) to a fine not exceeding \$10,000; and
 - (ii) to a further fine of \$1,000 for each day or part of a day in which the offence continues.

Limitation

20 No prosecution for an alleged contravention of this Act or the regulations or an order made pursuant to this Act shall be commenced more than two years after the date of commission of the alleged contravention.

Act prevails

21(1) Subject to Part IV of *The Public Health Act, 1994*, if there is a conflict or inconsistency between this Act or the regulations and any other Act or any regulation made pursuant to another Act, this Act and the regulations prevail.

(2) Subsection (1) applies notwithstanding any provision in the other Act or regulation that states that the provision is to apply notwithstanding any other Act or law.

(3) Subsection (1) applies notwithstanding subsection 4(2) of *The Health Information Protection Act*, subsection 23(2) of *The Freedom of Information and Protection of Privacy Act* and subsection 22(2) of *The Local Authority Freedom of Information and Protection of Privacy Act*.

Coming into force

22 This Act comes into force on proclamation.

FIRST SESSION
Twenty-fifth Legislature
SASKATCHEWAN

B I L L

No. 102 of 2004-05

An Act respecting the Mandatory Testing of Bodily
Substances for Communicable Diseases and the
Disclosure of the Analyses of Test Samples

Received and read the

First time

Second time

Third time

And passed

Honourable Frank Quennell
