

Act No. 86
Public Acts of 1992
Approved by the Governor
June 4, 1992
Filed with the Secretary of State
June 4, 1992

STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1992

Introduced by Reps. Bennane and Bodem

ENROLLED HOUSE BILL No. 4646

AN ACT to amend section 5131 of Act No. 368 of the Public Acts of 1978, entitled as amended "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for penalties and remedies; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," as amended by Act No. 271 of the Public Acts of 1989, being section 333.5131 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 5131 of Act No. 368 of the Public Acts of 1978, as amended by Act No. 271 of the Public Acts of 1989, being section 333.5131 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 5131. (1) All reports, records, and data pertaining to testing, care, treatment, reporting, research, and information pertaining to partner notification under section 5114a, associated with the serious communicable diseases or infections of HIV infection, acquired immunodeficiency syndrome, and acquired immunodeficiency syndrome-related complex are confidential. A person shall release reports, records, and data described in this subsection only pursuant to this section.

(2) Except as otherwise provided by law, the test results of a test for HIV infection, acquired immunodeficiency syndrome, or acquired immunodeficiency syndrome-related complex and the fact that such a test was ordered is information that is subject to section 2157 of the revised judiciary act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.2157 of the Michigan Compiled Laws.

(3) The disclosure of information pertaining to HIV infection, acquired immunodeficiency syndrome, or acquired immunodeficiency syndrome-related complex in response to a court order and subpoena is limited to only the following cases and is subject to all of the following restrictions:

(a) A court that is petitioned for an order to disclose the information shall determine both of the following:

- (i) That other ways of obtaining the information are not available or would not be effective.
- (ii) That the public interest and need for the disclosure outweigh the potential for injury to the patient.
- (b) If a court issues an order for the disclosure of the information, the order shall do all of the following:
 - (i) Limit disclosure to those parts of the patient's record that are determined by the court to be essential to fulfill the objective of the order.
 - (ii) Limit disclosure to those persons whose need for the information is the basis for the order.
 - (iii) Include such other measures as considered necessary by the court to limit disclosure for the protection of the patient.
- (4) A person who releases information pertaining to HIV infection, acquired immunodeficiency syndrome, or acquired immunodeficiency syndrome-related complex to a legislative body shall not identify in the information a specific individual who was tested or is being treated for HIV infection, acquired immunodeficiency syndrome, or acquired immunodeficiency syndrome-related complex.
- (5) Subject to subsection (7), subsection (1) does not apply to the following:
 - (a) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex, if the information is disclosed to the department, a local health department, or other health care provider for 1 or more of the following purposes:
 - (i) To protect the health of an individual.
 - (ii) To prevent further transmission of HIV.
 - (iii) To diagnose and care for a patient.
 - (b) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex, if the information is disclosed by a physician or local health officer to an individual who is known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex, if the physician or local health officer determines that the disclosure of the information is necessary to prevent a reasonably foreseeable risk of further transmission of HIV. This subdivision imposes an affirmative duty upon a physician or local health officer to disclose information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex to an individual who is known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex. A physician or local health officer may discharge the affirmative duty imposed under this subdivision by referring the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex to the appropriate local health department for assistance with partner notification under section 5114a. The physician or local health officer shall include as part of the referral the name and, if available, address and telephone number of each individual known by the physician or local health officer to be a contact of the individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex.
 - (c) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex, if the information is disclosed by an authorized representative of the department or by a local health officer to an employee of a school district, and if the department representative or local health officer determines that the disclosure is necessary to prevent a reasonably foreseeable risk of transmission of HIV to pupils in the school district. An employee of a school district to whom information is disclosed under this subdivision is subject to subsection (1).
 - (d) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex, if the disclosure is expressly authorized in writing by the individual. This subdivision applies only if the written authorization is specific to HIV infection, acquired immunodeficiency syndrome, or acquired immunodeficiency syndrome-related complex. If the individual is a minor or incapacitated, the written authorization may be executed by the parent or legal guardian of the individual.
 - (e) Information disclosed under section 5114, 5114a, 5119(3), 5129, or 20191 or information disclosed as required by rule promulgated under section 5111(1)(b) or (i).
 - (f) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex, if the information is part of a report required under the child protection law, Act No. 238 of the Public Acts of 1975, being sections 722.621 to 722.636 of the Michigan Compiled Laws.

(g) Information pertaining to an individual who is HIV infected or has been diagnosed as having acquired immunodeficiency syndrome or acquired immunodeficiency syndrome-related complex, if the information is disclosed by the department of social services, the department of mental health, the probate court, or a child placing agency in order to care for a minor and to place the minor with a child care organization licensed under Act No. 116 of the Public Acts of 1973, being sections 722.111 to 722.128 of the Michigan Compiled Laws. The person disclosing the information shall disclose it only to the director of the child care organization or, if the child care organization is a private home, to the individual who holds the license for the child care organization. An individual to whom information is disclosed under this subdivision is subject to subsection (1). As used in this subdivision, "child care organization" and "child placing agency" mean those terms as defined in section 1 of Act No. 116 of the Public Acts of 1973, being section 722.111 of the Michigan Compiled Laws.

(6) A person who releases the results of an HIV test in compliance with subsection (5) is immune from civil or criminal liability and administrative penalties including, but not limited to, licensure sanctions, for the release of that information.

(7) A person who discloses information under subsection (5) shall not include in the disclosure information that identifies the individual to whom the information pertains, unless the identifying information is determined by the person making the disclosure to be reasonably necessary to prevent a foreseeable risk of transmission of HIV. This subsection does not apply to information disclosed under subsection (5)(d), (f), or (g).

(8) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both, and is liable in a civil action for actual damages or \$1,000.00, whichever is greater, and costs and reasonable attorney fees. This subsection also applies to the employer of a person who violates this section, unless the employer had in effect at the time of the violation reasonable precautions designed to prevent the violation.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.