

HOUSE BILL No. 5863

May 28, 1992, Introduced by Reps. Jamian, O'Connor, Bandstra, Johnson, Brackenridge, Dolan, Dresch, Gnodtke, Middleton, Fitzgerald, Munsell, Robertson, Walberg, Horton, Hillegonds, Trim, Jaye, Weeks, Wozniak, Niederstadt, Bodem, Hoffman, McBryde, DeBeaussaert, Bobier, Goss, Willis Bullard, Kilpatrick, Perry Bullard, Gire, Joe Young, Jr., McNutt, Shugars, Martin, Sikkema, Power, Rocca, London, Strand, DeLange, Gernaat and Nye and referred to the Committee on Public Health,

A bill to amend sections 5131, 5133, and 5431 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code,"

section 5131 as amended by Act No. 271 of the Public Acts of 1989, section 5133 as added by Act No. 488 of the Public Acts of 1988, and section 5431 as amended by Act No. 264 of the Public Acts of 1988, being sections 333.5131, 333.5133, and 333.5431 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5131, 5133, and 5431 of Act No. 368 of
2 the Public Acts of 1978, section 5131 as amended by Act No. 271
3 of the Public Acts of 1989, section 5133 as added by Act No. 488
4 of the Public Acts of 1988, and section 5431 as amended by Act
5 No. 264 of the Public Acts of 1988, being sections 333.5131,

1 333.5133, and 333.5431 of the Michigan Compiled Laws, are amended
2 to read as follows:

3 Sec. 5131. (1) All reports, records, and data pertaining to
4 testing, care, treatment, reporting, and research associated with
5 the serious communicable diseases or infections of HIV infection,
6 acquired immunodeficiency syndrome, and acquired immunodeficiency
7 syndrome-related complex are confidential. ~~—, and—~~ A PERSON shall
8 ~~be released—~~ RELEASE REPORTS, RECORDS, AND DATA DESCRIBED IN
9 THIS SUBSECTION only pursuant to this section.

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

17 (3) The disclosure of information pertaining to HIV infec-
18 tion, acquired immunodeficiency syndrome, or acquired immunodefi-
19 ciency syndrome-related complex in response to a court order and
20 subpoena ~~shall be—~~ IS limited to only the following cases and IS
21 subject to all of the following restrictions:

22 (a) ~~The—~~ A court that is petitioned for an order to dis-
23 close the information shall determine both of the following:

24 (i) That other ways of obtaining the information are not
25 available or would not be effective.

26 (ii) That the public interest and need for the disclosure
27 outweigh the potential for injury to the patient.

1 (b) If a court issues an order for the disclosure of the
2 information, the order shall do all of the following:

3 (i) Limit disclosure to those parts of the patient's record
4 that are determined by the court to be essential to fulfill the
5 objective of the order.

6 (ii) Limit disclosure to those persons whose need for the
7 information is the basis for the order.

8 (iii) Include such other measures as considered necessary by
9 the court to limit disclosure for the protection of the patient.

10 (4) ~~Information~~ A PERSON WHO RELEASES INFORMATION pertain-
11 ing to HIV infection, acquired immunodeficiency syndrome, or
12 acquired immunodeficiency syndrome-related complex ~~that is~~
13 ~~released~~ to a legislative body shall not ~~contain information~~
14 ~~that identifies~~ IDENTIFY IN THE INFORMATION a specific individ-
15 ual who was tested or is being treated for HIV infection,
16 acquired immunodeficiency syndrome, or acquired immunodeficiency
17 syndrome-related complex.

18 (5) Subject to subsection (7), subsection (1) does not apply
19 to the following:

20 (a) Information pertaining to an individual who is HIV
21 infected or has been diagnosed as having acquired immunodeficiency
22 syndrome or acquired immunodeficiency syndrome-related
23 complex, if the information is disclosed to the department, a
24 local health department, or other health care provider for 1 or
25 more of the following purposes:

26 (i) To protect the health of an individual.

1 (ii) To prevent further transmission of HIV.

2 (iii) To diagnose and care for a patient.

3 (b) Information pertaining to an individual who is HIV
4 infected or has been diagnosed as having acquired immunodefi-
5 ciency syndrome or acquired immunodeficiency syndrome-related
6 complex, if the information is disclosed by a physician or local
7 health officer to an individual who is known by the physician or
8 local health officer to be a contact of the individual who is HIV
9 infected or has been diagnosed as having acquired immunodefi-
10 ciency syndrome or acquired immunodeficiency syndrome-related
11 complex, if the physician or local health officer determines that
12 the disclosure of the information is necessary to prevent a rea-
13 sonably foreseeable risk of further transmission of HIV. This
14 subdivision does not impose an affirmative duty upon a physician
15 or local health officer to disclose information pertaining to an
16 individual who is HIV infected or has been diagnosed as having
17 acquired immunodeficiency syndrome or acquired immunodeficiency
18 syndrome-related complex to an individual who is known by the
19 physician or local health officer to be a contact of the individ-
20 ual who is HIV infected or has been diagnosed as having acquired
21 immunodeficiency syndrome or acquired immunodeficiency
22 syndrome-related complex.

23 (c) Information pertaining to an individual who is HIV
24 infected or has been diagnosed as having acquired immunodefi-
25 ciency syndrome or acquired immunodeficiency syndrome-related
26 complex, if the information is disclosed by an authorized
27 representative of the department or BY a local health officer to

1 an employee of a school district, and if the department
2 representative or local health officer determines that the dis-
3 closure is necessary to prevent a reasonably foreseeable risk of
4 transmission of HIV to pupils in the school district. An
5 employee of a school district to whom information is disclosed
6 under this subdivision is subject to subsection (1).

7 (d) Information pertaining to an individual who is HIV
8 infected or has been diagnosed as having acquired immunodefi-
9 ciency syndrome or acquired immunodeficiency syndrome-related
10 complex, if the disclosure is expressly authorized in writing by
11 the individual. ~~7-but~~ THIS SUBDIVISION APPLIES only if the
12 written authorization is specific to HIV infection, acquired
13 immunodeficiency syndrome, or acquired immunodeficiency
14 syndrome-related complex. If the individual is a minor or inca-
15 pacitated, the written authorization may be executed by the
16 parent or legal guardian of the individual.

17 (e) Information disclosed under section 5114, 5114a,
18 5119(3), 5129, 5431, or ~~2019(1)~~ 20191.

19 (f) Information pertaining to an individual who is HIV
20 infected or has been diagnosed as having acquired immunodefi-
21 ciency syndrome or acquired immunodeficiency syndrome-related
22 complex, if the information is part of a report required under
23 the child protection law, Act No. 238 of the Public Acts of 1975,
24 being sections 722.621 to 722.636 of the Michigan Compiled Laws.

25 (g) Information pertaining to an individual who is HIV
26 infected or has been diagnosed as having acquired
27 immunodeficiency syndrome or acquired immunodeficiency

1 syndrome-related complex, if the information is disclosed by the
2 department of social services, the department of mental health,
3 the probate court, or a child placing agency in order to care for
4 a minor and to place the minor with a child care organization
5 licensed under Act No. 116 of the Public Acts of 1973, being
6 sections 722.111 to 722.128 of the Michigan Compiled Laws. The
7 PERSON DISCLOSING THE information shall ~~be disclosed~~ DISCLOSE
8 IT only to the director of the child care organization or, if the
9 child care organization is a private home, to the individual who
10 holds the license for the child care organization. An individual
11 to whom information is disclosed under this subdivision is
12 subject to subsection (1). As used in this subdivision, "child
13 care organization" and "child placing agency" mean those terms as
14 defined in section 1 of Act No. 116 of the Public Acts of 1973,
15 being section 722.111 of the Michigan Compiled Laws.

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

20 (7) ~~Information disclosed~~ A PERSON WHO DISCLOSES
21 INFORMATION under subsection (5) shall not ~~contain~~ INCLUDE IN
22 THE DISCLOSURE information that identifies the individual to whom
23 the information pertains, unless the identifying information is
24 determined by the person making the disclosure to be reasonably
25 necessary to prevent a foreseeable risk of transmission of HIV.
26 This subsection does not apply to information disclosed under
27 subsection (5)(d), (f), or (g).

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

9 Sec. 5133. (1) Except as otherwise provided in this sec-
10 tion, a physician who orders an HIV test or a health facility
11 that performs an HIV test shall provide counseling appropriate to
12 the test subject both before and after the test is administered.

13 (2) Except as otherwise provided in this part, a physician,
14 or an individual to whom the physician has delegated authority to
15 perform a selected act, task, or function under section 16215,
16 shall not order an HIV test for the purpose of diagnosing HIV
17 infection without first receiving the written, informed consent
18 of the test subject. ~~Subject to subsection (2), for~~ FOR pur-
19 poses of this ~~subsection~~ SECTION, written, informed consent
20 ~~shall consist~~ CONSISTS of a signed writing executed by the
21 ~~subject of a~~ test SUBJECT or the legally authorized representa-
22 tive of the test subject ~~which~~ THAT includes, at a minimum, all
23 of the following:

24 (a) An explanation of the test including, but not limited
25 to, the purpose of the test, the potential uses and limitations
26 of the test, and the meaning of test results.

1 (b) An explanation of the rights of the test subject
2 including, but not limited to, all of the following:

3 (i) The right to withdraw consent to the test at any time
4 before the administration of the test.

5 (ii) The right under this part to confidentiality of the
6 test results.

7 (iii) The right under this part to consent to and partici-
8 pate in the test on an anonymous basis.

9 (c) ~~A description of the~~ THE person OR CLASS OF PERSONS to
10 whom the test results may be disclosed UNDER THIS PART.

11 (3) ~~Within 120 days after the effective date of this part~~
12 BEGINNING JULY 28, 1989, a physician or an individual to whom the
13 physician has delegated authority to perform a selected act,
14 task, or function under section 16215 who orders an HIV test
15 shall distribute to ~~the~~ EACH test subject ~~information~~ A
16 PAMPHLET regarding the HIV test on a form provided by the
17 department. The ~~form shall be developed by the department and~~
18 DEPARTMENT SHALL DEVELOP THE PAMPHLET, WHICH shall include all of
19 the following:

20 (a) The purpose and nature of the test.

21 (b) The consequences of both taking and not taking the
22 test.

23 (c) The meaning of the test results.

24 (d) Other information considered necessary or relevant by
25 the department.

26 (e) A ~~standard~~ MODEL consent form for the signed writing
27 required under subsection ~~(+)~~ (2). The ~~standard~~ DEPARTMENT

1 SHALL INCLUDE IN THE MODEL consent form ~~shall include~~ all of
2 the information required under subsection (2)(a), (b), and (c).
3 (4) The ~~form required under subsection (2) shall be made~~
4 ~~available to physicians through the~~ department, the Michigan
5 board of medicine, and the Michigan board of osteopathic medicine
6 and surgery SHALL MAKE THE PAMPHLET REQUIRED UNDER SUBSECTION (3)
7 AVAILABLE TO PHYSICIANS. The Michigan board of medicine and the
8 Michigan board of osteopathic medicine and surgery shall notify
9 in writing all physicians subject to this section of the require-
10 ments of this section and the availability of the ~~form within~~
11 ~~100 days after the effective date of this part~~ PAMPHLET BY
12 JULY 10, 1989. Upon request, the Michigan board of medicine and
13 the Michigan board of osteopathic medicine and surgery shall pro-
14 vide copies of the form, free of charge, to a physician who is
15 subject to this section.

16 (5) If a test subject is given a copy of the ~~form~~ PAMPHLET
17 required under subsection (3), THE PHYSICIAN OR INDIVIDUAL
18 DESCRIBED IN SUBSECTION (3) SHALL INCLUDE IN THE TEST SUBJECT'S
19 MEDICAL RECORD a form, signed by the test subject, indicating
20 that he or she has been given a copy of the ~~form required under~~
21 ~~subsection (3), shall be included in the test subject's medical~~
22 ~~record~~ PAMPHLET.

23 (6) A test subject who executes a signed writing pursuant to
24 subsection (2) ~~shall be~~ IS barred from subsequently bringing a
25 civil action based on failure to obtain informed consent against
26 the physician who ordered the HIV test.

1 (7) The ~~information form~~ DEPARTMENT SHALL PROVIDE THE
2 PAMPHLET required ~~by~~ UNDER subsection (3). ~~(2) shall be~~
3 ~~provided by the department.~~ The department shall develop the
4 ~~form~~ PAMPHLET and have ~~the form~~ IT ready for distribution
5 ~~within 90 days after the effective date of this part~~ BY
6 JUNE 28, 1989. The ~~form shall be written~~ DEPARTMENT SHALL
7 WRITE THE PAMPHLET in English and in clear, nontechnical terms
8 ~~. Copies~~ AND SHALL PRINT COPIES of the ~~form shall also be~~
9 ~~printed~~ PAMPHLET in Spanish. The ~~form shall be distributed~~
10 DEPARTMENT SHALL DISTRIBUTE THE PAMPHLET, upon request and free
11 of charge, to a physician or other person or a governmental
12 entity that is subject to this section.

13 (8) In addition to the ~~forms~~ PAMPHLETS provided under
14 subsection (7), the department shall provide copies of the ~~form~~
15 PAMPHLET to the Michigan board of medicine and the Michigan board
16 of osteopathic medicine and surgery. The department shall pro-
17 vide copies of the ~~form~~ PAMPHLET to other persons upon written
18 request, at cost, and shall also provide copies of the ~~form~~
19 PAMPHLET free of charge, upon request, to public or private
20 schools, colleges, and universities.

21 (9) An individual who undergoes an HIV test at a department
22 approved testing site may request that the HIV test be performed
23 on an anonymous basis. If an individual requests that the HIV
24 test be performed on an anonymous basis, THE STAFF OF THE DEPART-
25 MENT APPROVED TESTING SITE SHALL ADMINISTER the HIV test ~~shall~~
26 ~~be administered~~ anonymously or under the condition that the test
27 subject not be identified, and SHALL OBTAIN consent to the test

1 ~~shall be given~~ using a coded system that does not link the
2 individual's identity with the request for the HIV test or the
3 HIV test results. If the test results of an HIV test performed
4 under this subsection indicate that the test subject is HIV
5 infected, the staff of the department approved testing site shall
6 proceed with partner notification in the same manner in which a
7 local health department would proceed as described in ~~section~~
8 ~~5114a(4)(a) and (b)~~ SECTION 5114A(3) TO (5).

9 (10) Subsection (2) does not apply to an HIV test performed
10 for the purpose of research, if the test is performed in such a
11 manner that the identity of the test subject is not revealed to
12 the researcher and the test results are not made known to the
13 test subject.

14 (11) A health facility may develop a standard protocol for
15 an HIV test performed upon a patient in the health facility in
16 preparation for an incisive or invasive surgical procedure.

17 (12) This section does not apply to an HIV test performed
18 upon a patient in a health facility if both of the following con-
19 ditions are met:

20 (a) The patient is informed in writing upon admission to the
21 health facility that an HIV test may be performed upon the
22 patient without the written consent required under this section
23 under circumstances described in subdivision (b).

24 (b) The HIV test is performed after a health professional or
25 ~~other~~ health facility employee sustains a percutaneous, mucous
26 membrane, or open wound exposure to the blood or other body
27 fluids of the patient.

1 (13) Subsections (2) and (3) do not apply if the test
2 subject is unable to receive or understand, or both, the
3 ~~information~~ PAMPHLET required under subsection (3) or to exe-
4 cute the written consent ~~form~~ required under subsection (2),
5 and the legally authorized representative of the test subject is
6 not readily available to receive the ~~information~~ PAMPHLET or
7 execute the written consent ~~form~~ for the test subject.

8 (14) THIS SECTION DOES NOT APPLY TO AN HIV TEST PERFORMED
9 UPON A NEWBORN INFANT UNDER SECTION 5431.

10 (15) ~~(14)~~ If the results of an HIV test performed ~~as~~
11 ~~described in~~ PURSUANT TO subsection (11), ~~or~~ (12), OR (13)
12 indicate that the patient is HIV infected, the health facility
13 shall inform the patient of the positive test results and provide
14 the patient with appropriate counseling regarding HIV infection,
15 acquired immunodeficiency syndrome, and acquired immunodeficiency
16 syndrome related complex.

17 Sec. 5431. (1) A health professional in charge of the care
18 of a newborn infant or, if none, the health professional in
19 charge at the birth of an infant shall administer or cause to be
20 administered to the infant a test for phenylketonuria, galactos-
21 emia, hypothyroidism, maple syrup urine disease, biotinidase
22 deficiency, sickle cell anemia, congenital adrenal hyperplasia,
23 HIV OR AN ANTIBODY TO HIV, and other treatable but otherwise
24 handicapping conditions as designated by the department. The
25 test shall be administered and reported within a time and under
26 conditions prescribed by the department. The department may
27 require that the test be performed by the department. IF FEDERAL

1 FUNDS ARE NOT AVAILABLE FOR THE HIV OR HIV ANTIBODY TESTS
2 REQUIRED UNDER THIS SUBSECTION, THE DEPARTMENT SHALL USE FUNDS
3 FROM THE MICHIGAN HEALTH INITIATIVE FUND PURSUANT TO PART 59.

4 (2) If the results of a test administered under subsection
5 (1) are positive, the results shall be reported to the infant's
6 ~~parents~~ PARENT, guardian, or person in loco parentis. A person
7 is in compliance with this subsection if the person makes a good
8 faith effort to report the positive test results to the infant's
9 parent, guardian, or person in loco parentis. Within 90 days
10 after the effective date of the 1992 amendatory act that added
11 this sentence, the department shall submit for promulgation under
12 section 48 of the administrative procedures act of 1969, being
13 section 24.248 of the Michigan Compiled Laws, emergency rules
14 that define a good faith effort to report positive test results
15 for purposes of this subsection. AS PART OF THE RULES PROMUL-
16 GATED UNDER THIS SUBSECTION, THE DEPARTMENT SHALL REQUIRE A TEST
17 RESULT INDICATING THAT AN INFANT IS HIV INFECTED BE REPORTED IN
18 PERSON TO THE INFANT'S PARENT, LEGAL GUARDIAN, OR PERSON IN LOCO
19 PARENTIS.

20 (3) If the department performs a test required under
21 subsection (1), the department may charge a fee for the test of
22 not more than \$25.00. The amount stated in this subsection shall
23 be adjusted annually by an amount determined by the state trea-
24 surer to reflect the cumulative annual percentage change in the
25 Detroit consumer price index. As used in this subsection,
26 "Detroit consumer price index" means the most comprehensive index

1 of consumer prices available for the Detroit area from the bureau
2 of labor statistics of the United States department of labor.

3 (4) A person who violates this section or a rule promulgated
4 under this part is guilty of a misdemeanor.

5 (5) The department shall provide for a hardship waiver of
6 the fee authorized under subsection (3) under circumstances found
7 appropriate by the department.