



HOUSE BILL No. 4558

March 25, 1993, Introduced by Reps. Jamian, McBryde, Kukuk, Dalman, Hammerstrom, Cropsey, Bobier, Whyman, Walberg, Weeks, Galloway, Dobb, Gustafson, DeLange, Horton, Jaye, Hill, Gire, Llewellyn and Pitoniak and referred to the Committee on Public Health.

A bill to amend sections 5131, 5133, 5431, and 5923 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," section 5131 as amended by Act No. 86 of the Public Acts of 1992, section 5133 as added by Act No. 488 of the Public Acts of 1988, section 5431 as amended by Act No. 81 of the Public Acts of 1992, and section 5923 as added by Act No. 258 of the Public Acts of 1987, being sections 333.5131, 333.5133, 333.5431, and 333.5923 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5131, 5133, 5431, and 5923 of Act
2 No. 368 of the Public Acts of 1978, section 5131 as amended by
3 Act No. 86 of the Public Acts of 1992, section 5133 as added by
4 Act No. 488 of the Public Acts of 1988, section 5431 as amended
5 by Act No. 81 of the Public Acts of 1992, and section 5923 as

1 added by Act No. 258 of the Public Acts of 1987, being sections
2 333.5131, 333.5133, 333.5431, and 333.5923 of the Michigan
3 Compiled Laws, are amended to read as follows:

4 Sec. 5131. (1) All reports, records, and data pertaining to
5 testing, care, treatment, reporting, AND research, and informa-
6 tion pertaining to partner notification under section 5114a,
7 associated with the serious communicable diseases or infections
8 of HIV infection, acquired immunodeficiency syndrome, and
9 acquired immunodeficiency syndrome-related complex are
10 confidential. A person shall release reports, records, and data
11 AND INFORMATION described in this subsection only pursuant to
12 this section.

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

20 (3) The disclosure of information pertaining to HIV infec-
21 tion, acquired immunodeficiency syndrome, or acquired immunodefi-
22 ciency syndrome-related complex in response to a court order and
23 subpoena is limited to only the following cases and is subject to
24 all of the following restrictions:

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

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

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

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

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

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

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

14 (4) A person who releases information pertaining to HIV
15 infection, acquired immunodeficiency syndrome, or acquired immu-
16 nodeficiency syndrome-related complex to a legislative body shall
17 not identify in the information a specific individual who was
18 tested or is being treated for HIV infection, acquired immunode-
19 ficiency syndrome, or acquired immunodeficiency syndrome-related
20 complex.

21 (5) Subject to subsection (7), subsection (1) does not apply
22 to the following:

23 (a) 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 to the department, a

1 local health department, or other health care provider for 1 or
2 more of the following purposes:

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

4 (ii) To prevent further transmission of HIV.

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

6 (b) Information pertaining to an individual who is HIV
7 infected or has been diagnosed as having acquired immunodeficiency
8 syndrome or acquired immunodeficiency syndrome-related
9 complex, if the information is disclosed by a physician or local
10 health officer to an individual who is known by the physician or
11 local health officer to be a contact of the individual who is HIV
12 infected or has been diagnosed as having acquired immunodeficiency
13 syndrome or acquired immunodeficiency syndrome-related
14 complex, if the physician or local health officer determines that
15 the disclosure of the information is necessary to prevent a reasonably
16 foreseeable risk of further transmission of HIV. This
17 subdivision imposes an affirmative duty upon a physician or local
18 health officer to disclose information pertaining to an individual
19 who is HIV infected or has been diagnosed as having acquired
20 immunodeficiency syndrome or acquired immunodeficiency
21 syndrome-related complex to an individual who is known by the
22 physician or local health officer to be a contact of the individual
23 who is HIV infected or has been diagnosed as having acquired
24 immunodeficiency syndrome or acquired immunodeficiency
25 syndrome-related complex. A physician or local health officer
26 may discharge the affirmative duty imposed under this subdivision
27 by referring the individual who is HIV infected or has been

1 diagnosed as having acquired immunodeficiency syndrome or
2 acquired immunodeficiency syndrome-related complex to the appro-
3 priate local health department for assistance with partner noti-
4 fication under section 5114a. The physician or local health
5 officer shall include as part of the referral the name and, if
6 available, address and telephone number of each individual known
7 by the physician or local health officer to be a contact of the
8 individual who is HIV infected or has been diagnosed as having
9 acquired immunodeficiency syndrome or acquired immunodeficiency
10 syndrome-related complex.

11 (c) Information pertaining to an individual who is HIV
12 infected or has been diagnosed as having acquired immunodefi-
13 ciency syndrome or acquired immunodeficiency syndrome-related
14 complex, if the information is disclosed by an authorized repre-
15 sentative of the department or by a local health officer to an
16 employee of a school district, and if the department representa-
17 tive or local health officer determines that the disclosure is
18 necessary to prevent a reasonably foreseeable risk of transmis-
19 sion of HIV to pupils in the school district. An employee of a
20 school district to whom information is disclosed under this sub-
21 division is subject to subsection (1).

22 (d) Information pertaining to an individual who is HIV
23 infected or has been diagnosed as having acquired immunodefi-
24 ciency syndrome or acquired immunodeficiency syndrome-related
25 complex, if the disclosure is expressly authorized in writing by
26 the individual. This subdivision applies only if the written
27 authorization is specific to HIV infection, acquired

1 immunodeficiency syndrome, or acquired immunodeficiency
2 syndrome-related complex. If the individual is a minor or inca-
3 pacitated, the written authorization may be executed by the
4 parent or legal guardian of the individual.

5 (e) Information disclosed under section 5114, 5114a,
6 5119(3), 5129, 5431, or 20191 or information disclosed as
7 required by rule promulgated under section 5111(1)(b) or (i).

8 (f) Information pertaining to an 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 information is part of a report required under
12 the child protection law, Act No. 238 of the Public Acts of 1975,
13 being sections 722.621 to 722.636 of the Michigan Compiled Laws.

14 (g) Information pertaining to an individual who is HIV
15 infected or has been diagnosed as having acquired immunodefi-
16 ciency syndrome or acquired immunodeficiency syndrome-related
17 complex, if the information is disclosed by the department of
18 social services, the department of mental health, the probate
19 court, or a child placing agency in order to care for a minor and
20 to place the minor with a child care organization licensed under
21 Act No. 116 of the Public Acts of 1973, being sections 722.111 to
22 722.128 of the Michigan Compiled Laws. The person disclosing the
23 information shall disclose it only to the director of the child
24 care organization or, if the child care organization is a private
25 home, to the individual who holds the license for the child care
26 organization. An individual to whom information is disclosed
27 under this subdivision is subject to subsection (1). As used in

1 this subdivision, "child care organization" and "child placing
2 agency" mean those terms as defined in section 1 of Act No. 116
3 of the Public Acts of 1973, being section 722.111 of the Michigan
4 Compiled Laws.

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

9 (7) A person who discloses information under subsection (5)
10 shall not include in the disclosure information that identifies
11 the individual to whom the information pertains, unless the iden-
12 tifying information is determined by the person making the dis-
13 closure to be reasonably necessary to prevent a foreseeable risk
14 of transmission of HIV. This subsection does not apply to infor-
15 mation disclosed under subsection (5)(d), (f), or (g).

16 (8) A person who violates this section is guilty of a misde-
17 meanor, punishable by imprisonment for not more than 1 year or a
18 fine of not more than \$5,000.00, or both, and is liable in a
19 civil action for actual damages or \$1,000.00, whichever is great-
20 er, and costs and reasonable attorney fees. This subsection also
21 applies to the employer of a person who violates this section,
22 unless the employer had in effect at the time of the violation
23 reasonable precautions designed to prevent the violation.

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

1 (2) Except as otherwise provided in this part, a physician,
2 or an individual to whom the physician has delegated authority to
3 perform a selected act, task, or function under section 16215,
4 shall not order an HIV test for the purpose of diagnosing HIV
5 infection without first receiving the written, informed consent
6 of the test subject. ~~Subject to subsection (2), for~~ FOR pur-
7 poses of this ~~subsection~~ SECTION, written, informed consent
8 ~~shall consist~~ CONSISTS of a signed writing executed by the
9 ~~subject of a~~ test SUBJECT or the legally authorized representa-
10 tive of the test subject ~~which~~ THAT includes, at a minimum, all
11 of the following:

12 (a) An explanation of the test including, but not limited
13 to, the purpose of the test, the potential uses and limitations
14 of the test, and the meaning of test results.

15 (b) An explanation of the rights of the test subject includ-
16 ing, but not limited to, all of the following:

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

19 (ii) The right under this part to confidentiality of the
20 test results.

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

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

25 (3) ~~Within 120 days after the effective date of this part~~
26 BEGINNING JULY 28, 1989, a physician or an individual to whom the
27 physician has delegated authority to perform a selected act,

1 task, or function under section 16215 who orders an HIV test
2 shall distribute to ~~the~~ EACH test subject ~~information~~ A
3 PAMPHLET regarding the HIV test on a form provided by the
4 department. The ~~form shall be developed by the department and~~
5 DEPARTMENT SHALL DEVELOP THE PAMPHLET, WHICH shall include all of
6 the following:

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

8 (b) The consequences of both taking and not taking the
9 test.

10 (c) The meaning of the test results.

11 (d) Other information considered necessary or relevant by
12 the department.

13 (e) A ~~standard~~ MODEL consent form for the signed writing
14 required under subsection ~~(1)~~ (2). The ~~standard~~ DEPARTMENT
15 SHALL INCLUDE IN THE MODEL consent form ~~shall include~~ all of
16 the information required under subsection (2)(a), (b), and (c).

17 (4) The ~~form required under subsection (2) shall be made~~
18 ~~available to physicians through the~~ department, the Michigan
19 board of medicine, and the Michigan board of osteopathic medicine
20 and surgery SHALL MAKE THE PAMPHLET REQUIRED UNDER SUBSECTION (3)
21 AVAILABLE TO PHYSICIANS. The Michigan board of medicine and the
22 Michigan board of osteopathic medicine and surgery shall notify
23 in writing all physicians subject to this section of the require-
24 ments of this section and the availability of the ~~form within~~
25 ~~100 days after the effective date of this part~~ PAMPHLET BY
26 JULY 10, 1989. Upon request, the Michigan board of medicine and
27 the Michigan board of osteopathic medicine and surgery shall

1 provide copies of the form, free of charge, to a physician who is
2 subject to this section.

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

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

14 (7) The ~~information form~~ DEPARTMENT SHALL PROVIDE THE
15 PAMPHLET required ~~by~~ UNDER subsection (3). ~~(2) shall be pro-~~
16 ~~vided by the department.~~ The department shall develop the ~~form~~
17 PAMPHLET and have ~~the form~~ IT ready for distribution ~~within 90~~
18 ~~days after the effective date of this part~~ BY JUNE 28, 1989.
19 The ~~form shall be written~~ DEPARTMENT SHALL WRITE THE PAMPHLET
20 in English and in clear, nontechnical terms ~~. Copies~~ AND SHALL
21 PRINT COPIES of the ~~form shall also be printed~~ PAMPHLET in
22 Spanish. The ~~form shall be distributed~~ DEPARTMENT SHALL DIS-
23 TRIBUTE THE PAMPHLET, upon request and free of charge, to a phy-
24 sician or other person or a governmental entity that is subject
25 to this section.

26 (8) In addition to the ~~forms~~ PAMPHLETS provided under
27 subsection (7), the department shall provide copies of the ~~form~~

1 PAMPHLET to the Michigan board of medicine and the Michigan board
 2 of osteopathic medicine and surgery. The department shall pro-
 3 vide copies of the ~~form~~ PAMPHLET to other persons upon written
 4 request, at cost, and shall also provide copies of the ~~form~~
 5 PAMPHLET free of charge, upon request, to public or private
 6 schools, colleges, and universities.

7 (9) An individual who undergoes an HIV test at a department
 8 approved testing site may request that the HIV test be performed
 9 on an anonymous basis. If an individual requests that the HIV
 10 test be performed on an anonymous basis, THE STAFF OF THE DEPART-
 11 MENT APPROVED TESTING SITE SHALL ADMINISTER the HIV test ~~shall~~
 12 ~~be administered~~ anonymously or under the condition that the test
 13 subject not be identified, and SHALL OBTAIN consent to the test
 14 ~~shall be given~~ using a coded system that does not link the
 15 individual's identity with the request for the HIV test or the
 16 HIV test results. If the test results of an HIV test performed
 17 under this subsection indicate that the test subject is HIV
 18 infected, the staff of the department approved testing site shall
 19 proceed with partner notification in the same manner in which a
 20 local health department would proceed as described in ~~section~~
 21 ~~5114a(4)(a) and (b)~~ SECTION 5114A(3) TO (5).

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

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

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

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

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

15 (13) Subsections (2) and (3) do not apply if the test
16 subject is unable to receive or understand, or both, the
17 ~~information~~ PAMPHLET required under subsection (3) or to exe-
18 cute the written consent ~~form~~ required under subsection (2),
19 and the legally authorized representative of the test subject is
20 not readily available to receive the ~~information~~ PAMPHLET or
21 execute the written consent ~~form~~ for the test subject.

22 (14) THIS SECTION DOES NOT APPLY TO AN HIV TEST OR AN HIV
23 ANTIBODY TEST PERFORMED UPON A NEWBORN INFANT UNDER SECTION 5431.

24 (15) ~~(14)~~ If the results of an HIV test performed ~~as~~
25 ~~described in~~ PURSUANT TO subsection (11), ~~or~~ (12), OR (13)
26 indicate that the patient is HIV infected, the health facility
27 shall inform the patient of the positive test results and provide

1 the patient with appropriate counseling regarding HIV infection,
2 acquired immunodeficiency syndrome, and acquired immunodeficiency
3 syndrome related complex.

4 Sec. 5431. (1) A health professional in charge of the care
5 of a newborn infant or, if none, the health professional in
6 charge at the birth of an infant shall administer or cause to be
7 administered to the infant a test for phenylketonuria, galactos-
8 emia, hypothyroidism, maple syrup urine disease, biotinidase
9 deficiency, sickle cell anemia, congenital adrenal hyperplasia,
10 HIV OR AN ANTIBODY TO HIV, and other treatable but otherwise
11 handicapping conditions as designated by the department. The
12 test shall be administered and reported within a time and under
13 conditions prescribed by the department. The department may
14 require that the test be performed by the department. A HEALTH
15 PROFESSIONAL WHO ADMINISTERS OR CAUSES TO BE ADMINISTERED THE
16 TESTS DESCRIBED IN THIS SUBSECTION SHALL PROVIDE TO THE PARENT,
17 GUARDIAN, OR PERSON IN LOCO PARENTIS OF THE INFANT TESTED, BEFORE
18 AND AFTER THE TEST, WRITTEN INFORMATION REGARDING EACH TEST AND
19 THE CONDITION TO WHICH THE TEST APPLIES. THE DEPARTMENT SHALL
20 REQUEST FEDERAL APPROVAL TO USE FEDERAL FUNDS FOR HIV TESTS OR
21 HIV ANTIBODY TESTS REQUIRED UNDER THIS SUBSECTION. IF THE FED-
22 ERAL APPROVAL IS DENIED OR IF NO OR INSUFFICIENT FEDERAL FUNDS
23 ARE AVAILABLE FOR THAT PURPOSE, THEN THE DEPARTMENT SHALL USE
24 STATE FUNDS. IF NO OR INSUFFICIENT STATE FUNDS ARE AVAILABLE FOR
25 HIV TESTS OR HIV ANTIBODY TESTS REQUIRED UNDER THIS SUBSECTION,
26 THE DEPARTMENT SHALL CHARGE A FEE FOR THOSE TESTS, AS PROVIDED IN
27 SUBSECTION (3).

1 (2) If the results of a test administered under subsection
2 (1) are positive, the results shall be reported to the infant's
3 ~~parents~~ PARENT, guardian, or person in loco parentis. A person
4 is in compliance with this subsection if the person makes a good
5 faith effort to report the positive test results to the infant's
6 parent, guardian, or person in loco parentis. ~~Within 90 days~~
7 ~~after the effective date of the 1992 amendatory act that added~~
8 ~~this sentence,~~ IF THE RESULTS OF A TEST FOR HIV OR AN ANTIBODY
9 TO HIV ADMINISTERED UNDER SUBSECTION (1) ARE POSITIVE, THE HEALTH
10 PROFESSIONAL WHO ADMINISTERED THE TEST OR CAUSED THE TEST TO BE
11 ADMINISTERED SHALL PROVIDE COUNSELING REGARDING HIV TREATMENT,
12 TRANSMISSION, AND PREVENTION TO THE PARENT, GUARDIAN, OR PERSON
13 IN LOCO PARENTIS OF THE INFANT TESTED. BY SEPTEMBER 2, 1992, the
14 department shall submit for promulgation under section 48 of the
15 administrative procedures act of 1969, being section 24.248 of
16 the Michigan Compiled Laws, emergency rules that define a good
17 faith effort to report positive test results for purposes of this
18 subsection. THE DEPARTMENT SHALL PROMULGATE THE EMERGENCY RULES
19 REQUIRED UNDER THIS SUBSECTION AS PERMANENT RULES. AS PART OF
20 THE RULES PROMULGATED UNDER THIS SUBSECTION, THE DEPARTMENT SHALL
21 REQUIRE A TEST RESULT INDICATING THAT AN INFANT IS HIV INFECTED
22 TO BE REPORTED IN PERSON TO THE INFANT'S PARENT, LEGAL GUARDIAN,
23 OR PERSON IN LOCO PARENTIS.

24 (3) If the department performs a test required under
25 subsection (1), the department may charge a fee for the test of
26 not more than \$25.00. The amount stated in this subsection shall
27 be adjusted annually by an amount determined by the state

1 treasurer to reflect the cumulative annual percentage change in
2 the Detroit consumer price index. As used in this subsection,
3 "Detroit consumer price index" means the most comprehensive index
4 of consumer prices available for the Detroit area from the bureau
5 of labor statistics of the United States department of labor.

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

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

11 Sec. 5923. (1) ~~The~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSEC-
12 TION (4), THE department shall utilize the fund to provide HIV
13 testing free of charge to all residents of this state and all
14 nonresident students enrolled in and attending a public or pri-
15 vate college, university, or other postsecondary educational
16 institution in this state. All HIV testing under this section
17 shall be performed by the department or a licensed clinical labo-
18 ratory designated by the department.

19 (2) As a condition of receiving an HIV test under this sec-
20 tion, the department shall require an individual who requests an
21 HIV test to undergo counseling both before and after the HIV
22 test. The counseling may be provided by local health department
23 personnel or an individual designated by the local health depart-
24 ment who has undergone training approved by the department. The
25 counseling shall be conducted pursuant to protocols approved by
26 the department. If the counseling required under this subsection
27 is provided by a local health department or an individual

1 designated by the local health department, the cost of the
2 counseling shall be paid by the local health department out of
3 the distribution of funds made under section 5(c) of the health
4 and safety fund act, ACT NO. 264 OF THE PUBLIC ACTS OF 1987,
5 BEING SECTION 141.475 OF THE MICHIGAN COMPILED LAWS. If a dis-
6 tribution of funds is not made under section 5(c) of ~~the health~~
7 ~~and safety fund act~~ ACT NO. 264 OF THE PUBLIC ACTS OF 1987, the
8 cost of counseling provided under this subsection by a local
9 health department or an individual designated by the local health
10 department shall be paid by the department.

11 (3) A person who provides HIV testing or counseling under
12 this section shall be reimbursed for the cost of the HIV testing
13 or counseling only by the department or a local health depart-
14 ment, and shall not bill the individual receiving the ~~services~~
15 HIV TESTING OR COUNSELING or any other person including, but not
16 limited to, a third party payer.

17 (4) THIS SECTION DOES NOT APPLY TO AN HIV TEST OR HIV ANTI-
18 BODY TEST PERFORMED UNDER SECTION 5431.