



HOUSE BILL No. 4630

April 21, 1993, Introduced by Rep. Profit and referred to the Committee on Public Health.

A bill to amend sections 5131 and 5203 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 and section 5203 as amended by Act No. 490 of the Public Acts of 1988, being sections 333.5131 and 333.5203 of the Michigan Compiled Laws; and to add section 5212.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5131 and 5203 of Act No. 368 of the
2 Public Acts of 1978, section 5131 as amended by Act No. 86 of the
3 Public Acts of 1992 and section 5203 as amended by Act No. 490 of
4 the Public Acts of 1988, being sections 333.5131 and 333.5203 of
5 the Michigan Compiled Laws, are amended and section 5212 is added
6 to read as follows:

1 Sec. 5131. (1) All reports, records, and data pertaining to
2 testing, care, treatment, reporting, AND research, and
3 information pertaining to partner notification under
4 section 5114a, THAT ARE associated with the serious communicable
5 diseases or infections of HIV infection, acquired immunodefi-
6 ciency syndrome, and acquired immunodeficiency syndrome-related
7 complex are confidential. A person shall release reports,
8 records, ~~and~~ data, AND INFORMATION described in this subsection
9 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 is limited to only the following cases and is subject to
21 all of the following restrictions:

22 (a) A court that is petitioned for an order to disclose the
23 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) A person who releases information pertaining to HIV
11 infection, acquired immunodeficiency syndrome, or acquired immu-
12 nodeficiency syndrome-related complex to a legislative body shall
13 not identify in the information a specific individual who was
14 tested or is being treated for HIV infection, acquired immunode-
15 ficiency syndrome, or acquired immunodeficiency syndrome-related
16 complex.

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

19 (a) ~~Information~~ A PERSON WHO DISCLOSES INFORMATION per-
20 taining to an individual who is HIV infected or has been diag-
21 nosed as having acquired immunodeficiency syndrome or acquired
22 immunodeficiency syndrome-related complex ~~, if the information~~
23 ~~is disclosed~~ to the department, a local health department, or
24 other health care provider for 1 or more of the following
25 purposes:

26 (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~~ A PHYSICIAN OR LOCAL HEALTH OFFICER WHO DISCLOSES 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

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

9 (c) ~~Information~~ AN AUTHORIZED REPRESENTATIVE OF THE
10 DEPARTMENT OR A LOCAL HEALTH OFFICER WHO DISCLOSES INFORMATION
11 pertaining to an individual who is HIV infected or has been diag-
12 nosed as having acquired immunodeficiency syndrome or acquired
13 immunodeficiency syndrome-related complex ~~, if the information~~
14 ~~is disclosed by an authorized representative of the department or~~
15 ~~by a local health officer~~ to an employee of a school district,
16 ~~and~~ if the department representative or local health officer
17 determines that the disclosure is necessary to prevent a reason-
18 ably foreseeable risk of transmission of HIV to pupils in the
19 school district. An employee of a school district to whom infor-
20 mation is disclosed under this subdivision is subject to subsec-
21 tion (1).

22 (d) ~~Information~~ A PERSON WHO DISCLOSES INFORMATION per-
23 taining to an individual who is HIV infected or has been diag-
24 nosed as having acquired immunodeficiency syndrome or acquired
25 immunodeficiency syndrome-related complex, if the disclosure is
26 expressly authorized in writing by the individual. This
27 subdivision applies only if the written authorization is specific

1 to HIV infection, acquired immunodeficiency syndrome, or acquired
2 immunodeficiency syndrome-related complex. If the individual TO
3 WHOM THE INFORMATION PERTAINS is a minor or incapacitated, the
4 written authorization may be executed by the parent or legal
5 guardian of the individual.

6 (e) ~~Information disclosed~~ A PERSON WHO DISCLOSES
7 INFORMATION under section 5114, 5114a, 5119(3), 5129, 5212, or
8 20191 or ~~information disclosed~~ as required by rule promulgated
9 under section 5111(1)(b) or (i).

10 (f) ~~Information~~ A PERSON WHO DISCLOSES INFORMATION per-
11 taining to an individual who is HIV infected or has been diag-
12 nosed as having acquired immunodeficiency syndrome or acquired
13 immunodeficiency syndrome-related complex, if the information is
14 part of a report required under the child protection law, Act
15 No. 238 of the Public Acts of 1975, being sections 722.621 to
16 722.636 of the Michigan Compiled Laws.

17 (g) ~~Information~~ A PERSON WHO DISCLOSES INFORMATION per-
18 taining to an individual who is HIV infected or has been diag-
19 nosed as having acquired immunodeficiency syndrome or acquired
20 immunodeficiency syndrome-related complex ~~, if the information~~
21 ~~is disclosed by~~ ON BEHALF OF the department of social services,
22 the department of mental health, the probate court, or a child
23 placing agency in order to care for a minor and to place the
24 minor with a child care organization licensed under Act No. 116
25 of the Public Acts of 1973, being sections 722.111 to 722.128 of
26 the Michigan Compiled Laws. The person disclosing the
27 information shall disclose it only to the director of the child

1 care organization or, if the child care organization is a private
2 home, to the individual who holds the license for the child care
3 organization. An individual to whom information is disclosed
4 under this subdivision is subject to subsection (1). As used in
5 this subdivision, "child care organization" and "child placing
6 agency" mean those terms as defined in section 1 of Act No. 116
7 of the Public Acts of 1973, being section 722.111 of the Michigan
8 Compiled Laws.

9 (6) A person who releases the results of an HIV test OR
10 OTHER INFORMATION DESCRIBED IN SUBSECTION (1) in compliance with
11 subsection (5) is immune from civil or criminal liability and
12 administrative penalties including, but not limited to, licensure
13 sanctions, for the release of that information.

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

21 (8) A person who violates this section is guilty of a misde-
22 meanor, punishable by imprisonment for not more than 1 year or a
23 fine of not more than \$5,000.00, or both, and is liable in a
24 civil action for actual damages or \$1,000.00, whichever is great-
25 er, and costs and reasonable attorney fees. This subsection also
26 applies to the employer of a person who violates this section,

1 unless the employer had in effect at the time of the violation
2 reasonable precautions designed to prevent the violation.

3 Sec. 5203. (1) Upon a determination by a department repre-
4 sentative or a local health officer that an individual is a car-
5 rier and is a health threat to others OR UNDER THE CIRCUMSTANCES
6 DESCRIBED IN SECTION 5212(1), the department representative or
7 local health officer shall issue a warning notice to the individ-
8 ual requiring the individual to cooperate with the department or
9 local health department in efforts to prevent or control trans-
10 mission of serious communicable diseases or infections. The
11 warning notice may also require the individual to participate in
12 education, counseling, or treatment programs — and to undergo
13 medical tests to verify the person's status as a carrier.

14 (2) A warning notice issued under subsection (1) shall be in
15 writing, except that in urgent circumstances, the warning notice
16 may be an oral statement, followed by a written statement within
17 3 days. A warning notice shall be individual and specific and
18 shall not be issued to a class of persons. A written warning
19 notice shall be served either by registered mail, return receipt
20 requested, or personally by an individual who is employed by, or
21 under contract to, the department or a local health department.

22 (3) A warning notice issued under subsection (1) shall
23 include a statement that unless the individual takes the action
24 requested in the warning notice, the department representative or
25 local health officer shall seek an order from the probate court,
26 pursuant to this part. The warning notice shall also state that,
27 except in cases of emergency, the individual to whom the warning

1 notice is issued has the right to notice and a hearing and other
2 rights provided in this part before the probate court issues an
3 order.

4 SEC. 5212. (1) IF AN OFFICER IS EXPOSED TO THE BLOOD OR
5 OTHER BODY FLUID OF AN INDIVIDUAL DURING THE COURSE OF THE
6 OFFICER'S OFFICIAL DUTIES, THE OFFICER MAY REQUEST THE LOCAL
7 HEALTH DEPARTMENT TO REVIEW THE CIRCUMSTANCES OF THE EXPOSURE TO
8 DETERMINE WHETHER THE EXPOSURE COULD HAVE TRANSMITTED HIV, IF THE
9 REQUEST IS MADE WITHIN 72 HOURS AFTER THE EXPOSURE. PURSUANT TO
10 A REQUEST MADE UNDER THIS SUBSECTION, IF THE LOCAL HEALTH DEPART-
11 MENT DETERMINES THAT AN EXPOSURE HAS OCCURRED THAT COULD REASON-
12 ABLY HAVE TRANSMITTED HIV, THE LOCAL HEALTH DEPARTMENT SHALL
13 ISSUE A WARNING NOTICE UNDER SECTION 5203. THE WARNING NOTICE
14 SHALL, AT A MINIMUM, REQUIRE THE INDIVIDUAL TO UNDERGO A TEST FOR
15 HIV OR AN ANTIBODY TO HIV. THE LOCAL HEALTH DEPARTMENT OR A
16 HEALTH CARE PROVIDER DESIGNATED BY THE LOCAL HEALTH DEPARTMENT
17 SHALL ADMINISTER THE TEST. THE LOCAL HEALTH DEPARTMENT SHALL
18 PROVIDE APPROPRIATE COUNSELING AND REFERRAL SERVICES TO AN OFFI-
19 CER WHO REQUESTS A REVIEW UNDER THIS SUBSECTION, WHETHER OR NOT
20 THE INDIVIDUAL TO WHOM THE OFFICER WAS EXPOSED IS TESTED, AND TO
21 AN INDIVIDUAL WHO IS TESTED UNDER THIS SECTION.

22 (2) THE RESULTS OF A TEST FOR HIV OR AN ANTIBODY TO HIV
23 ADMINISTERED UNDER SUBSECTION (1) SHALL BE DISCLOSED BY THE LOCAL
24 HEALTH DEPARTMENT ONLY TO PERSONS WHO DEMONSTRATE TO THE LOCAL
25 HEALTH DEPARTMENT A NEED TO KNOW THE TEST RESULTS, AND AS OTHER-
26 WISE PROVIDED IN SUBSECTION (5). FOR PURPOSES OF THIS

1 SUBSECTION, THE OFFICER WHO REQUESTED THE REVIEW UNDER SUBSECTION
2 (1) HAS A NEED TO KNOW THE TEST RESULTS.

3 (3) UPON THE REQUEST OF AN OFFICER REQUESTING A REVIEW UNDER
4 SUBSECTION (1), THE LOCAL HEALTH DEPARTMENT SHALL ADMINISTER A
5 TEST FOR HIV OR AN ANTIBODY TO HIV TO THE OFFICER, FREE OF
6 CHARGE.

7 (4) IF AN OFFICER REQUESTS A REVIEW UNDER SUBSECTION (1),
8 THE LOCAL HEALTH DEPARTMENT SHALL ADVISE THE OFFICER OF HIS OR
9 HER RIGHTS UNDER THIS SECTION, AND SHALL EXPLAIN TO THE OFFICER
10 THAT THE OFFICER IS SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF
11 SECTION 5131 AND THE PENALTIES UNDER THAT SECTION.

12 (5) THE LOCAL HEALTH DEPARTMENT SHALL REPORT EACH TEST
13 RESULT UNDER THIS SECTION THAT INDICATES THAT AN INDIVIDUAL IS
14 HIV INFECTED TO THE DEPARTMENT, IN COMPLIANCE WITH SECTION 5114.

15 (6) THE DEPARTMENT, THE LOCAL HEALTH DEPARTMENT PROVIDING
16 THE TESTING UNDER SUBSECTION (1), THE AGENCY EMPLOYING THE OFFI-
17 CER REQUESTING A REVIEW UNDER SUBSECTION (1), AND THE OFFICER ARE
18 NOT FINANCIALLY RESPONSIBLE FOR SUBSEQUENT MEDICAL CARE RECEIVED
19 BY THE INDIVIDUAL TESTED.

20 (7) UPON REQUEST, THE DEPARTMENT SHALL WORK WITH A STATE,
21 COUNTY, OR LOCAL LAW ENFORCEMENT AGENCY TO DEVELOP AND IMPLEMENT
22 A COMPREHENSIVE HIV EDUCATION PROGRAM FOR ALL OFFICERS EMPLOYED
23 BY THAT AGENCY THAT INCLUDES, AT A MINIMUM, EDUCATION CONCERNING
24 HIV TRANSMISSION, TREATMENT, AND PROTECTIVE MEASURES SPECIFIC TO
25 LAW ENFORCEMENT AND CORRECTIONS.

1 (8) THE DEPARTMENT SHALL DEVELOP GUIDELINES TO ASSIST LOCAL
2 HEALTH DEPARTMENTS IN DETERMINING IF AN EXPOSURE COULD HAVE
3 TRANSMITTED HIV.

4 (9) AS USED IN THIS SECTION, "OFFICER" MEANS A LAW ENFORCE-
5 MENT OFFICER EMPLOYED BY THE STATE OR A UNIT OF LOCAL GOVERNMENT,
6 OR A LOCAL CORRECTIONAL OFFICER AS DEFINED IN SECTION 2 OF THE
7 CORRECTIONAL OFFICERS' TRAINING ACT OF 1982, ACT NO. 415 OF THE
8 PUBLIC ACTS OF 1982, BEING SECTION 791.502 OF THE MICHIGAN
9 COMPILED LAWS.