



# HOUSE BILL No. 4658

April 27, 1993, Introduced by Reps. Olshove, Freeman and Harder and referred to the Committee on Public Health.

A bill to amend section 5133 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," as added by Act No. 488 of the Public Acts of 1988, being section 333.5133 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Section 5133 of Act No. 368 of the Public Acts  
2 of 1978, as added by Act No. 488 of the Public Acts of 1988,  
3 being section 333.5133 of the Michigan Compiled Laws, is amended  
4 to read as follows:

5 Sec. 5133. (1) Except as otherwise provided in this sec-  
6 tion, a physician who orders an HIV test or a health facility  
7 that performs an HIV test shall provide counseling appropriate to  
8 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~~ PAMPHLET, free of charge, to a  
2 physician who is 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,  
12 ~~or other~~ health facility employee, POLICE OFFICER, OR FIRE  
13 FIGHTER, OR A MEDICAL FIRST RESPONDER, EMERGENCY MEDICAL TECHNI-  
14 CIAN, EMERGENCY MEDICAL TECHNICIAN SPECIALIST, OR PARAMEDIC  
15 LICENSED UNDER SECTION 20950 sustains IN THE HEALTH FACILITY,  
16 WHILE TREATING THE PATIENT BEFORE TRANSPORT TO THE HEALTH FACILI-  
17 TY, OR WHILE TRANSPORTING THE PATIENT TO THE HEALTH FACILITY a  
18 percutaneous, mucous membrane, or open wound exposure to the  
19 blood or other body fluids of the patient.

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

1 (14) If the results of an HIV test performed ~~as described~~  
2 ~~in~~ PURSUANT TO subsection (11), ~~or~~ (12), OR (13) indicate that  
3 the patient is HIV infected, the health facility shall inform the  
4 patient of the positive test results and provide the patient with  
5 appropriate counseling regarding HIV infection, acquired immuno-  
6 deficiency syndrome, and acquired immunodeficiency syndrome  
7 related complex.