

HOUSE BILL NO. 4521

March 16, 2021, Introduced by Reps. Brabec, Sneller, Steckloff, Hood, Kuppa, Ellison, Frederick, Rabhi, Lasinski, Brenda Carter, Whiteford, Mueller, Peterson, Stone, Morse, Pohutsky, Cavanagh, Aiyash, Sowerby, Clemente, Neeley, Koleszar, Cynthia Johnson, Tyrone Carter, O'Neal, Allor, Whitsett, Roth, Calley, Manoogian, Anthony and Witwer and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 9123 (MCL 333.9123), as added by 1988 PA 487.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9123. (1) Except as otherwise provided in subsection (2),
2 a person, including, but not limited to, a licensee under article
3 15 or article 17 ~~who~~**that** procures or collects blood or human
4 tissues, organs, or other specimens for purposes of
5 transplantation, transfusion, introduction, or injection into a

1 human body shall test or provide for the testing of each potential
2 donor or each sample or specimen of blood or tissue, or each organ
3 or other human specimen for the presence in the donor, sample,
4 specimen, or organ of HIV or an antibody to HIV.

5 (2) Subsection (1) does not apply if a test for HIV or an
6 antibody to HIV cannot be performed in the time during which the
7 blood, tissue, organ, or other human specimen is viable for
8 purposes of transplantation, transfusion, introduction, or
9 injection into a human body, due to emergency or other exigent
10 circumstances.

11 (3) Except as otherwise provided in subsection (4) **or (5)**, if
12 the results of a test performed under subsection (1) are positive,
13 the blood, tissue, organ, or other human specimen ~~shall~~**must** not be
14 used for purposes of transplantation, transfusion, introduction, or
15 injection into a human body. If a test for HIV or an antibody to
16 HIV cannot be performed in the time during which the blood, tissue,
17 organ, or other human specimen is viable for purposes of
18 transplantation, transfusion, introduction, or injection into a
19 human body, due to emergency or other exigent circumstances, then
20 the blood, tissue, organ, or other human specimen may be used for
21 purposes of transplantation, transfusion, introduction, or
22 injection into a human body if the person responsible for the
23 transplantation, transfusion, introduction, or injection and the
24 ~~person~~**individual** who intends to receive the blood, tissue, organ,
25 or other human specimen ~~have been~~**are** informed that there was
26 insufficient time to perform a test for HIV or an antibody to HIV,
27 and ~~have agreed~~**agree** in writing to the use of the blood, tissue,
28 organ, or other human specimen. If the ~~person~~**individual** who
29 intends to receive the blood, tissue, organ, or other human

1 specimen **under this subsection** is a minor, then the parent, legal
 2 guardian, or person in loco parentis of the minor ~~shall have been~~
 3 **must be** informed that there was insufficient time to perform a test
 4 for HIV or an antibody to HIV and ~~shall have agreed~~ **must agree** in
 5 writing to the use of the blood, tissue, organ, or other human
 6 specimen. If the ~~person~~ **individual** who intends to receive the
 7 blood, tissue, organ, or other human specimen is otherwise unable
 8 to give informed consent, then any of the following persons, in
 9 order of priority stated, when persons in prior classes are not
 10 available at the time the transplantation, transfusion,
 11 introduction, or injection is to be performed, ~~shall have been~~ **must**
 12 **be** informed that there was insufficient time to perform a test for
 13 HIV or an antibody to HIV and ~~shall have agreed~~ **must agree** in
 14 writing to the use of the blood, tissue, organ, or other human
 15 specimen:

- 16 (a) ~~(i)~~ The spouse.
- 17 (b) ~~(ii)~~ An adult son or daughter.
- 18 (c) ~~(iii)~~ Either parent.
- 19 (d) ~~(iv)~~ An adult brother or sister.
- 20 (e) ~~(v)~~ A guardian of the ~~person~~ **individual** at the time the
 21 transplantation, transfusion, introduction, or injection is to be
 22 performed.

23 (4) If ~~a person~~ **an individual** donates blood exclusively for
 24 his or her own transfusion needs, and if the results of a test
 25 performed under subsection (1) are positive, the ~~person~~ **individual**
 26 may use the blood for that purpose if both the person responsible
 27 for the transfusion and the ~~person~~ **individual** who intends to
 28 receive the blood ~~have been~~ **are** informed of the positive test
 29 result and ~~have consented~~ **consent** in writing to the use of the

1 blood.

2 (5) If the results of a test performed on an organ under
3 subsection (1) are positive, the organ may be used for purposes of
4 transplantation into a human body if the individual who intends to
5 receive the organ has tested positive for HIV, the individual is
6 informed that the test results performed on the organ under
7 subsection (1) are positive, and the individual and the person
8 responsible for the transplantation agree in writing to the use of
9 the organ. If the individual who intends to receive the organ under
10 this subsection is a minor, then the parent, legal guardian, or
11 person in loco parentis of the minor must be informed that the test
12 results performed on the organ under subsection (1) are positive
13 and must agree in writing to the use of the organ.

14 (6) ~~(5)~~ A person, including, but not limited to, a licensee
15 under article 15 or article 17, who procures or collects self-
16 replicating body fluids for purposes of introduction into a human
17 body shall test each potential donor, and, if the donor donates on
18 a regular basis, not less than every 3 months, for the presence in
19 the donor of HIV or an antibody to HIV. If at any time the test
20 results are positive, the self-replicating body fluids of the donor
21 ~~shall~~ **must** not be used for introduction into a human body.

22 (7) ~~(6)~~ A person, including, but not limited to, a licensee
23 under article 15 or article 17 ~~who~~ **that** orders or performs, or
24 both, a test for HIV or an antibody to HIV under this section
25 shall, if the test result is positive, inform the donor of the
26 positive test result. For purposes of this subsection, a positive
27 test result is a double positive enzyme-linked immunosorbent assay
28 test, combined with a positive western blot assay test, or a
29 positive result under an HIV test that is considered reliable by

1 the federal ~~centers~~ **Centers** for ~~disease control~~ **Disease Control and**
2 **Prevention** and is approved by the department.

3 (8) ~~(7)~~ A person ~~who~~ **that** violates this section ~~shall be~~ **is**
4 liable in a civil action for damages for the loss or damage
5 resulting from the violation.

6 (9) ~~(8)~~ As used in this section:

7 (a) "Blood" includes whole blood, blood plasma, blood
8 products, and blood derivatives.

9 (b) "HIV" means human immunodeficiency virus.

10 (c) "Self-replicating body fluids" means bodily fluids that
11 are reproduced by the body including, but not limited to, breast
12 milk. Self-replicating body fluids does not include blood or sperm.

13 Enacting section 1. This amendatory act takes effect 90 days
14 after the date it is enacted into law.