

Act No. 128
Public Acts of 2021
Approved by the Governor
December 16, 2021
Filed with the Secretary of State
December 17, 2021
EFFECTIVE DATE: Sine Die

**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 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

ENROLLED HOUSE BILL No. 4521

AN ACT to amend 1978 PA 368, entitled "An act to protect and promote the public health; to codify, revise, consolidate, classify, and add to the laws relating to public health; to provide for the prevention and control of diseases and disabilities; to provide for the classification, administration, regulation, financing, and maintenance of personal, environmental, and other health services and activities; to create or continue, and prescribe the powers and duties of, departments, boards, commissions, councils, committees, task forces, and other agencies; to prescribe the powers and duties of governmental entities and officials; to regulate occupations, facilities, and agencies affecting the public health; to regulate health maintenance organizations and certain third party administrators and insurers; to provide for the imposition of a regulatory fee; to provide for the levy of taxes against certain health facilities or agencies; to promote the efficient and economical delivery of health care services, to provide for the appropriate utilization of health care facilities and services, and to provide for the closure of hospitals or consolidation of hospitals or services; to provide for the collection and use of data and information; to provide for the transfer of property; to provide certain immunity from liability; to regulate and prohibit the sale and offering for sale of drug paraphernalia under certain circumstances; to provide for the implementation of federal law; to provide for penalties and remedies; to provide for sanctions for violations of this act and local ordinances; to provide for an appropriation and supplements; to repeal certain acts and parts of acts; to repeal certain parts of this act; and to repeal certain parts of this act on specific dates," by amending section 9123 (MCL 333.9123), as added by 1988 PA 487.

The People of the State of Michigan enact:

Sec. 9123. (1) Except as otherwise provided in subsection (2), a person, including, but not limited to, a licensee under article 15 or article 17 that procures or collects blood or human tissues, organs, or other specimens for purposes of transplantation, transfusion, introduction, or injection into a human body shall test or provide for the testing of each potential donor or each sample or specimen of blood or tissue, or each organ or other human specimen for the presence in the donor, sample, specimen, or organ of HIV or an antibody to HIV.

(2) Subsection (1) does not apply if a test for HIV or an antibody to HIV cannot be performed in the time during

which the blood, tissue, organ, or other human specimen is viable for purposes of transplantation, transfusion, introduction, or injection into a human body, due to emergency or other exigent circumstances.

(3) Except as otherwise provided in subsection (4) or (5), if the results of a test performed under subsection (1) are positive, the blood, tissue, organ, or other human specimen must not be used for purposes of transplantation, transfusion, introduction, or injection into a human body. If a test for HIV or an antibody to HIV cannot be performed in the time during which the blood, tissue, organ, or other human specimen is viable for purposes of transplantation, transfusion, introduction, or injection into a human body, due to emergency or other exigent circumstances, then the blood, tissue, organ, or other human specimen may be used for purposes of transplantation, transfusion, introduction, or injection into a human body if the person responsible for the transplantation, transfusion, introduction, or injection and the individual who intends to receive the blood, tissue, organ, or other human specimen are informed that there was insufficient time to perform a test for HIV or an antibody to HIV, and agree in writing to the use of the blood, tissue, organ, or other human specimen. If the individual who intends to receive the blood, tissue, organ, or other human specimen under this subsection is a minor, then the parent, legal guardian, or person in loco parentis of the minor must be informed that there was insufficient time to perform a test for HIV or an antibody to HIV and must agree in writing to the use of the blood, tissue, organ, or other human specimen. If the individual who intends to receive the blood, tissue, organ, or other human specimen is otherwise unable to give informed consent, then any of the following persons, in order of priority stated, when persons in prior classes are not available at the time the transplantation, transfusion, introduction, or injection is to be performed, must be informed that there was insufficient time to perform a test for HIV or an antibody to HIV and must agree in writing to the use of the blood, tissue, organ, or other human specimen:

- (a) The spouse.
- (b) An adult son or daughter.
- (c) Either parent.
- (d) An adult brother or sister.
- (e) A guardian of the individual at the time the transplantation, transfusion, introduction, or injection is to be performed.

(4) If an individual donates blood exclusively for his or her own transfusion needs, and if the results of a test performed under subsection (1) are positive, the individual may use the blood for that purpose if both the person responsible for the transfusion and the individual who intends to receive the blood are informed of the positive test result and consent in writing to the use of the blood.

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

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

(7) A person, including, but not limited to, a licensee under article 15 or article 17 that orders or performs, or both, a test for HIV or an antibody to HIV under this section shall, if the test result is positive, inform the donor of the positive test result. For purposes of this subsection, a positive test result is a double positive enzyme-linked immunosorbent assay test, combined with a positive western blot assay test, or a positive result under an HIV test that is considered reliable by the federal Centers for Disease Control and Prevention and is approved by the department.

(8) A person that violates this section is liable in a civil action for damages for the loss or damage resulting from the violation.

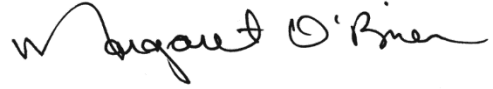
(9) As used in this section:

- (a) "Blood" includes whole blood, blood plasma, blood products, and blood derivatives.
- (b) "HIV" means human immunodeficiency virus.
- (c) "Self-replicating body fluids" means bodily fluids that are reproduced by the body including, but not limited to, breast milk. Self-replicating body fluids does not include blood or sperm.

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



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor