

Act No. 174
Public Acts of 1989
Approved by the Governor
August 21, 1989
Filed with the Secretary of State
August 22, 1989

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Senator Sederburg

ENROLLED SENATE BILL No. 504

AN ACT to amend sections 5111 and 5131 of Act No. 368 of the Public Acts of 1978, entitled as amended "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 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 penalties and remedies; 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," section 5111 as amended by Act No. 491 of the Public Acts of 1988 and section 5131 as added by Act No. 488 of the Public Acts of 1988, being sections 333.5111 and 333.5131 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 5111 and 5131 of Act No. 368 of the Public Acts of 1978, section 5111 as amended by Act No. 491 of the Public Acts of 1988 and section 5131 as added by Act No. 488 of the Public Acts of 1988, being sections 333.5111 and 333.5131 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 5111. (1) In carrying out its authority under this article, the department may promulgate rules to:

(a) Designate and classify communicable, serious communicable, chronic, other noncommunicable diseases, infections, and disabilities.

(b) Establish requirements for reporting and other surveillance methods for measuring the occurrence of diseases, infections, and disabilities and the potential for epidemics. Rules promulgated under this subdivision may require a licensed health professional or health facility to submit to the department or a local health department, on a form provided by the department, a report of the occurrence of a communicable disease, serious communicable disease or infection, or disability. The rules promulgated under this subdivision may require a report to be submitted to the department not more than 24 hours after a licensed health professional or health facility determines that an individual has a serious communicable disease or infection.

(c) Investigate cases, epidemics, and unusual occurrences of diseases, infections, and situations with a potential for causing diseases.

(d) Establish procedures for control of diseases and infections, including, but not limited to, immunization and environmental controls.

(e) Establish procedures for the prevention, detection, and treatment of disabilities and rehabilitation of individuals suffering from disabilities or disease, including nutritional problems.

(f) Establish procedures for control of rabies and the disposition of nonhuman agents carrying disease, including rabid animals.

(g) Establish procedures for the reporting of known or suspected cases of lead poisoning or undue lead body burden.

(h) Designate communicable diseases or serious communicable diseases or infections for which local health departments are required to furnish care including, but not limited to, tuberculosis and venereal disease.

(i) Implement this part and parts 52 and 53 including, but not limited to, rules for the discovery, care, and reporting of an individual having or suspected of having a communicable disease or a serious communicable disease or infection, and to establish approved tests under section 5125 and approved prophylaxes under section 5127.

(2) The department shall promulgate rules to provide for the confidentiality of reports, records, and data pertaining to testing, care, treatment, reporting, and research associated with communicable diseases and serious communicable diseases or infections. The rules shall specify the communicable diseases and serious communicable diseases or infections covered under the rules and shall include, but are not limited to, hepatitis B, venereal disease, and tuberculosis. The rules shall not apply to the serious communicable diseases or infections of HIV infection, acquired immunodeficiency syndrome, or acquired immunodeficiency syndrome related complex. The department shall submit the rules for public hearing under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, within 90 days after the effective date of this subsection.

Sec. 5131. (1) All reports, records, and data pertaining to testing, care, treatment, reporting, and research associated with the serious communicable diseases or infections of HIV infection, acquired immunodeficiency syndrome, and acquired immunodeficiency syndrome related complex are confidential, and shall be released only pursuant to this section, or if a report is required under the child protection law, Act No. 238 of the Public Acts of 1975, being sections 722.621 to 722.636 of the Michigan Compiled Laws.

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

(3) The disclosure of information pertaining to HIV infection, acquired immunodeficiency syndrome, or acquired immunodeficiency syndrome related complex in response to a court order and subpoena shall be limited to only the following cases and subject to all of the following restrictions:

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

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

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

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

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

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

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

(4) Information pertaining to HIV infection, acquired immunodeficiency syndrome, or acquired immunodeficiency syndrome related complex that is released to a legislative body shall not contain information that identifies a specific individual who was tested or is being treated for HIV infection, acquired immunodeficiency syndrome, or acquired immunodeficiency syndrome related complex.

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

(a) 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 to the department, a local health department, or other health care provider for 1 or more of the following purposes:

(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 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 public 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 does not impose 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.

(c) 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 an authorized representative of the department or a local health officer to an employee of a school district, and if the department representative or local health officer determines that the disclosure is necessary to prevent a reasonably foreseeable risk of transmission of HIV to pupils in the school district. An employee of a school district to whom information is disclosed under this subdivision is subject to subsection (1).

(d) 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 disclosure is expressly authorized in writing by the individual, but only if the written authorization is specific to HIV infection, acquired immunodeficiency syndrome, or acquired immunodeficiency syndrome related complex. If the individual is a minor or incapacitated, the written authorization may be executed by the parent or legal guardian of the individual.

(e) Information disclosed under section 5114, 5114a, 5119(3), 5129, or 20191(1).

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

(7) Information disclosed under subsection (5) shall not contain information that identifies the individual to whom the information pertains, unless the identifying information is determined by the person making the disclosure to be reasonably necessary to prevent a foreseeable risk of transmission of HIV. This subsection does not apply to information disclosed under subsection (5)(d).

(8) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both, and is liable in a civil action for actual damages or \$1,000.00, whichever is greater, and costs and reasonable attorney fees. This subsection also applies to the employer of a person who violates this section, unless the employer had in effect at the time of the violation reasonable precautions designed to prevent the violation.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved

Governor.

