

# HOUSE BILL No. 4956

June 28, 1989, Introduced by Reps. Bandstra, Pridnia, Mathieu, O'Connor, Porreca, London, Rocca, Munsell, Gnodtke, Miller, Walberg, Niederstadt, Jaye and Runco and referred to the Committee on Public Health.

A bill to amend sections 5114a and 5131 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code,"

section 5114a as added by Act No. 489 of the Public Acts of 1988 and section 5131 as added by Act No. 488 of the Public Acts of 1988, being sections 333.5114a and 333.5131 of the Michigan Compiled Laws; and to add section 5114b.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 5114a and 5131 of Act No. 368 of the  
2 Public Acts of 1978, section 5114a as added by Act No. 489 of the  
3 Public Acts of 1988 and section 5131 as added by Act No. 488 of  
4 the Public Acts of 1988, being sections 333.5114a and 333.5131 of  
5 the Michigan Compiled Laws, are amended and section 5114b is  
6 added to read as follows:

1       Sec. 5114a. (1) ~~A~~ SUBJECT TO SECTION 5114B, A person or  
2 governmental entity that administers a test for HIV or an  
3 antibody to HIV to an individual shall refer the individual to  
4 the appropriate local health department for assistance with part-  
5 ner notification if both of the following conditions are met:

6       (a) The test results indicate that the individual is HIV  
7 infected.

8       (b) The person or governmental entity that administered the  
9 test determines that the individual needs assistance with partner  
10 notification.

11       (2) A person or governmental entity that refers an individ-  
12 ual to a local health department under subsection (1) shall pro-  
13 vide the local health department with information determined nec-  
14 essary by the local health department to carry out partner  
15 notification. Information required under this subsection may  
16 include, but is not limited to, the name, address, and telephone  
17 number of the individual test subject. A PERSON OR GOVERNMENTAL  
18 ENTITY THAT REFERS AN INDIVIDUAL TO A LOCAL HEALTH DEPARTMENT  
19 UNDER SUBSECTION (1) STILL IS SUBJECT TO SECTION 5114B.

20       (3) A local health department to which an individual is  
21 referred under subsection (1) OR SECTION 5114B shall inform the  
22 individual that he or she has a legal obligation to inform each  
23 of his or her sexual partners of the individual's HIV infection  
24 before engaging in sexual relations with that sexual partner, and  
25 that the individual may be subject to criminal sanctions for  
26 failure to so inform a sexual partner.

1 (4) A partner notification program operated by a local  
2 health department shall include notification of individuals who  
3 are sexual or hypodermic needle-sharing partners of the individ-  
4 ual ~~tested~~ REFERRED under subsection (1). Partner notification  
5 shall be confidential and conducted in the form of a direct,  
6 one-to-one conversation between the employee of the local health  
7 department and the partner of the test subject.

8 (5) If a local health department receives a report under  
9 section 5114(2) OR SECTION 5114B that indicates that a resident  
10 of this state or an individual located in this state is HIV  
11 infected, the local health department shall make it a priority to  
12 do all of the following:

13 (a) Attempt to interview the individual and offer to contact  
14 the individual's sexual partners and, if applicable, hypodermic  
15 needle-sharing or drug-sharing partners. If the subject of the  
16 report is determined to have been infected with HIV in utero, the  
17 local health department shall attempt to interview the  
18 individual's parent or legal guardian, or both. The interview  
19 conducted under this subdivision shall be voluntary on the part  
20 of the individual being interviewed. The interview or attempted  
21 interview required under this subdivision shall be performed by a  
22 local health department within 14 days after receipt of a report  
23 under section 5114(2) OR SECTION 5114B.

24 (b) Within 35 days after the interview conducted pursuant to  
25 subdivision (a), confidentially, privately, and in a discreet  
26 manner contact each individual identified as a sexual or  
27 hypodermic needle-sharing or drug-sharing partner regarding the

1 individual's possible exposure to HIV. The local health  
2 department shall not reveal to an individual identified as a  
3 partner the identity of the individual who has tested positive  
4 for HIV or an antibody to HIV except if authorized to do so by  
5 the individual who named the contact, and if needed to protect  
6 others from exposure to HIV or from transmitting HIV. The local  
7 health department shall provide each individual interviewed under  
8 subdivision (a) and each individual contacted under this subdivi-  
9 sion with all of the following information:

10       (i) Available medical tests for HIV, an antibody to HIV, and  
11 any other indicator of HIV infection.

12       (ii) Steps to take in order to avoid transmission of HIV.

13       (iii) Other information considered appropriate by the  
14 department.

15       (6) The reports, records, and data of a local health depart-  
16 ment pertaining to information acquired under this section shall  
17 be retained by the local health department for not more than  
18 90 days after the date of receipt or for a period established by  
19 rule of the department.

20       (7) Information acquired by the department or a local health  
21 department under this section or section 5114 OR 5114B is exempt  
22 from disclosure under the freedom of information act, Act No. 442  
23 of the Public Acts of 1976, being sections 15.231 to 15.246 of  
24 the Michigan Compiled Laws.

25       (8) The department in consultation with local health depart-  
26 ments shall submit a biennial report to the standing committees  
27 in the senate and house of representatives responsible for

1 legislation pertaining to public health on the effect of this  
2 section on the department's efforts to monitor and control HIV  
3 infection. The report shall include, but IS not ~~be~~ limited to,  
4 statistics on the total number of index cases reported, the total  
5 number of index cases reported with information identifying the  
6 test subject or a partner of the test subject, and the total  
7 number of partners actually contacted under this section, and an  
8 assessment of the effectiveness of the program, and recommenda-  
9 tions to improve the effectiveness of the program, if any. The  
10 statistics included in the report shall be broken down by local  
11 health department jurisdiction.

12 SEC. 5114B. (1) BEFORE A PHYSICIAN OR AN INDIVIDUAL TO WHOM  
13 THE PHYSICIAN HAS DELEGATED AUTHORITY TO PERFORM A SELECTED ACT,  
14 TASK, OR FUNCTION UNDER SECTION 16215 ORDERS A TEST FOR HIV OR AN  
15 ANTIBODY TO HIV FOR THE PURPOSE OF DIAGNOSING HIV INFECTION, THE  
16 PHYSICIAN OR INDIVIDUAL AUTHORIZED BY THE PHYSICIAN SHALL INFORM  
17 THE TEST SUBJECT OF ALL OF THE FOLLOWING:

18 (A) THE REQUIREMENTS OF THIS SECTION.

19 (B) THE AVAILABILITY AND CONDITIONS OF ANONYMOUS TESTING  
20 UNDER SECTION 5114.

21 (2) IF A PHYSICIAN OBTAINS FROM A TEST SUBJECT A POSITIVE,  
22 VALIDATED TEST RESULT FOR THE PRESENCE OF HIV OR AN ANTIBODY TO  
23 HIV THAT INDICATES THAT THE TEST SUBJECT IS HIV INFECTED, THE  
24 PHYSICIAN SHALL DO 1 OF THE FOLLOWING:

25 (A) IF THE PHYSICIAN KNOWS OF INDIVIDUALS WHO ARE AT RISK OF  
26 HIV INFECTION BECAUSE OF THEIR SEXUAL OR INTRAVENOUS  
27 NEEDLE-SHARING RELATIONSHIP WITH THE TEST SUBJECT, MAKE

1 REASONABLE EFFORTS TO NOTIFY THOSE INDIVIDUALS OF THE TEST  
2 SUBJECT'S HIV INFECTED STATUS.

3 (B) AS AN ALTERNATIVE TO SUBDIVISION (A), THE PHYSICIAN MAY  
4 NOTIFY THE APPROPRIATE INDIVIDUAL IN THE LOCAL HEALTH DEPARTMENT  
5 OF THE TEST SUBJECT'S HIV INFECTED STATUS, THE TEST SUBJECT'S  
6 IDENTITY, AND THE IDENTITY OF EACH INDIVIDUAL DESCRIBED IN  
7 SUBDIVISION (A) KNOWN TO THE PHYSICIAN.

8 (3) THIS SECTION DOES NOT REQUIRE A PHYSICIAN OR HEALTH CARE  
9 FACILITY TO INQUIRE ABOUT INDIVIDUALS WHO MAY BE AT RISK OF HIV  
10 INFECTION BECAUSE OF THEIR RELATIONSHIP WITH THE TEST SUBJECT.

11 (4) A PHYSICIAN WHO IN GOOD FAITH COMPLIES WITH THIS SECTION  
12 IS NOT LIABLE FOR DAMAGES IN A CIVIL ACTION OR SUBJECT TO PROSE-  
13 CUTION IN A CRIMINAL PROCEEDING AS A RESULT OF THE COMPLIANCE.  
14 IN ADDITION, COMPLIANCE WITH THIS SECTION IS NOT A VIOLATION OF  
15 THE PHYSICIAN-PATIENT PRIVILEGE ESTABLISHED UNDER SECTION 2157 OF  
16 THE REVISED JUDICATURE ACT OF 1961, ACT NO. 236 OF THE PUBLIC  
17 ACTS OF 1961, BEING SECTION 600.2157 OF THE MICHIGAN COMPILED  
18 LAWS.

19 Sec. 5131. (1) All reports, records, and data pertaining to  
20 testing, care, treatment, reporting, and research associated with  
21 a communicable disease or a serious communicable disease or  
22 infection are confidential, and shall be released only pursuant  
23 to this section, or if a report is required under the child pro-  
24 tection law, Act No. 238 of the Public Acts of 1975, being sec-  
25 tions 722.621 to 722.636 of the Michigan Compiled Laws.

26 (2) Except as otherwise provided by law, the test results of  
27 a test for the presence of a communicable disease or a serious

1 communicable disease or infection and the fact that such a test  
2 was ordered is information that is subject to section 2157 of the  
3 revised judicature act of 1961, Act No. 236 of the Public Acts of  
4 1961, being section 600.2157 of the Michigan Compiled Laws.

5 (3) The disclosure of information pertaining to a communica-  
6 ble disease or a serious communicable disease or infection in  
7 response to a court order and subpoena shall be limited to only  
8 the following cases and subject to all of the following  
9 restrictions:

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

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

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

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

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

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

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

25 (4) Information pertaining to a communicable disease or a  
26 serious communicable disease or infection that is released to a  
27 legislative body shall not contain information that identifies a

1 specific individual who was tested or is being treated for a  
2 communicable disease or a serious communicable disease or  
3 infection.

4 (5) Subject to subsection ~~-(6)-~~ (7), subsection (1) does not  
5 apply to the following:

6 (a) Information pertaining to an individual who has a commu-  
7 nicable disease or a serious communicable disease or infection,  
8 if the information is disclosed to the department, a local health  
9 department, or other health care provider for 1 or more of the  
10 following purposes:

11 (i) To protect the health of an individual.

12 (ii) To prevent further transmission of the communicable  
13 disease or serious communicable disease or infection.

14 (iii) To diagnose and care for a patient.

15 (b) Information pertaining to an individual who has a commu-  
16 nicable disease or a serious communicable disease or infection,  
17 if the information is disclosed by a physician or public health  
18 officer to an individual who is known by the physician or local  
19 health officer to be a contact of the individual who has a commu-  
20 nicable disease or a serious communicable disease or infection,  
21 AND if the physician or local health officer determines that the  
22 disclosure of the information is necessary to prevent a reason-  
23 ably foreseeable risk of further transmission of the communicable  
24 disease or serious communicable disease or infection OR IS  
25 REQUIRED TO DISCLOSE THE INFORMATION UNDER SECTION 5114B. ~~This~~  
26 ~~subdivision does not impose an affirmative duty upon a physician~~  
27 ~~or local health officer to disclose information pertaining to an~~



~~1 individual who has a communicable disease or a serious  
2 communicable disease or infection to an individual who is known  
3 by the physician or local health officer to be a contact of the  
4 individual who has a communicable disease or a serious communica-  
5 ble disease or infection.~~

6 (c) Information pertaining to an individual who has a commu-  
7 nicable disease or a serious communicable disease or infection,  
8 if the information is disclosed by an authorized representative  
9 of the department or a local health officer to an employee of a  
10 school district, if the department representative or local health  
11 officer determines that the disclosure is necessary to prevent a  
12 reasonably foreseeable risk of transmission of the communicable  
13 disease or serious communicable disease or infection to pupils in  
14 the school district. An employee of a school district to whom  
15 information is disclosed under this subdivision is subject to  
16 subsection (1).

17 (d) Information pertaining to an individual who has a commu-  
18 nicable disease or a serious communicable disease or infection,  
19 if the disclosure is expressly authorized in writing by the indi-  
20 vidual, but only if the written authorization is specific to the  
21 communicable disease or serious communicable disease or  
22 infection.

23 (e) Information disclosed under section 5114, 5114a, 5129,  
24 or 20191(1).

25 (6) A person who releases the results of an HIV test in com-  
26 pliance with subsection (5) is immune from civil or criminal

1 liability or administrative penalties including, but not limited  
2 to, licensure sanctions, for the release of that information.

3 (7) Information disclosed under subsection (5) shall not  
4 contain information that identifies the individual to whom the  
5 information pertains, unless the identifying information is  
6 determined by the person making the disclosure to be reasonably  
7 necessary to prevent a foreseeable risk of transmission of the  
8 communicable disease or serious communicable disease or  
9 infection. This subsection does not apply to information dis-  
10 closed under subsection (5)(d) OR SECTION 5114B.

11 (8) A person who violates this section by disclosing infor-  
12 mation pertaining to an individual who has a communicable disease  
13 that is not a serious communicable disease or infection is guilty  
14 of a misdemeanor, punishable by imprisonment for not more than 90  
15 days, or a fine of not more than \$500.00, or both.

16 (9) A person who is not a governmental entity or employed by  
17 or under contract to a governmental entity and who violates this  
18 section by disclosing information pertaining to an individual who  
19 has a serious communicable disease or infection is liable in a  
20 civil action for actual damages or \$1,000.00, whichever is great-  
21 er, and costs and reasonable attorney fees. This subsection also  
22 applies to the employer of a person who violates this section,  
23 unless the employer had in effect at the time of the violation  
24 reasonable precautions designed to prevent the unlawful disclo-  
25 sure by employees of information pertaining to an individual who  
26 has a serious communicable disease or infection that is  
27 confidential under subsection (1).

1       (10) A person who is employed by or under contract to a  
2 governmental entity and who violates this section by disclosing  
3 information pertaining to an individual who has a serious commu-  
4 nicable disease or infection is guilty of a felony, punishable by  
5 imprisonment for not more than 3 years, a fine of not more than  
6 \$5,000.00, or both.