

HOUSE BILL No. 4959

June 29, 1989, Introduced by Reps. Bennane, Pridnia, Hunter, Hertel, Barns, Dunaskiss, Miller, Gnodtke, Crandall, Krause, Munsell, Emmons and Runco and referred to the Committee on Public Health.

A bill to amend sections 5111 and 5131 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," 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:

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

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

1 (a) Designate and classify communicable, serious
2 communicable, chronic, other noncommunicable diseases, infec-
3 tions, and disabilities. THE DEPARTMENT SHALL NOT PROMULGATE
4 RULES TO DESIGNATE COMMUNICABLE DISEASES AND SERIOUS COMMUNICABLE
5 DISEASES AND INFECTIONS FOR PURPOSES OF SECTION 5131.

6 (b) Establish requirements for reporting and other surveil-
7 lance methods for measuring the occurrence of diseases, infec-
8 tions, and disabilities and the potential for epidemics. Rules
9 promulgated under this subdivision may require a licensed health
10 professional or health facility to submit to the department or a
11 local health department, on a form provided by the department, a
12 report of the occurrence of a communicable disease, serious com-
13 municable disease or infection, or disability. The rules promul-
14 gated under this subdivision may require a report to be submitted
15 to the department not more than 24 hours after a licensed health
16 professional or health facility determines that an individual has
17 a serious communicable disease or infection.

18 (c) Investigate cases, ~~and~~ epidemics, and unusual occur-
19 rences of diseases, infections, and situations with a potential
20 for causing diseases.

21 (d) Establish procedures for control of diseases and infec-
22 tions, including, but not limited to, immunization and environ-
23 mental controls.

24 (e) Establish procedures for the prevention, detection, and
25 treatment of disabilities and rehabilitation of individuals suf-
26 fering from disabilities or disease, including nutritional
27 problems.

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

4 (g) Establish procedures for the reporting of known or sus-
5 pected cases of lead poisoning or undue lead body burden.

6 (h) Designate communicable diseases or serious communicable
7 diseases or infections for which local health departments are
8 required to furnish care including, but not limited to, tubercu-
9 losis and venereal disease.

10 (i) Implement this part and parts 52 and 53 including, but
11 not limited to, rules for the discovery, care, and reporting of
12 an individual having or suspected of having a communicable dis-
13 ease or a serious communicable disease or infection, and to
14 establish approved tests under section 5125 ~~—~~ and approved pro-
15 phylaxes under section 5127.

16 (2) THE DEPARTMENT SHALL PROMULGATE RULES TO PROVIDE FOR THE
17 CONFIDENTIALITY OF REPORTS, RECORDS, AND DATA PERTAINING TO TEST-
18 ING, CARE, TREATMENT, REPORTING, AND RESEARCH ASSOCIATED WITH
19 COMMUNICABLE DISEASES AND SERIOUS COMMUNICABLE DISEASES AND
20 INFECTIONS. THE RULES SHALL SPECIFY THE COMMUNICABLE DISEASES
21 AND SERIOUS COMMUNICABLE DISEASES AND INFECTIONS COVERED UNDER
22 THE RULES AND SHALL INCLUDE, BUT ARE NOT LIMITED TO, HEPATITIS B,
23 VENEREAL DISEASE, AND TUBERCULOSIS. THE RULES SHALL NOT APPLY TO
24 HIV INFECTION, ACQUIRED IMMUNODEFICIENCY SYNDROME, OR ACQUIRED
25 IMMUNODEFICIENCY SYNDROME RELATED COMPLEX. THE DEPARTMENT SHALL
26 SUBMIT THE RULES FOR PUBLIC HEARING UNDER THE ADMINISTRATIVE
27 PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969,

1 BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS,
2 WITHIN 90 DAYS AFTER THE EFFECTIVE DATE OF THIS SUBSECTION.

3 Sec. 5131. (1) All reports, records, and data pertaining to
4 testing, care, treatment, reporting, and research associated with
5 ~~a communicable disease or a serious communicable disease or~~
6 ~~infection~~ HIV INFECTION, ACQUIRED IMMUNODEFICIENCY SYNDROME, AND
7 ACQUIRED IMMUNODEFICIENCY SYNDROME RELATED COMPLEX are confiden-
8 tial, and shall be released only pursuant to this section, or if
9 a report is required under the child protection law, Act No. 238
10 of the Public Acts of 1975, being sections 722.621 to 722.636 of
11 the Michigan Compiled Laws.

12 (2) Except as otherwise provided by law, the test results of
13 a test for ~~the presence of a communicable disease or a serious~~
14 ~~communicable disease or infection~~ HIV INFECTION, ACQUIRED IMMU-
15 NODEFICIENCY SYNDROME, OR ACQUIRED IMMUNODEFICIENCY SYNDROME
16 RELATED COMPLEX and the fact that such a test was ordered is
17 information that is subject to section 2157 of the revised judi-
18 cature act of 1961, Act No. 236 of the Public Acts of 1961, being
19 section 600.2157 of the Michigan Compiled Laws.

20 (3) The disclosure of information pertaining to ~~a communi-~~
21 ~~cable disease or a serious communicable disease or infection~~ HIV
22 INFECTION, ACQUIRED IMMUNODEFICIENCY SYNDROME, OR ACQUIRED IMMU-
23 NODEFICIENCY SYNDROME RELATED COMPLEX in response to a court
24 order and subpoena shall be limited to only the following cases
25 and subject to all of the following restrictions:

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

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

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

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

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

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

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

14 (4) Information pertaining to ~~a communicable disease or a~~
15 ~~serious communicable disease or infection~~ HIV INFECTION,
16 ACQUIRED IMMUNODEFICIENCY SYNDROME, OR ACQUIRED IMMUNODEFICIENCY
17 SYNDROME RELATED COMPLEX that is released to a legislative body
18 shall not contain information that identifies a specific individ-
19 ual who was tested or is being treated for ~~a communicable dis-~~
20 ~~ease or a serious communicable disease or infection~~ HIV INFEC-
21 TION, ACQUIRED IMMUNODEFICIENCY SYNDROME, OR ACQUIRED IMMUNODEFI-
22 CIENCY SYNDROME RELATED COMPLEX.

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

25 (a) Information pertaining to an individual who ~~has a com-~~
26 ~~municable disease or a serious communicable disease or infection~~
27 IS HIV INFECTED OR HAS BEEN DIAGNOSED AS HAVING ACQUIRED

1 IMMUNODEFICIENCY SYNDROME OR ACQUIRED IMMUNODEFICIENCY SYNDROME
2 RELATED COMPLEX, if the information is disclosed to the depart-
3 ment, a local health department, or other health care provider
4 for 1 or more of the following purposes:

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

6 (ii) To prevent further transmission of HIV. ~~the communica-~~
7 ~~ble disease or serious communicable disease or infection.~~

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

9 (b) Information pertaining to an individual who ~~has a com-~~
10 ~~municable disease or a serious communicable disease or infection~~
11 IS HIV INFECTED OR HAS BEEN DIAGNOSED AS HAVING ACQUIRED IMMUNO-
12 DEFICIENCY SYNDROME OR ACQUIRED IMMUNODEFICIENCY SYNDROME RELATED
13 COMPLEX, if the information is disclosed by a physician or public
14 health officer to an individual who is known by the physician or
15 local health officer to be a contact of the individual who ~~has a~~
16 ~~communicable disease or a serious communicable disease or~~
17 ~~infection~~ IS HIV INFECTED OR HAS BEEN DIAGNOSED AS HAVING
18 ACQUIRED IMMUNODEFICIENCY SYNDROME OR ACQUIRED IMMUNODEFICIENCY
19 SYNDROME RELATED COMPLEX, if the physician or local health offi-
20 cer determines that the disclosure of the information is neces-
21 sary to prevent a reasonably foreseeable risk of further trans-
22 mission of HIV. ~~the communicable disease or serious communicable~~
23 ~~disease or infection.~~ This subdivision does not impose an affir-
24 mative duty upon a physician or local health officer to disclose
25 information pertaining to an individual who ~~has a communicable~~
26 ~~disease or a serious communicable disease or infection~~ IS HIV
27 INFECTED OR HAS BEEN DIAGNOSED AS HAVING ACQUIRED

1 IMMUNODEFICIENCY SYNDROME OR ACQUIRED IMMUNODEFICIENCY SYNDROME
2 RELATED COMPLEX to an individual who is known by the physician or
3 local health officer to be a contact of the individual who ~~has a~~
4 ~~communicable disease or a serious communicable disease or~~
5 ~~infection~~ IS HIV INFECTED OR HAS BEEN DIAGNOSED AS HAVING
6 ACQUIRED IMMUNODEFICIENCY SYNDROME OR ACQUIRED IMMUNODEFICIENCY
7 SYNDROME RELATED COMPLEX.

8 (c) Information pertaining to an individual who ~~has a com-~~
9 ~~municable disease or a serious communicable disease or infection~~
10 IS HIV INFECTED OR HAS BEEN DIAGNOSED AS HAVING ACQUIRED IMMUNO-
11 DEFICIENCY SYNDROME OR ACQUIRED IMMUNODEFICIENCY SYNDROME RELATED
12 COMPLEX, if the information is disclosed by an authorized repre-
13 sentative of the department or a local health officer to an
14 employee of a school district, AND if the department representa-
15 tive or local health officer determines that the disclosure is
16 necessary to prevent a reasonably foreseeable risk of transmis-
17 sion of ~~the communicable disease or serious communicable disease~~
18 ~~or infection~~ HIV to pupils in the school district. An employee
19 of a school district to whom information is disclosed under this
20 subdivision is subject to subsection (1).

21 (d) Information pertaining to an individual who ~~has a com-~~
22 ~~municable disease or a serious communicable disease or infection~~
23 IS HIV INFECTED OR HAS BEEN DIAGNOSED AS HAVING ACQUIRED IMMUNO-
24 DEFICIENCY SYNDROME OR ACQUIRED IMMUNODEFICIENCY SYNDROME RELATED
25 COMPLEX, if the disclosure is expressly authorized in writing by
26 the individual, but only if the written authorization is specific
27 to ~~the communicable disease or serious communicable disease or~~

1 ~~infection~~ HIV INFECTION, ACQUIRED IMMUNODEFICIENCY SYNDROME, OR
2 ACQUIRED IMMUNODEFICIENCY SYNDROME RELATED COMPLEX. IF THE INDI-
3 VIDUAL IS A MINOR OR OTHERWISE INCAPACITATED, THE WRITTEN AUTHO-
4 RIZATION MAY BE EXECUTED BY THE PARENT OR LEGAL GUARDIAN OF THE
5 INDIVIDUAL.

6 (e) Information disclosed under section 5114, 5114a, 5129,
7 or 20191(1).

8 (6) A person who releases the results of an HIV test in com-
9 pliance with subsection (5) is immune from civil or criminal
10 liability ~~or~~ AND administrative penalties including, but not
11 limited to, licensure sanctions, for the release of that
12 information.

13 (7) Information disclosed under subsection (5) shall not
14 contain information that identifies the individual to whom the
15 information pertains, unless the identifying information is
16 determined by the person making the disclosure to be reasonably
17 necessary to prevent a foreseeable risk of transmission of HIV.
18 ~~the communicable disease or serious communicable disease or~~
19 ~~infection.~~ This subsection does not apply to information dis-
20 closed under subsection (5)(d).

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

26 ~~(9) A person who is not a governmental entity or employed by~~
27 ~~or under contract to a governmental entity and who violates this~~

~~1 section by disclosing information pertaining to an individual who~~
~~2 has a serious communicable disease or infection~~

3 (8) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDE-
4 MEANOR, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A
5 FINE OF NOT MORE THAN \$5,000.00, OR BOTH, AND is liable in a
6 civil action for actual damages or \$1,000.00, whichever is great-
7 er, and costs and reasonable attorney fees. This subsection also
8 applies to the employer of a person who violates this section,
9 unless the employer had in effect at the time of the violation
10 reasonable precautions designed to prevent the VIOLATION.

~~11 unlawful disclosure by employees of information pertaining to an~~
~~12 individual who has a serious communicable disease or infection~~
~~13 that is confidential under subsection (1).~~

14 ~~(10) A person who is employed by or under contract to a gov-~~
~~15 ernmental entity and who violates this section by disclosing~~
~~16 information pertaining to an individual who has a serious commu-~~
~~17 nicable disease or infection is guilty of a felony, punishable by~~
~~18 imprisonment for not more than 3 years, a fine of not more than~~
~~19 \$5,000.00, or both.~~