

HOUSE BILL No. 5131

October 3, 1989, Introduced by Reps. Pridnia, Bennane, Munsell, Bartnik, Bandstra, Gnodtke, Dunaskiss, Krause, O'Connor, Varga, Muxlow, Law, Rocca, Leland, Hertel, Palamara, Gire, Bender, Honigman, Emerson, Stacey, Crandall, Power, Sparks, Maynard, Profit, DeBeaussiaert, Ciaramitaro, Hillegonds, Trim, Porreca, Middaugh, DeMars, Stabenow, Gubow, Martin, Ouwinga, Allen, DeLange, Hoekman, Wartner, Van Singel, Sofio, Weeks, Hollister, Fitzgerald, Emmons, Johnson, Gilmer, Sikkema, London, Ostling, Pitoniak, Barns, Webb, Willis Bullard, Stopczynski, Griffin, Dolan, Hoffman, Runco, Hart, Kosteva, Brown, Hickner, Giese, Jaye, Jondahl, Keith, Niederstadt, Mathieu, Scott and Randall and referred to the Committee on Public Health.

A bill to amend section 5131 of Act No. 368 of the Public Acts of 1978, entitled as amended

"Public health code,"

as amended by Act No. 174 of the Public Acts of 1989, being section 333.5131 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 5131 of Act No. 368 of the Public Acts
2 of 1978, as amended by Act No. 174 of the Public Acts of 1989,
3 being section 333.5131 of the Michigan Compiled Laws, is amended
4 to read as follows:

5 Sec. 5131. (1) All reports, records, and data pertaining to
6 testing, care, treatment, reporting, and research associated with
7 the serious communicable diseases or infections of HIV infection,
8 acquired immunodeficiency syndrome, and acquired immunodeficiency
9 syndrome related complex are confidential, and shall be released

1 only pursuant to this section. ~~, or if a report is required~~
2 ~~under the child protection law, Act No. 238 of the Public Acts of~~
3 ~~1975, being sections 722.621 to 722.636 of the Michigan Compiled~~
4 ~~Laws.~~

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

12 (3) The disclosure of information pertaining to HIV infec-
13 tion, acquired immunodeficiency syndrome, or acquired immunodefi-
14 ciency syndrome related complex in response to a court order and
15 subpoena shall be limited to only the following cases and subject
16 to all of the following restrictions:

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

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

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

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

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

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

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

5 (4) Information pertaining to HIV infection, acquired immu-
6 nodeficiency syndrome, or acquired immunodeficiency syndrome
7 related complex that is released to a legislative body shall not
8 contain information that identifies a specific individual who was
9 tested or is being treated for HIV infection, acquired immunode-
10 ficiency syndrome, or acquired immunodeficiency syndrome related
11 complex.

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

14 (a) Information pertaining to an individual who is HIV
15 infected or has been diagnosed as having acquired immunodefi-
16 ciency syndrome or acquired immunodeficiency syndrome related
17 complex, if the information is disclosed to the department, a
18 local health department, or other health care provider for 1 or
19 more of the following purposes:

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

21 (ii) To prevent further transmission of HIV.

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

23 (b) Information pertaining to an individual who is HIV
24 infected or has been diagnosed as having acquired immunodefi-
25 ciency syndrome or acquired immunodeficiency syndrome related
26 complex, if the information is disclosed by a physician or
27 ~~public~~ LOCAL health officer to an individual who is known by

1 the physician or local health officer to be a contact of the
2 individual who is HIV infected or has been diagnosed as having
3 acquired immunodeficiency syndrome or acquired immunodeficiency
4 syndrome related complex, if the physician or local health offi-
5 cer determines that the disclosure of the information is neces-
6 sary to prevent a reasonably foreseeable risk of further trans-
7 mission of HIV. This subdivision does not impose an affirmative
8 duty upon a physician or local health officer to disclose infor-
9 mation pertaining to an individual who is HIV infected or has
10 been diagnosed as having acquired immunodeficiency syndrome or
11 acquired immunodeficiency syndrome related complex to an individ-
12 ual who is known by the physician or local health officer to be a
13 contact of the individual who is HIV infected or has been diag-
14 nosed as having acquired immunodeficiency syndrome or acquired
15 immunodeficiency syndrome related complex.

16 (c) Information pertaining to an individual who is HIV
17 infected or has been diagnosed as having acquired immunodefi-
18 ciency syndrome or acquired immunodeficiency syndrome related
19 complex, if the information is disclosed by an authorized repre-
20 sentative of the department or a local health officer to an
21 employee of a school district, and if the department representa-
22 tive or local health officer determines that the disclosure is
23 necessary to prevent a reasonably foreseeable risk of transmis-
24 sion of HIV to pupils in the school district. An employee of a
25 school district to whom information is disclosed under this sub-
26 division is subject to subsection (1).

1 (d) Information pertaining to an individual who is HIV
2 infected or has been diagnosed as having acquired
3 immunodeficiency syndrome or acquired immunodeficiency syndrome
4 related complex, if the disclosure is expressly authorized in
5 writing by the individual, but only if the written authorization
6 is specific to HIV infection, acquired immunodeficiency syndrome,
7 or acquired immunodeficiency syndrome related complex. If the
8 individual is a minor or incapacitated, the written authorization
9 may be executed by the parent or legal guardian of the
10 individual.

11 (e) Information disclosed under section 5114, 5114a,
12 5119(3), 5129, or 20191(1).

13 (F) INFORMATION PERTAINING TO AN INDIVIDUAL WHO IS HIV
14 INFECTED OR HAS BEEN DIAGNOSED AS HAVING ACQUIRED IMMUNODEFI-
15 CIENCY SYNDROME RELATED COMPLEX, IF THE INFORMATION IS PART OF A
16 REPORT REQUIRED UNDER THE CHILD PROTECTION LAW, ACT NO. 238 OF
17 THE PUBLIC ACTS OF 1975, BEING SECTIONS 722.621 TO 722.636 OF THE
18 MICHIGAN COMPILED LAWS.

19 (G) INFORMATION PERTAINING TO AN INDIVIDUAL WHO IS HIV
20 INFECTED OR HAS BEEN DIAGNOSED AS HAVING ACQUIRED IMMUNODEFI-
21 CIENCY SYNDROME OR ACQUIRED IMMUNODEFICIENCY SYNDROME RELATED
22 COMPLEX, IF THE INFORMATION IS DISCLOSED BY THE DEPARTMENT OF
23 SOCIAL SERVICES, THE DEPARTMENT OF MENTAL HEALTH, THE PROBATE
24 COURT, OR A CHILD PLACING AGENCY IN ORDER TO CARE FOR A MINOR AND
25 TO PLACE THE MINOR WITH A CHILD CARE ORGANIZATION LICENSED UNDER
26 ACT NO. 116 OF THE PUBLIC ACTS OF 1973, BEING SECTIONS 722.111 TO
27 722.128 OF THE MICHIGAN COMPILED LAWS. AN INDIVIDUAL TO WHOM

1 INFORMATION IS DISCLOSED UNDER THIS SUBDIVISION IS SUBJECT TO
2 SUBSECTION (1). AS USED IN THIS SUBDIVISION, "CHILD CARE
3 ORGANIZATION" AND "CHILD PLACING AGENCY" MEAN THOSE TERMS AS
4 DEFINED IN SECTION 1 OF ACT NO. 116 OF THE PUBLIC ACTS OF 1973,
5 BEING SECTION 722.111 OF THE MICHIGAN COMPILED LAWS.

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

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

17 (8) A person who violates this section is guilty of a misde-
18 meanor, punishable by imprisonment for not more than 1 year or a
19 fine of not more than \$5,000.00, or both, and 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 violation.