



**House
Legislative
Analysis
Section**

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**A SUMMARY OF HOUSE BILL 5189
SUBSTITUTE H-2**

The bill would amend the Public Health Code to provide that a physician, or an individual delegated by a physician and qualified under the code to perform selected duties, could not order an HIV (Human Immunodeficiency Virus) test to diagnose HIV infection without first receiving the written, informed consent of the test subject, or the legally authorized representative of the test subject. The consent would consist of an agreement in writing, including, at a minimum, an explanation of the test, including, but not limited to: the purpose of the test, the potential uses and limitations of the test, and the meaning of test results; and an explanation of the rights of the test subject, including, but not limited to, the right to withdraw consent to the test at any time, the right to confidentiality of the test results, and the right to consent to and participate in the test on an anonymous basis.

The bill would also require that, within 120 days after the effective date of the bill, a physician or a physician's delegate ordering an HIV test make available to the test subject an informational pamphlet regarding the test. The pamphlet would be provided by the Department of Public Health (DPH) and would include information on the purpose and nature of the test and the consequences of both taking and not taking it, the meaning of the test results, the purpose, nature, and availability of confirmatory testing, and other information considered necessary or relevant by the department. The pamphlet would be made available to physicians and other affected governmental entities who requested it, free of charge, through the department, the Michigan Board of Medicine (MBM), and the Michigan Board of Osteopathic Medicine and Surgery (MBOMS), who would be required to notify all affected physicians in writing, within 100 days after the effective date of the bill, of the pamphlet's availability. If a test subject signed a form indicating receipt of the pamphlet, it would be included in his or her medical record and would prevent the test subject from bringing suit based on failure to obtain informed consent against the physician providing the pamphlet in regard to information contained in it. The department would be required to provide the above pamphlet within 90 days after the effective date of the bill. The pamphlet would be written in English in clear, nontechnical terms, with copies available in Spanish. In addition, the department would be required to provide copies to MBM, MBOMS, public or private schools, colleges, universities, and other persons who requested it.

Under the bill, an individual undergoing an HIV test on an anonymous basis could give consent using a coded system that did not link the individual's identity with the request for the test or the test result. These provisions would not apply to a test performed upon a physical part of a human body procured for donation, a test performed upon semen donated for artificial insemination purposes, a test performed for the purpose of research if performed in such a way that the identity of the test subject was not revealed to the researcher and the test results were not made known

AIDS TESTS/CONFIDENTIAL & PRIOR CONSENT

House Bill 5189 (Substitute H-2) **RECEIVED**

Sponsor: Rep. Teola Hunter

Committee: Public Health

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to the test subject, or a test administered to an individual required by law to undergo the HIV test. Under the bill, the confidentiality of HIV test results would not be disclosed, except to one or more of the following persons:

- the test subject or his or her legally authorized representative;
- a person designated in a legally effective release of the test results executed by the subject of the test, or his or her legally authorized representative;
- a health care provider or employee of a health care facility who has direct contact with patients or who handles or processes specimens of body fluids or tissues, if the provider is authorized to obtain the test results;
- the department, or an agency designated by the department;
- a health care facility or provider who procures, processes, distributes, or uses either a physical part of a human body from a deceased person for medical information, or semen obtained for purposes of artificial insemination;
- a medical staff committee of a health care facility for the purpose of program monitoring, program evaluation, or service reviews; or
- a person granted access to the HIV test results by court order as provided for in the bill.

The bill would allow a court to issue the above order if it found that the person seeking test results had demonstrated a compelling need for them which could not be accommodated by means other than the court order. In assessing the "compelling need," the court would be required to weigh the need for disclosure against the privacy interest of the test subject and the public interest of assuring an adequate supply of human organs and tissues for donation and the confidentiality of test results. In pleadings pertaining to disclosure of test results, a pseudonym would have to be substituted for the actual name of the test subject. Disclosure of the test subject's actual name would be made confidentially to the parties in documents not filed with the court. Before granting an order compelling the disclosure of test results, the court would be required to provide an individual, whose HIV test result was in question, with notice and a reasonable opportunity to participate in the proceedings, if the individual were not already a party. Court proceedings as to the disclosure of HIV test results would be conducted in camera (in private), unless the test subject agreed to an open court hearing, or unless the court determined that an open court hearing was necessary to the public interest and the proper administration of justice. Upon issuance of an order compelling the disclosure of test results, the court would impose appropriate safeguards against unauthorized disclosure, which would specify the persons who might have access to the information, the purposes for which the information could be used, and prohibitions on future disclosure of the information.

H.B. 5189 (6-3-88)

Under the bill, anyone employed by, or under contract to, a governmental entity who disclosed confidential information in violation of the bill's requirements would be guilty of a felony, punishable by imprisonment for not more than three years, or a fine of not more than \$5,000, or both. Anyone who was not a governmental entity, or employed by or under contract to a governmental entity, who disclosed confidential information in violation of the bill's requirements would be liable in a civil action for actual damages, or \$1,000, whichever was greater, punitive damages, and costs and reasonable attorney fees.

MCL 333.1101 et al.