

# HOUSE BILL No. 4605

April 13, 2005, Introduced by Reps. Adamini and Gaffney and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 5131 (MCL 333.5131), as amended by 1997 PA 57.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 5131. (1) All reports, records, and data pertaining to  
2 testing, care, treatment, reporting, and research, and information  
3 pertaining to partner notification under section 5114a, that are  
4 associated with the serious communicable diseases or infections of  
5 HIV infection and acquired immunodeficiency syndrome are  
6 confidential. A person shall release reports, records, data, and  
7 information described in this subsection only pursuant to this  
8 section **OR AS OTHERWISE PERMITTED OR REQUIRED UNDER THE HEALTH**  
9 **INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, PUBLIC LAW**

1 104-191, OR REGULATIONS PROMULGATED UNDER THAT ACT, 45 CFR PARTS  
2 160 AND 164.

3 (2) Except as otherwise provided by law, the test results of a  
4 test for HIV infection or acquired immunodeficiency syndrome and  
5 the fact that such a test was ordered is information that is  
6 subject to section 2157 of the revised judicature act of 1961, 1961  
7 PA 236, MCL 600.2157.

8 (3) The disclosure of information pertaining to HIV infection  
9 or acquired immunodeficiency syndrome in response to a court order  
10 and subpoena is limited to only the following cases and is subject  
11 to all of the following restrictions:

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

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

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

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

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

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

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

27 (4) A person who releases information pertaining to HIV

1 infection or acquired immunodeficiency syndrome to a legislative  
2 body shall not identify in the information a specific individual  
3 who was tested or is being treated for HIV infection or acquired  
4 immunodeficiency syndrome.

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

7 (a) Information pertaining to an individual who is HIV  
8 infected or has been diagnosed as having acquired immunodeficiency  
9 syndrome, if the information is disclosed to the department, a  
10 local health department, or other health care provider for 1 or  
11 more of the following purposes:

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

13 (ii) To prevent further transmission of HIV.

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

15 (b) Information pertaining to an individual who is HIV  
16 infected or has been diagnosed as having acquired immunodeficiency  
17 syndrome, if the information is disclosed by a physician or local  
18 health officer to an individual who is known by the physician or  
19 local health officer to be a contact of the individual who is HIV  
20 infected or has been diagnosed as having acquired immunodeficiency  
21 syndrome, if the physician or local health officer determines that  
22 the disclosure of the information is necessary to prevent a  
23 reasonably foreseeable risk of further transmission of HIV. This  
24 subdivision imposes an affirmative duty upon a physician or local  
25 health officer to disclose information pertaining to an individual  
26 who is HIV infected or has been diagnosed as having acquired  
27 immunodeficiency syndrome to an individual who is known by the

1 physician or local health officer to be a contact of the individual  
2 who is HIV infected or has been diagnosed as having acquired  
3 immunodeficiency syndrome. A physician or local health officer may  
4 discharge the affirmative duty imposed under this subdivision by  
5 referring the individual who is HIV infected or has been diagnosed  
6 as having acquired immunodeficiency syndrome to the appropriate  
7 local health department for assistance with partner notification  
8 under section 5114a. The physician or local health officer shall  
9 include as part of the referral the name and, if available, address  
10 and telephone number of each individual known by the physician or  
11 local health officer to be a contact of the individual who is HIV  
12 infected or has been diagnosed as having acquired immunodeficiency  
13 syndrome.

14 (c) Information pertaining to an individual who is HIV  
15 infected or has been diagnosed as having acquired immunodeficiency  
16 syndrome, if the information is disclosed by an authorized  
17 representative of the department or by a local health officer to an  
18 employee of a school district, and if the department representative  
19 or local health officer determines that the disclosure is necessary  
20 to prevent a reasonably foreseeable risk of transmission of HIV to  
21 pupils in the school district. An employee of a school district to  
22 whom information is disclosed under this subdivision is subject to  
23 subsection (1).

24 (d) Information pertaining to an individual who is HIV  
25 infected or has been diagnosed as having acquired immunodeficiency  
26 syndrome, if the disclosure is expressly authorized in writing by  
27 the individual. This subdivision applies only if the written

1 authorization is specific to HIV infection or acquired  
2 immunodeficiency syndrome. If the individual is a minor or  
3 incapacitated, the written authorization may be executed by the  
4 parent or legal guardian of the individual.

5 (e) Information disclosed under section 5114, 5114a, 5119(3),  
6 5129, 5204, or 20191 or information disclosed as required by rule  
7 promulgated under section 5111(1)(b) or (i).

8 (f) Information pertaining to an individual who is HIV  
9 infected or has been diagnosed as having acquired immunodeficiency  
10 syndrome, if the information is part of a report required under the  
11 child protection law, 1975 PA 238, MCL 722.621 to ~~722.636~~  
12 **722.638**.

13 (g) Information pertaining to an individual who is HIV  
14 infected or has been diagnosed as having acquired immunodeficiency  
15 syndrome, if the information is disclosed by the department of  
16 ~~social~~ **HUMAN** services, the department of ~~mental~~ **COMMUNITY**  
17 health, the probate court, or a child placing agency in order to  
18 care for a minor and to place the minor with a child care  
19 organization licensed under 1973 PA 116, MCL 722.111 to 722.128.  
20 The person disclosing the information shall disclose it only to the  
21 director of the child care organization or, if the child care  
22 organization is a private home, to the individual who holds the  
23 license for the child care organization. An individual to whom  
24 information is disclosed under this subdivision is subject to  
25 subsection (1). As used in this subdivision, "child care  
26 organization" and "child placing agency" mean those terms as  
27 defined in section 1 of 1973 PA 116, MCL 722.111.

1           (6) A person who releases the results of an HIV test or other  
2 information described in subsection (1) in compliance with  
3 subsection (5) is immune from civil or criminal liability and  
4 administrative penalties including, but not limited to, licensure  
5 sanctions, for the release of that information.

6           (7) A person who discloses information under subsection (5)  
7 shall not include in the disclosure information that identifies the  
8 individual to whom the information pertains, unless the identifying  
9 information is determined by the person making the disclosure to be  
10 reasonably necessary to prevent a foreseeable risk of transmission  
11 of HIV **OR THE IDENTIFYING INFORMATION IS REQUIRED, OR OTHERWISE**  
12 **PERMITTED, TO BE DISCLOSED UNDER THE HEALTH INSURANCE PORTABILITY**  
13 **AND ACCOUNTABILITY ACT OF 1996, PUBLIC LAW 104-191, OR REGULATIONS**  
14 **PROMULGATED UNDER THAT ACT, 45 CFR PARTS 160 AND 164.** This  
15 subsection does not apply to information disclosed under subsection  
16 (5)(d), (f), or (g).

17           (8) A person who violates this section is guilty of a  
18 misdemeanor, punishable by imprisonment for not more than 1 year or  
19 a 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 greater,  
21 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.