

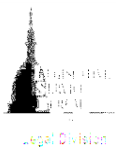
HOUSE BILL NO. 5484

February 11, 2020, Introduced by Reps. Warren, Rabhi, Peterson, Calley, Lasinski, Pohutsky, Koleszar, Stone, Sneller, Ellison, Wittenberg, Clemente, Garrett, Liberati, Mueller, Hoadley, Hood, Whiteford, Frederick, Afendoulis and Witwer and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending section 9123 (MCL 333.9123), as added by 1988 PA 487.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9123. (1) Except as otherwise provided in subsection (2),
2 a person, including, but not limited to, a licensee under article
3 15 or article 17 ~~who~~**that** procures or collects blood or human
4 tissues, organs, or other specimens for purposes of
5 transplantation, transfusion, introduction, or injection into a
6 human body shall test or provide for the testing of each potential



1 donor or each sample or specimen of blood or tissue, or each organ
2 or other human specimen for the presence in the donor, sample,
3 specimen, or organ of HIV or an antibody to HIV.

4 (2) Subsection (1) does not apply if a test for HIV or an
5 antibody to HIV cannot be performed in the time during which the
6 blood, tissue, organ, or other human specimen is viable for
7 purposes of transplantation, transfusion, introduction, or
8 injection into a human body, due to emergency or other exigent
9 circumstances.

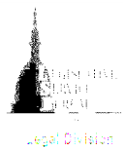
10 (3) Except as otherwise provided in subsection (4) **or (5)**, if
11 the results of a test performed under subsection (1) are positive,
12 the blood, tissue, organ, or other human specimen ~~shall~~**must** not be
13 used for purposes of transplantation, transfusion, introduction, or
14 injection into a human body. If a test for HIV or an antibody to
15 HIV cannot be performed in the time during which the blood, tissue,
16 organ, or other human specimen is viable for purposes of
17 transplantation, transfusion, introduction, or injection into a
18 human body, due to emergency or other exigent circumstances, then
19 the blood, tissue, organ, or other human specimen may be used for
20 purposes of transplantation, transfusion, introduction, or
21 injection into a human body if the person responsible for the
22 transplantation, transfusion, introduction, or injection and the
23 ~~person~~**individual** who intends to receive the blood, tissue, organ,
24 or other human specimen ~~have been~~**are** informed that there was
25 insufficient time to perform a test for HIV or an antibody to HIV,
26 and ~~have agreed~~**agree** in writing to the use of the blood, tissue,
27 organ, or other human specimen. If the ~~person~~**individual** who
28 intends to receive the blood, tissue, organ, or other human
29 specimen **under this subsection** is a minor, then the parent, legal



1 guardian, or person in loco parentis of the minor ~~shall have been~~
 2 **must be** informed that there was insufficient time to perform a test
 3 for HIV or an antibody to HIV and ~~shall have agreed~~ **must agree** in
 4 writing to the use of the blood, tissue, organ, or other human
 5 specimen. If the ~~person~~ **individual** who intends to receive the
 6 blood, tissue, organ, or other human specimen is otherwise unable
 7 to give informed consent, then any of the following persons, in
 8 order of priority stated, when persons in prior classes are not
 9 available at the time the transplantation, transfusion,
 10 introduction, or injection is to be performed, ~~shall have been~~ **must**
 11 **be** informed that there was insufficient time to perform a test for
 12 HIV or an antibody to HIV and ~~shall have agreed~~ **must agree** in
 13 writing to the use of the blood, tissue, organ, or other human
 14 specimen:

- 15 (i) The spouse.
- 16 (ii) An adult son or daughter.
- 17 (iii) Either parent.
- 18 (iv) An adult brother or sister.
- 19 (v) A guardian of the ~~person~~ **individual** at the time the
- 20 transplantation, transfusion, introduction, or injection is to be
- 21 performed.

22 (4) If a ~~person~~ **an individual** donates blood exclusively for
 23 his or her own transfusion needs, and if the results of a test
 24 performed under subsection (1) are positive, the ~~person~~ **individual**
 25 may use the blood for that purpose if both the person responsible
 26 for the transfusion and the ~~person~~ **individual** who intends to
 27 receive the blood ~~have been~~ **are** informed of the positive test
 28 result and ~~have consented~~ **consent** in writing to the use of the
 29 blood.



(5) If the results of a test performed on an organ under subsection (1) are positive, the organ may be used for purposes of transplantation into a human body if the individual who intends to receive the organ has tested positive for HIV, the individual is informed that the test results performed on the organ under subsection (1) are positive, and the individual and the person responsible for the transplantation agree in writing to the use of the organ. If the individual who intends to receive the organ under this subsection is a minor, then the parent, legal guardian, or person in loco parentis of the minor must be informed that the test results performed on the organ under subsection (1) are positive and must agree in writing to the use of the organ.

(6) ~~(5)~~—A person, including, but not limited to, a licensee under article 15 or article 17, who procures or collects self-replicating body fluids for purposes of introduction into a human body shall test each potential donor, and, if the donor donates on a regular basis, not less than every 3 months, for the presence in the donor of HIV or an antibody to HIV. If at any time the test results are positive, the self-replicating body fluids of the donor ~~shall~~**must** not be used for introduction into a human body.

(7) ~~(6)~~—A person, including, but not limited to, a licensee under article 15 or article 17 ~~who~~**that** orders or performs, or both, a test for HIV or an antibody to HIV under this section shall, if the test result is positive, inform the donor of the positive test result. For purposes of this subsection, a positive test result is a double positive enzyme-linked immunosorbent assay test, combined with a positive western blot assay test, or a positive result under an HIV test that is considered reliable by the federal ~~centers~~**Centers** for ~~disease control~~**Disease Control and**



1 **Prevention** and is approved by the department.

2 (8) ~~(7)~~ A person ~~who~~ **that** violates this section ~~shall be~~ **is**
3 liable in a civil action for damages for the loss or damage
4 resulting from the violation.

5 (9) ~~(8)~~ As used in this section:

6 (a) "Blood" includes whole blood, blood plasma, blood
7 products, and blood derivatives.

8 (b) "HIV" means human immunodeficiency virus.

9 (c) "Self-replicating body fluids" means bodily fluids that
10 are reproduced by the body including, but not limited to, breast
11 milk. Self-replicating body fluids does not include blood or sperm.

12 Enacting section 1. This amendatory act takes effect 90 days
13 after the date it is enacted into law.

