

HOUSE BILL No. 4646

March 25, 1991, Introduced by Reps. Bennane and Bodem 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. 271 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. 271 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~~ A PERSON shall

1 ~~be released~~ RELEASE REPORTS, RECORDS, AND DATA DESCRIBED IN
2 THIS SUBSECTION only pursuant to this section.

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

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

15 (a) ~~The~~ A court that is petitioned for an order to dis-
16 close the information shall determine both of the following:

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

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

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

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

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

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

3 (4) ~~Information~~ A PERSON WHO RELEASES INFORMATION pertain-
4 ing to HIV infection, acquired immunodeficiency syndrome, or
5 acquired immunodeficiency syndrome-related complex ~~that is~~
6 ~~released~~ to a legislative body shall not ~~contain information~~
7 ~~that identifies~~ IDENTIFY IN THE INFORMATION a specific individ-
8 ual who was tested or is being treated for HIV infection,
9 acquired immunodeficiency syndrome, or acquired immunodeficiency
10 syndrome-related complex.

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

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

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

20 (ii) To prevent further transmission of HIV.

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

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

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

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

26 (d) Information pertaining to an individual who is HIV
27 infected or has been diagnosed as having acquired

1 immunodeficiency syndrome or acquired immunodeficiency
2 syndrome-related complex, if the disclosure is expressly autho-
3 rized in writing by the individual. ~~, but~~ THIS SUBDIVISION
4 APPLIES only if the written authorization is specific to HIV
5 infection, acquired immunodeficiency syndrome, or acquired immu-
6 nodeficiency syndrome-related complex. If the individual is a
7 minor or incapacitated, the written authorization may be executed
8 by the parent or legal guardian of the individual.

9 (e) Information disclosed under section 5114, 5114a,
10 5119(3), 5129, or ~~2019(1)~~ 20191 OR INFORMATION DISCLOSED AS
11 REQUIRED BY RULE PROMULGATED UNDER SECTION 5111(1)(B) OR (I).

12 (f) Information pertaining to an individual who is HIV
13 infected or has been diagnosed as having acquired immunodefi-
14 ciency syndrome or acquired immunodeficiency syndrome-related
15 complex, if the information is part of a report required under
16 the child protection law, Act No. 238 of the Public Acts of 1975,
17 being sections 722.621 to 722.636 of the Michigan Compiled Laws.

18 (g) Information pertaining to an individual who is HIV
19 infected or has been diagnosed as having acquired immunodefi-
20 ciency syndrome or acquired immunodeficiency syndrome-related
21 complex, if the information is disclosed by the department of
22 social services, the department of mental health, the probate
23 court, or a child placing agency in order to care for a minor and
24 to place the minor with a child care organization licensed under
25 Act No. 116 of the Public Acts of 1973, being sections 722.111 to
26 722.128 of the Michigan Compiled Laws. The PERSON DISCLOSING THE
27 information shall ~~be disclosed~~ DISCLOSE IT only to the director

1 of the child care organization or, if the child care organization
2 is a private home, to the individual who holds the license for
3 the child care organization. An individual to whom information
4 is disclosed under this subdivision is subject to
5 subsection (1). As used in this subdivision, "child care
6 organization" and "child placing agency" mean those terms as
7 defined in section 1 of Act No. 116 of the Public Acts of 1973,
8 being section 722.111 of the Michigan Compiled Laws.

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

13 (7) ~~Information disclosed~~ A PERSON WHO DISCLOSES
14 INFORMATION under subsection (5) shall not ~~contain~~ INCLUDE IN
15 THE DISCLOSURE information that identifies the individual to whom
16 the information pertains, unless the identifying information is
17 determined by the person making the disclosure to be reasonably
18 necessary to prevent a foreseeable risk of transmission of HIV.
19 This subsection does not apply to information disclosed under
20 subsection (5)(d), (f), or (g).

21 (8) A person who violates this section is guilty of a misde-
22 meanor, punishable by imprisonment for not more than 1 year or a
23 fine of not more than \$5,000.00, or both, and is liable in a
24 civil action for actual damages or \$1,000.00, whichever is great-
25 er, and costs and reasonable attorney fees. This subsection also
26 applies to the employer of a person who violates this section,

1 unless the employer had in effect at the time of the violation
2 reasonable precautions designed to prevent the violation.