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:

Sec. 9123. (1) Except as otherwise provided in subsection (2), a person, including, but not limited to, a licensee under article 15 or article 17 who that procures or collects blood or human tissues, organs, or other specimens for purposes of transplantation, transfusion, introduction, or injection into a
human body shall test or provide for the testing of each potential
donor or each sample or specimen of blood or tissue, or each organ
or other human specimen for the presence in the donor, sample,
specimen, or organ of HIV or an antibody to HIV.

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

(3) Except as otherwise provided in subsection (4) or (5), if
the results of a test performed under subsection (1) are positive,
the blood, tissue, organ, or other human specimen shall must not be
used for purposes of transplantation, transfusion, introduction, or
injection into a human body. If a test for HIV or an antibody to
HIV cannot be performed in the time during which the blood, tissue,
organ, or other human specimen is viable for purposes of
transplantation, transfusion, introduction, or injection into a
human body, due to emergency or other exigent circumstances, then
the blood, tissue, organ, or other human specimen may be used for
purposes of transplantation, transfusion, introduction, or
injection into a human body if the person responsible for the
transplantation, transfusion, introduction, or injection and the
person individual who intends to receive the blood, tissue, organ,
or other human specimen have been are informed that there was
insufficient time to perform a test for HIV or an antibody to HIV,
and have agreed agree in writing to the use of the blood, tissue,
organ, or other human specimen. If the person individual who
intends to receive the blood, tissue, organ, or other human
specimen **under this subsection** is a minor, then the parent, legal
guardian, or person in loco parentis of the minor **shall** have been
must be informed that there was insufficient time to perform a test
for HIV or an antibody to HIV and **shall** have agreed—must agree in
writing to the use of the blood, tissue, organ, or other human
specimen. If the **person—individual** who intends to receive the
blood, tissue, organ, or other human specimen is otherwise unable
to give informed consent, then any of the following persons, in
order of priority stated, when persons in prior classes are not
available at the time the transplantation, transfusion,
introduction, or injection is to be performed, **shall** have been—**must**
be informed that there was insufficient time to perform a test for
HIV or an antibody to HIV and **shall** have agreed—must agree in
writing to the use of the blood, tissue, organ, or other human
specimen:

(a) **(i)**—The spouse.
(b) **(ii)**—An adult son or daughter.
(c) **(iii)**—Either parent.
(d) **(iv)**—An adult brother or sister.
(e) **(v)**—A guardian of the **person—individual** at the time the
transplantation, transfusion, introduction, or injection is to be
performed.

(4) If a **person—an individual** donates blood exclusively for
his or her own transfusion needs, and if the results of a test
performed under subsection (1) are positive, the **person—individual**
may use the blood for that purpose if both the **person—individual**
responsible for the transfusion and the **person—individual** who intends to
receive the blood have been—**are** informed of the positive test
result and have consented—**consent** in writing to the use of the
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) 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 not be used for introduction into a human body.

(7) A person, including, but not limited to, a licensee under article 15 or article 17 who 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 for Disease Control and Prevention and is approved by the department.

(8) A person who violates this section shall be liable in a civil action for damages for the loss or damage resulting from the violation.

(9) As used in this section:

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

(b) "HIV" means human immunodeficiency virus.

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

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