

# SENATE BILL No. 458

May 3, 2001, Introduced by Senator JAYE and referred to the Committee on Judiciary.

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 informa-  
3 tion pertaining to partner notification under section 5114a, that  
4 are associated with the serious communicable diseases or infec-  
5 tions of 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.

9       (2) Except as otherwise provided by law, the test results of  
10 a test for HIV infection or acquired immunodeficiency syndrome

1 and the fact that such a test was ordered is information that is  
2 subject to section 2157 of the revised judicature act of 1961,  
3 1961 PA 236, MCL 600.2157.

4 (3) The disclosure of information pertaining to HIV infec-  
5 tion or acquired immunodeficiency syndrome in response to a court  
6 order and subpoena is limited to only the following cases and is  
7 subject to all of the following restrictions:

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

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

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

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

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

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

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

23 (4) A person who releases information pertaining to HIV  
24 infection or acquired immunodeficiency syndrome to a legislative  
25 body shall not identify in the information a specific individual  
26 who was tested or is being treated for HIV infection or acquired  
27 immunodeficiency syndrome.

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

3 (a) Information pertaining to an individual who is HIV  
4 infected or has been diagnosed as having acquired immunodefi-  
5 ciency syndrome, if the information is disclosed to the depart-  
6 ment, a local health department, or other health care provider  
7 for 1 or more of the following purposes:

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

9 (ii) To prevent further transmission of HIV. THIS SUBPARA-  
10 GRAPH APPLIES TO, BUT IS NOT LIMITED TO, THE RELEASE BY THE  
11 DEPARTMENT OF CORRECTIONS OF INFORMATION PERTAINING TO A PRISONER  
12 WHO IS HIV INFECTED OR HAS BEEN DIAGNOSED AS HAVING ACQUIRED  
13 IMMUNODEFICIENCY SYNDROME AND WHO IS BEING PLACED ON PAROLE, AS  
14 PROVIDED IN SECTION 34B OF 1953 PA 232, MCL 791.234B.

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

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

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

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

25 (d) Information pertaining to an individual who is HIV  
26 infected or has been diagnosed as having acquired  
27 immunodeficiency syndrome, if the disclosure is expressly

1 authorized in writing by the individual. This subdivision  
2 applies only if the written authorization is specific to HIV  
3 infection or acquired immunodeficiency syndrome. If the individ-  
4 ual is a minor or incapacitated, the written authorization may be  
5 executed by the parent or legal guardian of the individual.

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

9 (f) Information pertaining to an individual who is HIV  
10 infected or has been diagnosed as having acquired immunodefi-  
11 ciency syndrome, if the information is part of a report required  
12 under the child protection law, 1975 PA 238, MCL 722.621 to  
13 ~~722.636~~ 722.638.

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

1 organization" and "child placing agency" mean those terms as  
2 defined in section 1 of 1973 PA 116, MCL 722.111.

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

8 (7) A person who discloses information under subsection (5)  
9 shall not include in the disclosure information that identifies  
10 the individual to whom the information pertains, unless the iden-  
11 tifying information is determined by the person making the dis-  
12 closure to be reasonably necessary to prevent a foreseeable risk  
13 of transmission of HIV. This subsection does not apply to infor-  
14 mation disclosed under subsection (5)(d), (f), or (g) OR TO THE  
15 RELEASE BY THE DEPARTMENT OF CORRECTIONS OF INFORMATION REGARDING  
16 A PRISONER BEING PLACED ON PAROLE, AS DESCRIBED IN  
17 SUBSECTION (5)(A).

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

26 Enacting section 1. This amendatory act does not take  
27 effect unless Senate Bill No. 457

1 of the 91st Legislature is enacted into  
2 law.