

# SENATE BILL No. 681

July 15, 2009, Introduced by Senator GEORGE and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled  
"Public health code,"  
by amending section 5133 (MCL 333.5133), as amended by 1994 PA 420.

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

1           Sec. 5133. (1) Except as otherwise provided in subsections  
2           (12) and (13), a physician who orders an HIV test or a health  
3           facility that performs an HIV test shall provide counseling  
4           appropriate to the test subject both before and after the test is  
5           administered.

6           (2) Except as otherwise provided in this part, a physician, or  
7           an individual to whom the physician has delegated authority to  
8           perform a selected act, task, or function under section 16215,

1 ~~shall not~~ **MAY** order an HIV test for the purpose of diagnosing HIV  
2 infection without first receiving the written, informed consent of  
3 the test subject. ~~For purposes of this section, written, informed~~  
4 ~~consent consists of a signed writing executed by the test subject~~  
5 ~~or the legally authorized representative of the test subject that~~  
6 ~~includes, at a minimum, all of the following:~~

7 ~~—— (a) An explanation of the test including, but not limited to,~~  
8 ~~the purpose of the test, the potential uses and limitations of the~~  
9 ~~test, and the meaning of test results.~~

10 ~~—— (b) An explanation of the rights of the test subject~~  
11 ~~including, but not limited to, all of the following:~~

12 ~~—— (i) The right to withdraw consent to the test at any time~~  
13 ~~before the administration of the test.~~

14 ~~—— (ii) The right under this part to confidentiality of the test~~  
15 ~~results.~~

16 ~~—— (iii) The right under this part to consent to and participate in~~  
17 ~~the test on an anonymous basis.~~

18 ~~—— (c) The person or class of persons to whom the test results~~  
19 ~~may be disclosed under this part. **UNLESS THE HIV TEST IS DECLINED**~~  
20 ~~**IN WRITING UNDER THIS SECTION, THE TEST SUBJECT'S CONSENT TO**~~  
21 ~~**GENERAL MEDICAL CARE IS CONSIDERED CONSENT TO AN HIV TEST.**~~

22 (3) Beginning ~~July 28, 1989~~ **OCTOBER 1, 2009**, a physician or an  
23 individual to whom the physician has delegated authority to perform  
24 a selected act, task, or function under section 16215 who orders an  
25 HIV test shall distribute to each test subject a pamphlet regarding  
26 the HIV test on a form provided by the department. The department  
27 shall develop the pamphlet, which shall include all of the

1 following:

2 (a) The purpose and nature of the test.

3 (b) The consequences of both taking and not taking the test.

4 (c) The meaning of the test results.

5 (d) Other information considered necessary or relevant by the  
6 department.

7 (e) A model ~~consent~~ form for the ~~signed writing required under~~  
8 ~~subsection (2)~~ **TEST SUBJECT TO USE IF HE OR SHE WISHES TO DECLINE**  
9 **THE HIV TEST IN WRITING**. The department shall include in the model  
10 ~~consent~~ form all of the ~~information required under subsection~~  
11 ~~(2) (a), (b), and (c)~~. **FOLLOWING:**

12 (i) **AN EXPLANATION OF THE TEST INCLUDING, BUT NOT LIMITED TO,**  
13 **THE PURPOSE OF THE TEST, THE POTENTIAL USES AND LIMITATIONS OF THE**  
14 **TEST, AND THE MEANING OF TEST RESULTS.**

15 (ii) **AN EXPLANATION OF THE RIGHTS OF THE TEST SUBJECT,**  
16 **INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:**

17 (A) **THE RIGHT TO DECLINE THE TEST AT ANY TIME BEFORE THE**  
18 **ADMINISTRATION OF THE TEST AND THE CIRCUMSTANCES UNDER WHICH THE**  
19 **TEST SUBJECT DOES NOT HAVE THE RIGHT TO DECLINE THE TEST.**

20 (B) **THE RIGHT UNDER THIS PART TO CONFIDENTIALITY OF THE TEST**  
21 **RESULTS.**

22 (C) **THE RIGHT UNDER THIS PART TO CONSENT TO AND PARTICIPATE IN**  
23 **THE TEST ON AN ANONYMOUS BASIS.**

24 (iii) **THE PERSON OR CLASS OF PERSONS TO WHOM THE TEST RESULTS**  
25 **MAY BE DISCLOSED UNDER THIS PART.**

26 (iv) **A PLACE FOR THE TEST SUBJECT TO DECLINE THE HIV TEST IN**  
27 **WRITING.**

1           (4) The department, the Michigan board of medicine, and the  
2 Michigan board of osteopathic medicine and surgery shall make the  
3 pamphlet required under subsection (3) available to physicians. The  
4 Michigan board of medicine and the Michigan board of osteopathic  
5 medicine and surgery shall notify in writing all physicians subject  
6 to this section of the requirements of this section and the  
7 availability of the pamphlet by ~~July 10, 1989~~ **OCTOBER 1, 2009**. Upon  
8 request, the Michigan board of medicine and the Michigan board of  
9 osteopathic medicine and surgery shall provide copies of the  
10 pamphlet, free of charge, to a physician who is subject to this  
11 section.

12           (5) If a test subject is given a copy of the pamphlet required  
13 under subsection (3), the physician or individual described in  
14 subsection (3) shall include in the test subject's medical record a  
15 form, signed by the test subject, indicating that he or she has  
16 been given a copy of the pamphlet.

17           (6) A test subject who executes a signed writing pursuant to  
18 subsection (2), **AS THAT SUBSECTION READ BEFORE THE EFFECTIVE DATE**  
19 **OF THE AMENDATORY ACT THAT ADDED THIS PHRASE**, is barred from  
20 subsequently bringing a civil action based on failure to obtain  
21 informed consent for the HIV test against the physician who ordered  
22 the HIV test.

23           (7) The department shall provide the pamphlet required under  
24 subsection (3). The department shall develop the pamphlet and have  
25 it ready for distribution by ~~June 28, 1989~~ **OCTOBER 1, 2009**. The  
26 department shall write and print the pamphlet in clear,  
27 nontechnical English and Spanish. The department shall distribute

1 the pamphlet, upon request and free of charge, to a physician or  
2 other person or a governmental entity that is subject to this  
3 section.

4 (8) In addition to complying with the duties imposed under  
5 subsection (7), the department shall provide copies of the pamphlet  
6 to the Michigan board of medicine and the Michigan board of  
7 osteopathic medicine and surgery. The department shall provide  
8 copies of the pamphlet to other persons upon written request, at  
9 cost, and shall also provide copies of the pamphlet free of charge,  
10 upon request, to public or private schools, colleges, and  
11 universities.

12 (9) An individual who undergoes an HIV test at a department  
13 approved testing site may request that the HIV test be performed on  
14 an anonymous basis. If an individual requests that the HIV test be  
15 performed on an anonymous basis, the staff of the department  
16 approved testing site shall administer the HIV test anonymously or  
17 under the condition that the test subject not be identified, and  
18 shall obtain consent to the test using a coded system that does not  
19 link the individual's identity with the request for the HIV test or  
20 the HIV test results. If the test results of an HIV test performed  
21 under this subsection indicate that the test subject is HIV  
22 infected, the staff of the department approved testing site shall  
23 proceed with partner notification in the same manner in which a  
24 local health department would proceed as described in section  
25 5114a(3) to (5).

26 (10) ~~Subsection (2)~~ **THIS SECTION** does not apply to an HIV test  
27 performed for the purpose of research, if the test is performed in

1 such a manner that the identity of the test subject is not revealed  
2 to the researcher and the test results are not made known to the  
3 test subject.

4 (11) A health facility may develop a standard protocol for an  
5 HIV test performed upon a patient in the health facility in  
6 preparation for an incisive or invasive surgical procedure.

7 (12) This section does not apply to an HIV test performed upon  
8 a patient in a health facility if the conditions in subdivisions  
9 (a) and (b) or the conditions in subdivisions (a) and (c) are met:

10 (a) The patient is informed in writing upon admission to the  
11 health facility that an HIV test may be performed upon the patient  
12 without ~~the written consent required under this section~~ **HIS OR HER**  
13 **RIGHT TO DECLINE** under circumstances described in subdivision (b)  
14 or (c). As used in this subdivision, "admission" means the  
15 provision of an inpatient or outpatient health care service in a  
16 health facility.

17 (b) The HIV test is performed after a health professional,  
18 health facility employee, police officer, or fire fighter, or a  
19 medical first responder, emergency medical technician, emergency  
20 medical technician specialist, or paramedic licensed under section  
21 20950 or 20952 sustains in the health facility, while treating the  
22 patient before transport to the health facility, or while  
23 transporting the patient to the health facility, a percutaneous,  
24 mucous membrane, or open wound exposure to the blood or other body  
25 fluids of the patient.

26 (c) The HIV test is performed pursuant to a request made under  
27 section 20191(2).

1           (13) ~~Subsections (1) to (3) do~~ **THIS SECTION DOES** not apply if  
2 the test subject is unable to receive or understand, or both, the  
3 pretest counseling and the pamphlet described in subsections (1) to  
4 (3) or to ~~execute the signed~~ **DECLINE THE TEST IN** writing **AS**  
5 described in subsection (2), and the legally authorized  
6 representative of the test subject is not readily available to  
7 receive the pamphlet or ~~execute written consent~~ **DECLINE** for the  
8 test subject.

9           (14) If the results of an HIV test performed pursuant to  
10 subsection (11) or (12) or under circumstances described in  
11 subsection (13) indicate that the patient is HIV infected, the  
12 health facility shall inform the patient of the positive test  
13 results and provide the patient with appropriate counseling  
14 regarding HIV infection and acquired immunodeficiency syndrome.