

# HOUSE BILL NO. 4728

June 08, 2023, Introduced by Reps. Rogers, Glanville, Brabec, McFall, Hood, Tyrone Carter, Conlin, Byrnes, Rheingans, Fitzgerald, Scott, Outman, Neeley, Steckloff and Price 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 amended by 2021 PA 128.

**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 that procures or collects blood or human tissues,  
4 organs, or other specimens for purposes of transplantation,  
5 transfusion, introduction, or injection into a human body shall  
6 test or provide for the testing of each potential donor or each

1 sample or specimen of blood or tissue, or each organ or other human  
2 specimen for the presence in the donor, sample, specimen, or organ  
3 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 must not be used  
13 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 individual who intends to receive the blood, tissue, organ, or  
24 other human specimen are informed that there was insufficient time  
25 to perform a test for HIV or an antibody to HIV, and agree in  
26 writing to the use of the blood, tissue, organ, or other human  
27 specimen. If the individual who intends to receive the blood,  
28 tissue, organ, or other human specimen under this subsection is a  
29 minor, then the parent, legal guardian, or person in loco parentis

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

13 (a) The spouse.

14 (b) An adult son or daughter.

15 (c) Either parent.

16 (d) An adult brother or sister.

17 (e) A guardian of the individual at the time the  
18 transplantation, transfusion, introduction, or injection is to be  
19 performed.

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

27 (5) If the results of a test performed on an organ under  
28 subsection (1) are positive, the organ may be used for purposes of  
29 transplantation into a human body if the individual who intends to

1 receive the organ has tested positive for HIV, the individual is  
2 informed that the test results performed on the organ under  
3 subsection (1) are positive, and the individual and the person  
4 responsible for the transplantation agree in writing to the use of  
5 the organ. If the individual who intends to receive the organ under  
6 this subsection is a minor, then the parent, legal guardian, or  
7 person in loco parentis of the minor must be informed that the test  
8 results performed on the organ under subsection (1) are positive  
9 and must agree in writing to the use of the organ.

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

18 (7) A person, including, but not limited to, a licensee under  
19 article 15 or article 17 that orders or performs, or both, a test  
20 for HIV or an antibody to HIV under this section shall, if the test  
21 result is positive, inform the donor of the positive test result.  
22 For purposes of this subsection, a positive test result is a double  
23 positive enzyme-linked immunosorbent assay test, combined with a  
24 positive western blot assay test, or a positive result under an HIV  
25 test that is considered reliable by the federal Centers for Disease  
26 Control and Prevention and is approved by the department.

27 (8) A person that violates this section is liable in a civil  
28 action for damages for the loss or damage resulting from the  
29 violation.

1 (9) As used in this section:

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

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

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