

HOUSE BILL NO. 4606

May 16, 2019, Introduced by Reps. Hoitenga, Whitsett, Eisen, Peterson, Elder, Yancey, Rendon, Garza, Chirkun, Tate, Cambensy, Kennedy, Brenda Carter, Wozniak, Neeley, Coleman, Jones and Robinson 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 added by 1988 PA 487.

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 who 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, **or Lyme disease**.

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

10 (3) Except as otherwise provided in subsection (4), if the
11 results of a test performed under subsection (1) are positive, the
12 blood, tissue, organ, or other human specimen ~~shall~~**must** not be
13 used for purposes of transplantation, transfusion, introduction, or
14 injection into a human body. If a test for HIV, ~~or~~ an antibody to
15 HIV, **or Lyme disease** cannot be performed in the time during which
16 the blood, tissue, organ, or other human specimen is viable for
17 purposes of transplantation, transfusion, introduction, or
18 injection into a human body, due to emergency or other exigent
19 circumstances, then the blood, tissue, organ, or other human
20 specimen may be used for purposes of transplantation, transfusion,
21 introduction, or injection into a human body if the person
22 responsible for the transplantation, transfusion, introduction, or
23 injection and the ~~person~~**individual** who intends to receive the
24 blood, tissue, organ, or other human specimen have been informed
25 that there was insufficient time to perform a test for HIV, ~~or~~ an
26 antibody to HIV, **or Lyme disease**, and have agreed in writing to the
27 use of the blood, tissue, organ, or other human specimen. If the
28 ~~person~~**individual** who intends to receive the blood, tissue, organ,
29 or other human specimen is a minor, then the parent, legal



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

15 (i) The spouse.

16 (ii) An adult son or daughter.

17 (iii) Either parent.

18 (iv) An adult brother or sister.

19 (v) A guardian of the ~~person~~**individual** at the time the
20 transplantation, transfusion, introduction, or injection is to be
21 performed.

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

29 (5) A person, including, but not limited to, a licensee under



1 article 15 or article 17, who procures or collects self-replicating
2 body fluids for purposes of introduction into a human body shall
3 test each potential donor, and, if the donor donates on a regular
4 basis, not less than every 3 months, for the presence in the donor
5 of HIV or an antibody to HIV. If at any time the test results are
6 positive, the self-replicating body fluids of the donor shall not
7 be used for introduction into a human body.

8 (6) A person, including, but not limited to, a licensee under
9 article 15 or article 17 who orders or performs, or both, a test
10 for HIV, ~~or~~ an antibody to HIV, **or Lyme disease** under this section
11 shall, if the test result is positive, inform the donor of the
12 positive test result. For purposes of this subsection, a positive
13 test result **for HIV or an antibody to HIV** is a double positive
14 enzyme-linked immunosorbent assay test, combined with a positive
15 western blot assay test, or a positive result under an HIV test
16 that is considered reliable by the federal ~~centers for disease~~
17 ~~control~~ **Centers for Disease Control** and is approved by the
18 department.

19 (7) A person who violates this section ~~shall be~~ **is** liable in a
20 civil action for damages for the loss or damage resulting from the
21 violation.

22 (8) As used in this section:

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

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

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

