

SECOND REGULAR SESSION

HOUSE BILL NO. 1404

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LIESE .

Read 1st time January 17, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4089L.011

AN ACT

To repeal section 191.656, RSMo, and to enact in lieu thereof one new section relating to disclosure of human immunodeficiency virus status, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 191.656, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 191.656, to read as follows:

191.656. 1. (1) All information known to, and records containing any information held or maintained by, any person, or by any agency, department, or political subdivision of the state concerning an individual's HIV infection status or the results of any individual's HIV testing shall be strictly confidential and shall not be disclosed except to:

(a) Public employees within the agency, department, or political subdivision who need to know to perform their public duties;

(b) Public employees of other agencies, departments, or political subdivisions who need to know to perform their public duties;

(c) Peace officers, as defined in section 590.100, RSMo, the attorney general or any assistant attorneys general acting on his or her behalf, as defined in chapter 27, RSMo, and prosecuting attorneys or circuit attorneys as defined in chapter 56, RSMo, and pursuant to section 191.657;

(d) Prosecuting attorneys or circuit attorneys as defined in chapter 56, RSMo, to prosecute cases pursuant to section 191.677 or 567.020, RSMo. Prosecuting attorneys or circuit attorneys may obtain from the department of health and senior services the contact information

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 and test results of individuals with whom the HIV-infected individual has had sexual intercourse
17 or deviate sexual intercourse. Any prosecuting attorney or circuit attorney who receives
18 information from the department of health and senior services pursuant to the provisions of this
19 section shall use such information only for investigative and prosecutorial purposes and such
20 information shall be considered strictly confidential and shall only be released as authorized by
21 this section;

22 (e) Persons other than public employees who are entrusted with the regular care of those
23 under the care and custody of a state agency, including but not limited to operators of day care
24 facilities, group homes, residential care facilities and adoptive or foster parents;

25 (f) As authorized by subsection 2 of this section;

26 (g) Victims of any sexual offense defined in chapter 566, RSMo, which includes sexual
27 intercourse or deviate sexual intercourse, as an element of the crime or to a victim of a section
28 566.135, RSMo, offense, in which the court, for good cause shown, orders the defendant to be
29 tested for HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, or chlamydia, once the charge is
30 filed. Prosecuting attorneys or circuit attorneys, or the department of health and senior services
31 may release information to such victims;

32 (h) Any individual who has tested positive or false positive to HIV, hepatitis B, hepatitis
33 C, syphilis, gonorrhea, or chlamydia, may request copies of any and all test results relating to
34 said infections.

35 (2) Further disclosure by public employees shall be governed by subsections 2 and 3 of
36 this section;

37 (3) Disclosure by a public employee or any other person in violation of this section may
38 be subject to civil actions brought under subsection 6 of this section, unless otherwise required
39 by chapter 330, 332, 334, or 335, RSMo, pursuant to discipline taken by a state licensing board.

40 2. (1) Unless the person acted in bad faith or with conscious disregard, no person shall
41 be liable for violating any duty or right of confidentiality established by law for disclosing the
42 results of an individual's HIV testing:

43 (a) To the department of health and senior services;

44 (b) To health care personnel working directly with the infected individual who have a
45 reasonable need to know the results for the purpose of providing direct patient health care;

46 (c) Pursuant to the written authorization of the subject of the test result or results;

47 (d) To the spouse of the subject of the test result or results;

48 (e) To the subject of the test result or results;

49 (f) To the parent or legal guardian or custodian of the subject of the testing, if he is an
50 unemancipated minor;

51 (g) To the victim of any sexual offense defined in chapter 566, RSMo, which includes
52 sexual intercourse or deviate sexual intercourse, as an element of the crime or to a victim of a
53 section 566.135, RSMo, offense, in which the court, for good cause shown, orders the defendant
54 to be tested for HIV, B, hepatitis C, syphilis, gonorrhea, or chlamydia, once the charge is filed;

55 (h) To employees of a state licensing board in the execution of their duties under chapter
56 330, 332, 334, or 335, RSMo, pursuant to discipline taken by a state licensing board;

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58 The department of health and senior services and its employees shall not be held liable for
59 disclosing an HIV-infected person's HIV status to individuals with whom that person had sexual
60 intercourse or deviate sexual intercourse;

61 (2) Paragraphs (b) and (d) of subdivision (1) of this subsection shall not be construed in
62 any court to impose any duty on a person to disclose the results of an individual's HIV testing
63 to a spouse or health care professional or other potentially exposed person, parent or guardian;

64 (3) No person to whom the results of an individual's HIV testing has been disclosed
65 pursuant to paragraphs (b) and (c) of subdivision (1) of this subsection shall further disclose such
66 results; except that prosecuting attorneys or circuit attorneys may disclose such information to
67 defense attorneys defending actions pursuant to section 191.677 or 567.020, RSMo, under the
68 rules of discovery, or jurors or court personnel hearing cases pursuant to section 191.677 or
69 567.020, RSMo. Such information shall not be used or disclosed for any other purpose;

70 (4) When the results of HIV testing, disclosed pursuant to paragraph (b) of subdivision
71 (1) of this subsection, are included in the medical record of the patient who is subject to the test,
72 the inclusion is not a disclosure for purposes of such paragraph so long as such medical record
73 is afforded the same confidentiality protection afforded other medical records.

74 3. All communications between the subject of HIV testing and a physician, hospital, or
75 other person authorized by the department of health and senior services who performs or
76 conducts HIV sampling shall be privileged communications.

77 4. The identity of any individual participating in a research project approved by an
78 institutional review board shall not be reported to the department of health and senior services
79 by the physician conducting the research project.

80 5. The subject of HIV testing who is found to have HIV infection and is aware of his or
81 her HIV status shall disclose such information to any health care professional from whom such
82 person receives health care services, **or in the case of a minor, the parent or legal guardian**
83 **of the minor shall disclose such information.** Said notification shall be made prior to receiving
84 services from such health care professional if the HIV-infected person is medically capable of
85 conveying that information or as soon as he or she becomes capable of conveying that
86 information. **Any person who violates this subsection is guilty of a class A misdemeanor.**

87 6. Any individual aggrieved by a violation of this section or regulations promulgated by
88 the department of health and senior services may bring a civil action for damages. If it is found
89 in a civil action that:

90 (1) A person has negligently violated this section, the person is liable, for each violation,
91 for:

92 (a) The greater of actual damages or liquidated damages of one thousand dollars; and

93 (b) Court costs and reasonable attorney's fees incurred by the person bringing the action;

94 and

95 (c) Such other relief, including injunctive relief, as the court may deem appropriate; or

96 (2) A person has willfully or intentionally or recklessly violated this section, the person
97 is liable, for each violation, for:

98 (a) The greater of actual damages or liquidated damages of five thousand dollars; and

99 (b) Exemplary damages; and

100 (c) Court costs and reasonable attorney's fees incurred by the person bringing the action;

101 and

102 (d) Such other relief, including injunctive relief, as the court may deem appropriate.

103 7. No civil liability shall accrue to any health care provider as a result of making a good
104 faith report to the department of health and senior services about a person reasonably believed
105 to be infected with HIV, or cooperating in good faith with the department in an investigation
106 determining whether a court order directing an individual to undergo HIV testing will be sought,
107 or in participating in good faith in any judicial proceeding resulting from such a report or
108 investigations; and any person making such a report, or cooperating with such an investigation
109 or participating in such a judicial proceeding, shall be immune from civil liability as a result of
110 such actions so long as taken in good faith.

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