

SECOND REGULAR SESSION

HOUSE BILL NO. 2868

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE STINNETT.

5828H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 191.656, RSMo, and to enact in lieu thereof one new section relating to the disclosure of medical information to health carriers.

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Section A. Section 191.656, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 191.656, to read as follows: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, the attorney general or any assistant attorneys general acting on his or her behalf, as defined in chapter 27, and prosecuting attorneys or circuit attorneys as defined in chapter 56 and pursuant to section 191.657;

(d) Prosecuting attorneys or circuit attorneys as defined in chapter 56 to prosecute cases pursuant to section 191.677 or 567.020. Prosecuting attorneys or circuit attorneys may obtain from the department of health and senior services the contact information and test results of individuals with whom the HIV-infected individual has had sexual intercourse or deviate sexual intercourse. Any prosecuting attorney or circuit attorney who receives information from the department of health and senior services pursuant to the provisions of

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.

18 this section shall use such information only for investigative and prosecutorial purposes and
19 such information shall be considered strictly confidential and shall only be released as
20 authorized by this section;

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

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

25 (g) Victims of any sexual offense defined in chapter 566, which includes sexual
26 intercourse or deviate sexual intercourse, as an element of the crime or to a victim of a section
27 545.940 offense, in which the court, for good cause shown, orders the defendant to be tested
28 for HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, or chlamydia, once the charge is filed.
29 Prosecuting attorneys or circuit attorneys, or the department of health and senior services may
30 release information to such victims;

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

34 (i) **Health carriers, as defined in section 376.1350, for purposes of treatment,**
35 **payment, or health care operations, as described in the federal Health Insurance**
36 **Portability and Accountability Act of 1996 and its implementing regulations.**

37 (2) Further disclosure by public employees shall be governed by subsections 2 and 3
38 of this section[;].

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

43 2. (1) Unless the person acted in bad faith or with conscious disregard, no person
44 shall be liable for violating any duty or right of confidentiality established by law for
45 disclosing the results of an individual's HIV testing:

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

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

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

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

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

52 (f) To the parent or legal guardian or custodian of the subject of the testing, if he **or**
53 **she** is an unemancipated minor;

54 (g) To the victim of any sexual offense defined in chapter 566, which includes sexual
55 intercourse or deviate sexual intercourse, as an element of the crime or to a victim of a section
56 545.940 offense, in which the court, for good cause shown, orders the defendant to be tested
57 for HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, or chlamydia, once the charge is filed;

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

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

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

68 (3) No person to whom the results of an individual's HIV testing has been disclosed
69 pursuant to paragraphs (b) and (c) of subdivision (1) of this subsection shall further disclose
70 such results; except that prosecuting attorneys or circuit attorneys may disclose such
71 information to defense attorneys defending actions pursuant to section 191.677 or 567.020
72 under the rules of discovery, or jurors or court personnel hearing cases pursuant to section
73 191.677 or 567.020. Such information shall not be used or disclosed for any other purpose;

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

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

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

85 5. The subject of HIV testing who is found to have HIV infection and is aware of his
86 or her HIV status shall disclose such information to any health care professional from whom
87 such person receives health care services. Said notification shall be made prior to receiving
88 services from such health care professional if the HIV-infected person is medically capable of
89 conveying that information or as soon as he or she becomes capable of conveying that
90 information.

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

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

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

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

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

100 or

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

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

104 (b) Exemplary damages; and

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

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

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

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