

SENATE BILL NO. 1255

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR RAZER.

4473S.01H

KRISTINA MARTIN, Secretary

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Section A. Section 191.656, RSMo, is repealed and one new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

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

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

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

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

19 (d) Prosecuting attorneys or circuit attorneys as
20 defined in chapter 56 to prosecute cases pursuant to section
21 191.677 or 567.020. Prosecuting attorneys or circuit
22 attorneys may obtain from the department of health and
23 senior services the contact information and test results of
24 individuals with whom the HIV-infected individual has had
25 sexual intercourse or deviate sexual intercourse. Any
26 prosecuting attorney or circuit attorney who receives
27 information from the department of health and senior
28 services pursuant to the provisions of this section shall
29 use such information only for investigative and
30 prosecutorial purposes and such information shall be
31 considered strictly confidential and shall only be released
32 as authorized by this section;

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

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

39 (g) Victims of any sexual offense defined in chapter
40 566, which includes sexual intercourse or deviate sexual
41 intercourse, as an element of the crime or to a victim of a
42 section 545.940 offense, in which the court, for good cause
43 shown, orders the defendant to be tested for HIV, hepatitis
44 B, hepatitis C, syphilis, gonorrhea, or chlamydia, once the
45 charge is filed. Prosecuting attorneys or circuit
46 attorneys, or the department of health and senior services
47 may release information to such victims;

48 (h) Any individual who has tested positive or false
49 positive to HIV, hepatitis B, hepatitis C, syphilis,

50 gonorrhoea, or chlamydia, may request copies of any and all
51 test results relating to said infections;

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

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

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

64 2. (1) Unless the person acted in bad faith or with
65 conscious disregard, no person shall be liable for violating
66 any duty or right of confidentiality established by law for
67 disclosing the results of an individual's HIV testing:

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

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

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

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

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

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

80 (g) To the victim of any sexual offense defined in
81 chapter 566, which includes sexual intercourse or deviate

82 sexual intercourse, as an element of the crime or to a
83 victim of a section 545.940 offense, in which the court, for
84 good cause shown, orders the defendant to be tested for HIV,
85 hepatitis B, hepatitis C, syphilis, gonorrhea, or chlamydia,
86 once the charge is filed;

87 (h) To employees of a state licensing board in the
88 execution of their duties under chapter 330, 332, 334, or
89 335 pursuant to discipline taken by a state licensing board;

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

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

99 (3) No person to whom the results of an individual's
100 HIV testing has been disclosed pursuant to paragraphs (b)
101 and (c) of subdivision (1) of this subsection shall further
102 disclose such results; except that prosecuting attorneys or
103 circuit attorneys may disclose such information to defense
104 attorneys defending actions pursuant to section 191.677 or
105 567.020 under the rules of discovery, or jurors or court
106 personnel hearing cases pursuant to section 191.677 or
107 567.020. Such information shall not be used or disclosed
108 for any other purpose;

109 (4) When the results of HIV testing, disclosed
110 pursuant to paragraph (b) of subdivision (1) of this
111 subsection, are included in the medical record of the
112 patient who is subject to the test, the inclusion is not a

113 disclosure for purposes of such paragraph so long as such
114 medical record is afforded the same confidentiality
115 protection afforded other medical records.

116 3. All communications between the subject of HIV
117 testing and a physician, hospital, or other person
118 authorized by the department of health and senior services
119 who performs or conducts HIV sampling shall be privileged
120 communications.

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

125 5. The subject of HIV testing who is found to have HIV
126 infection and is aware of his or her HIV status shall
127 disclose such information to any health care professional
128 from whom such person receives health care services. Said
129 notification shall be made prior to receiving services from
130 such health care professional if the HIV-infected person is
131 medically capable of conveying that information or as soon
132 as he or she becomes capable of conveying that information.

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

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

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

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

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

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

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

150 (b) Exemplary damages; and

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

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

155 7. No civil liability shall accrue to any health care
156 provider as a result of making a good faith report to the
157 department of health and senior services about a person
158 reasonably believed to be infected with HIV, or cooperating
159 in good faith with the department in an investigation
160 determining whether a court order directing an individual to
161 undergo HIV testing will be sought, or in participating in
162 good faith in any judicial proceeding resulting from such a
163 report or investigations; and any person making such a
164 report, or cooperating with such an investigation or
165 participating in such a judicial proceeding, shall be immune
166 from civil liability as a result of such actions so long as
167 taken in good faith.

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