
By: Senators Hollinger, Hoffman, Kelley, Teitelbaum, Sfikas, and Pinsky

Introduced and read first time: January 10, 1996

Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **AIDS - Pregnant Women - Counseling and Testing**

3 FOR the purpose of requiring certain health care providers to counsel pregnant women
4 in regard to being tested for the presence of the human immunodeficiency virus
5 (HIV); specifying certain information that the counseling must include; establishing
6 the confidentiality of certain test records; authorizing the introduction into evidence
7 of certain test results under certain circumstances; establishing a certain immunity
8 for health care providers and health care facilities under certain circumstances; and
9 generally relating to the provision of counseling to pregnant women under certain
10 circumstances.

11 BY adding to

12 Article - Health - General
13 Section 18-338.2
14 Annotated Code of Maryland
15 (1994 Replacement Volume and 1995 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article - Health - General**

19 18-338.2.

20 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
21 INDICATED.

22 (2) "HEALTH CARE FACILITY" MEANS A FACILITY OR OFFICE WHERE
23 HEALTH OR MEDICAL CARE IS PROVIDED TO PATIENTS BY A HEALTH CARE
24 PROVIDER, INCLUDING:

25 (I) A HOSPITAL AS DEFINED IN § 19-301 OF THIS ARTICLE;

26 (II) A FACILITY OPERATED BY THE DEPARTMENT OR A HEALTH
27 OFFICER; AND

28 (III) THE OFFICE OF A HEALTH CARE PROVIDER.

2

1 (3) "HEALTH CARE PROVIDER" MEANS A PHYSICIAN, NURSE, OR
2 DESIGNEE OF A HEALTH CARE FACILITY.

3 (4) "HIV" MEANS THE HUMAN IMMUNODEFICIENCY VIRUS THAT
4 CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS).

5 (5) "PRENATAL CARE" MEANS OBSTETRIC AND GYNECOLOGIC SERVICE
6 PERFORMED AS PART OF A PRENATAL CARE PROGRAM, INCLUDING:

7 (I) SCREENING;

8 (II) PHYSICAL EXAMINATION;

9 (III) LABORATORY AND DIAGNOSTIC TESTING PROCEDURES AND
10 INTERPRETATION; AND

11 (IV) COUNSELING.

12 (B) (1) AS PART OF A HEALTH CARE PROVIDER'S PATIENT ACCEPTANCE
13 PROCEDURES OR PROTOCOL, A HEALTH CARE PROVIDER SHALL PROVIDE A
14 PREGNANT WOMAN WITH COUNSELING CONCERNING BEING TESTED FOR THE
15 PRESENCE OF HIV AS PART OF THE WOMAN'S PRENATAL CARE PROGRAM.

16 (2) THE COUNSELING SHALL INCLUDE:

17 (I) INFORMATION THAT:

18 1. THE PREGNANT WOMAN IS NOT REQUIRED TO CONSENT
19 TO A TEST FOR THE PRESENCE OF HIV; AND

20 2. THE PREGNANT WOMAN WILL NOT BE DENIED PRENATAL
21 CARE BY THE HEALTH CARE PROVIDER OR AT THE HEALTH CARE FACILITY
22 BECAUSE THE WOMAN REFUSES TO HAVE A TEST PERFORMED; AND

23 (II) EDUCATION ON:

24 1. THE EFFECT OF A POSITIVE HIV TEST RESULT ON THE
25 PREGNANT WOMAN AND THE FETUS IN REGARD TO THE RISK OF TRANSMISSION OF
26 HIV TO THE FETUS; AND

27 2. RECOGNIZED METHODS OF REDUCING THAT RISK,
28 INCLUDING THE USE OF PHARMACEUTICALS DURING PREGNANCY KNOWN TO
29 REDUCE THE RISK OF TRANSMISSION OF HIV TO THE FETUS.

30 (C) (1) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (2) OF THIS
31 SUBSECTION, THE RECORD OF AN HIV TEST PERFORMED UNDER THIS SECTION IS
32 CONFIDENTIAL AND NOT DISCOVERABLE OR ADMISSIBLE IN EVIDENCE IN ANY
33 CRIMINAL, CIVIL, OR ADMINISTRATIVE ACTION.

34 (2) PROVIDED THAT THE IDENTITY OR ANY OTHER INFORMATION
35 THAT COULD READILY BE ASSOCIATED WITH THE IDENTITY OF THE PREGNANT
36 WOMAN IS NOT DISCLOSED, THE RESULTS OF AN HIV TEST PERFORMED UNDER THIS
37 SECTION MAY BE INTRODUCED INTO EVIDENCE IN ANY CRIMINAL, CIVIL, OR

3

1 ADMINISTRATIVE ACTION, INCLUDING THE ADJUDICATION OF A WORKERS'
2 COMPENSATION CLAIM.

3 (D) A HEALTH CARE PROVIDER, INCLUDING A HEALTH CARE FACILITY,
4 ACTING IN GOOD FAITH TO PROVIDE THE COUNSELING REQUIRED UNDER
5 SUBSECTION (B) OF THIS SECTION MAY NOT BE HELD LIABLE IN ANY CAUSE OF
6 ACTION RELATED TO A WOMAN'S DECISION TO CONSENT OR NOT TO CONSENT TO
7 HAVE AN HIV TEST.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 1996.