

HOUSE BILL 802

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8lr2363

By: **Delegates Nathan–Pulliam, Benson, Donoghue, Glenn, Jones, Kullen,
Montgomery, Morhaim, Oaks, Tarrant, and V. Turner**
Introduced and read first time: February 6, 2008
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Women’s Health – HIV Testing and Infant Mortality Reduction**

3 FOR the purpose of requiring a pregnant woman to be tested for the presence of HIV
4 at certain times during the pregnancy as part of the woman’s prenatal care
5 program under certain circumstances; requiring certain women to receive
6 certain counseling and to be tested for the presence of HIV; providing that a
7 pregnant woman may decline to be tested for the presence of HIV; requiring the
8 declination to be tested for the presence of HIV to be documented in the
9 woman’s medical record; providing that a woman may not be denied testing for
10 the presence of HIV for a certain reason; providing that a certain record is
11 confidential and not discoverable or admissible in evidence in certain actions;
12 providing for a certain immunity from liability in certain causes of action for
13 certain health care providers; requiring the Department of Health and Mental
14 Hygiene to convene a certain workgroup to conduct a certain study; requiring
15 the Department to submit a certain report to certain committees of the General
16 Assembly on or before a certain date; and generally relating to pregnant women,
17 HIV testing, and infant mortality reduction.

18 BY repealing and reenacting, with amendments,
19 Article – Health – General
20 Section 18–338.2
21 Annotated Code of Maryland
22 (2005 Replacement Volume and 2007 Supplement)

23 Preamble

24 WHEREAS, Of the estimated 1.2 million people living with HIV/AIDS in the
25 United States in 2005, about 300,000 were women and the vast majority of the women
26 were between 25 and 44 years of age; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, An estimated 6,000 to 7,000 HIV–infected women give birth each
2 year in the United States, resulting in 280 to 370 new prenatal infections; and

3 WHEREAS, The Centers for Disease Control and Prevention recommends that
4 HIV screening should be a routine part of prenatal testing; and

5 WHEREAS, Antiretroviral therapy lowers the risk of mother–to–child
6 transmission of HIV to less than 2 percent; and

7 WHEREAS, Despite overall improvements in infant mortality, there continues
8 to be a disparity in infant mortality rates between Caucasian and African American
9 infants; and

10 WHEREAS, The infant mortality rate among Caucasian infants is 4.9 deaths
11 per 1,000 births and the infant mortality rate among African American infants is 11.4
12 deaths per 1,000 births; now, therefore,

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

15 **Article – Health – General**

16 18–338.2.

17 (a) (1) In this section the following words have the meanings indicated.

18 (2) “Health care facility” means a facility or office where health or
19 medical care is provided to patients by a health care provider, including:

20 (i) A hospital as defined in § 19–301 of this article;

21 (ii) A facility operated by the Department or a health officer;
22 and

23 (iii) The office of a health care provider.

24 (3) “Health care provider” means a physician, nurse, or designee of a
25 health care facility.

26 (4) “HIV” means the human immunodeficiency virus that causes
27 acquired immune deficiency syndrome (AIDS).

28 (5) “Prenatal care” means obstetric and gynecologic service performed
29 as part of a prenatal care program, including:

30 (i) Screening;

31 (ii) Physical examination;

1 (iii) Laboratory and diagnostic testing procedures and
2 interpretation; and

3 (iv) Counseling.

4 (B) (1) **SUBJECT TO PARAGRAPH (2)(I) OF THIS SUBSECTION:**

5 (I) **A PREGNANT WOMAN SHALL BE TESTED FOR THE**
6 **PRESENCE OF HIV AS PART OF THE WOMAN'S PRENATAL CARE PROGRAM:**

7 1. **AS EARLY AS POSSIBLE IN THE PREGNANCY; AND**

8 2. **AGAIN DURING THE THIRD TRIMESTER.**

9 (II) **A PREGNANT WOMAN WHO PRESENTS HERSELF FOR**
10 **DELIVERY WHO HAS NOT BEEN COUNSELED OR TESTED FOR HIV AS REQUIRED**
11 **BY THIS SECTION AS PART OF A PRENATAL PROGRAM SHALL BE PROVIDED WITH**
12 **THE COUNSELING REQUIRED UNDER SUBSECTION (C)(2) OF THIS SECTION AS**
13 **SOON AS IS MEDICALLY APPROPRIATE AND SHALL BE TESTED FOR HIV AS SOON**
14 **AS IS MEDICALLY APPROPRIATE.**

15 (2) (I) **A PREGNANT WOMAN MAY DECLINE TO BE TESTED FOR**
16 **THE PRESENCE OF HIV.**

17 (II) **IF A PREGNANT WOMAN DECLINES TO BE TESTED FOR**
18 **THE PRESENCE OF HIV, THE DECLINATION SHALL BE DOCUMENTED IN HER**
19 **MEDICAL RECORD.**

20 (3) **A WOMAN MAY NOT BE DENIED TESTING FOR HIV BASED ON**
21 **HER ECONOMIC STATUS.**

22 [(b)] (C) (1) **As part of a health care provider's patient acceptance**
23 **procedures or protocol, a health care provider shall provide a pregnant woman with**
24 **counseling concerning being tested for the presence of HIV as part of the woman's**
25 **prenatal care program.**

26 (2) **The counseling shall include:**

27 (i) **Information that:**

28 1. **The pregnant woman is not required to consent to a**
29 **test for the presence of HIV; and**

1 2. The pregnant woman will not be denied prenatal care
2 by the health care provider or at the health care facility because the woman refuses to
3 have a test performed; and

4 (ii) Education on:

5 1. The effect of a positive HIV test result on the
6 pregnant woman and the fetus concerning the risk of transmission of HIV to the fetus;
7 and

8 2. Recognized methods of reducing that risk, including
9 the use of pharmaceuticals during pregnancy known to reduce the risk of transmission
10 of HIV to the fetus.

11 [(c)] (D) (1) Except as otherwise provided in paragraph (2) of this
12 subsection, the record of an HIV test performed under this section is confidential and
13 not discoverable or admissible in evidence in any criminal, civil, or administrative
14 action.

15 (2) Provided that the identity or any other information that could
16 readily be associated with the identity of the pregnant woman is not disclosed, the
17 results of an HIV test performed under this section may be introduced into evidence in
18 any criminal, civil, or administrative action, including the adjudication of a workers'
19 compensation claim.

20 **(3) THE RECORD OF A DECLINATION TO BEING TESTED FOR HIV**
21 **UNDER THIS SECTION IS CONFIDENTIAL AND NOT DISCOVERABLE OR**
22 **ADMISSIBLE IN EVIDENCE IN ANY CRIMINAL, CIVIL, OR ADMINISTRATIVE**
23 **ACTION.**

24 [(d)] (E) A health care provider, including a health care facility, acting in
25 good faith to provide the **TESTING OR** counseling required under [subsection (b) of]
26 this section may not be held liable in any cause of action related to a woman's decision
27 to consent or not to consent to have an HIV test.

28 SECTION 2. AND BE IT FURTHER ENACTED, That:

29 (a) The Department of Health and Mental Hygiene shall convene a work
30 group composed of stakeholders to perform a comprehensive study on methods to
31 reduce the infant mortality rate in the State, including methods to reduce the racial
32 disparity in infant mortality rates.

33 (b) In conducting the study required under subsection (a) of this section, the
34 Department shall:

1 (1) identify current State programs and other programs that address
2 infant mortality, including programs that use pregnancy navigators throughout a
3 woman’s pregnancy;

4 (2) consider the recommendations of the Centers for Disease Control
5 and Prevention related to the reduction of infant mortality;

6 (3) examine the feasibility and desirability of establishing a
7 permanent oversight advisory group or committee on infant mortality;

8 (4) make recommendations on how to:

9 (i) most effectively coordinate the current infant mortality
10 programs offered in the State; and

11 (ii) implement the recommendations of the Centers for Disease
12 Control and Prevention related to the reduction of infant mortality.

13 (c) On or before December 1, 2008, the Department shall report its findings
14 and recommendations, in accordance with § 2–1246 of the State Government Article,
15 to the Senate Finance Committee and House Health and Government Operations
16 Committee.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 July 1, 2008.