

SENATE BILL 856

J1

(6lr2912)

ENROLLED BILL

— *Education, Health, and Environmental Affairs/Health and Government Operations* —

Introduced by **Senators Kelley, Ferguson, and Nathan–Pulliam**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Public Health – HIV Testing During Pregnancy**

3 FOR the purpose of requiring certain health care providers to obtain consent for HIV
4 testing in accordance with certain provisions of law and to test pregnant patients,
5 except under certain circumstances, during the first and third trimesters of
6 pregnancy; repealing certain provisions of law made obsolete by this Act; *providing*
7 *that certain health care providers may not be subject to certain disciplinary action*
8 *under certain circumstances;* and generally relating to HIV testing during
9 pregnancy.

10 BY repealing and reenacting, with amendments,

11 Article – Health – General

12 Section 18–338.2

13 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 (2015 Replacement Volume)

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

4 **Article – Health – General**

5 18–338.2.

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

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

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

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

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

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

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

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

18 (i) Screening;

19 (ii) Physical examination;

20 (iii) Laboratory and diagnostic testing procedures and interpretation;

21 and

22 (iv) Counseling.

23 (b) **(1) ~~EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,~~**
24 **A health care provider who provides prenatal medical care shall:**

25 ~~(1)~~ **(1)** [Notify each pregnant patient that she will be tested for HIV
26 infection as part of the routine prenatal blood tests;

27 (2) Advise the pregnant patient that she has the right to refuse the test for
28 HIV infection without penalty;

1 (3) Obtain [informed] consent from [the] A pregnant patient [to test her]
2 for HIV [infection] **TESTING IN ACCORDANCE WITH § 18-336 OF THIS SUBTITLE;**

3 ~~[(4)] ~~(2)~~~~ **(II)** Test the patient **DURING THE FIRST AND THIRD**
4 **TRIMESTERS**, unless the patient declines the [test] **TESTS; AND**

5 [(5) Document in the medical record if the patient declines the test;

6 (6) Offer an HIV test in the third trimester to a pregnant woman who was
7 not tested earlier in her pregnancy;

8 (7) Consider routinely offering a repeat HIV test in the third trimester to
9 all pregnant women:

10 (i) At health care facilities in areas of high rates of HIV prevalence;
11 and

12 (ii) Who are at a high risk of acquiring HIV; and]

13 ~~[(8)] ~~(3)~~~~ **(III)** Provide a referral for treatment and supportive services,
14 including case management services.

15 **(2) PARAGRAPH (1) OF THIS SUBSECTION:**

16 **(I) APPLIES TO ROUTINE PRENATAL MEDICAL CARE VISITS;**
17 **AND**

18 **(II) DOES NOT APPLY TO THE INCIDENTAL OR EPISODIC**
19 **PROVISION OF PRENATAL MEDICAL CARE GIVEN TO A PREGNANT PATIENT BY A**
20 **HEALTH CARE PROVIDER.**

21 (c) A health care provider who provides labor and delivery services to pregnant
22 women shall offer:

23 (1) A rapid HIV test to pregnant women with unknown or undocumented
24 HIV status during labor and delivery; and

25 (2) Antiretroviral prophylaxis prior to receiving the results of the
26 confirmatory test if a rapid HIV test during labor and delivery is positive.

27 (d) (1) As part of a health care provider's patient acceptance procedures or
28 protocol, a health care provider shall provide a pregnant woman with counseling concerning
29 being tested for the presence of HIV as part of the woman's prenatal care program.

30 (2) The counseling shall include:

1 (i) Information required for pretest counseling under § 18–336 of
2 this subtitle; and

3 (ii) Education on:

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

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

9 (e) (1) Except as otherwise provided in paragraph (2) of this subsection, the
10 record of an HIV test performed under this section is confidential and not discoverable or
11 admissible in evidence in any criminal, civil, or administrative action.

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

16 (f) **(1)** A health care provider, including a health care facility, acting in good
17 faith to provide the counseling required under subsection (d) of this section may not be held
18 liable in any cause of action related to a woman's decision to consent or not to consent to
19 have an HIV test.

20 **(2) A HEALTH CARE PROVIDER MAY NOT BE SUBJECT TO**
21 **DISCIPLINARY ACTION BY THE PROFESSIONAL LICENSING BOARD THAT LICENSES**
22 **THE HEALTH CARE PROVIDER FOR NOT TESTING A PREGNANT PATIENT FOR HIV**
23 **DURING THE THIRD TRIMESTER IN ACCORDANCE WITH THIS SECTION.**

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2016.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.