

SENATE BILL 856

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CF HB 180

By: **Senators Kelley, Ferguson, and Nathan–Pulliam**

Introduced and read first time: February 5, 2016

Assigned to: Finance

A BILL ENTITLED

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; and
7 generally relating to HIV testing during pregnancy.

8 BY repealing and reenacting, with amendments,

9 Article – Health – General

10 Section 18–338.2

11 Annotated Code of Maryland

12 (2015 Replacement Volume)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
14 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 medical
19 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; and

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (3) "Health care provider" means a physician, nurse, or designee of a health
2 care facility.

3 (4) "HIV" means the human immunodeficiency virus that causes acquired
4 immune deficiency syndrome (AIDS).

5 (5) "Prenatal care" means obstetric and gynecologic service performed as
6 part of a prenatal care program, including:

7 (i) Screening;

8 (ii) Physical examination;

9 (iii) Laboratory and diagnostic testing procedures and interpretation;
10 and

11 (iv) Counseling.

12 (b) A health care provider who provides prenatal medical care shall:

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

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

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

19 [(4)] (2) Test the patient **DURING THE FIRST AND THIRD TRIMESTERS,**
20 unless the patient declines the [test] **TESTS; AND**

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

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

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

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

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

1 ~~[(8)]~~ (3) Provide a referral for treatment and supportive services,
2 including case management services.

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

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

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

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

12 (2) The counseling shall include:

13 (i) Information required for pretest counseling under § 18-336 of
14 this subtitle; and

15 (ii) Education on:

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

18 2. Recognized methods of reducing that risk, including the
19 use of pharmaceuticals during pregnancy known to reduce the risk of transmission of HIV
20 to the fetus.

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

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

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

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