

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

Reassigned: Education, Health, and Environmental Affairs, February 12, 2016

Committee Report: Favorable

Senate action: Adopted

Read second time: March 15, 2016

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; 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.

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.



1 (2) "Health care facility" means a facility or office where health or medical
2 care is provided to patients by a health care provider, including:

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

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

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

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

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

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

12 (i) Screening;

13 (ii) Physical examination;

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

15 and

16 (iv) Counseling.

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

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

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

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

24 **[(4) (2) Test the patient DURING THE FIRST AND THIRD TRIMESTERS,**
25 **unless the patient declines the [test] TESTS; AND**

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

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

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

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

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

6 **[(8) (3)** Provide a referral for treatment and supportive services,
7 including case management services.

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

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

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

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

17 (2) The counseling shall include:

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

20 (ii) Education on:

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

23 2. Recognized methods of reducing that risk, including the
24 use of pharmaceuticals during pregnancy known to reduce the risk of transmission of HIV
25 to the fetus.

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.