

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

SENATE BILL NO. 2208
(Senators DeMers, Thane)
(Representatives Gorder, Kerzman, Rose, Svedjan)

AN ACT to create and enact two new sections to chapter 23-07.1 of the North Dakota Century Code, relating to the control of tuberculosis; to amend and reenact sections 23-07.1-01, 23-07.1-04, 23-07.1-05, 23-07.1-06, 23-07.1-07, 23-07.1-08, 23-07.1-09, 23-07.1-10, 23-07.1-12, 23-07.1-13, and 23-07.1-14 of the North Dakota Century Code, relating to the control and eradication of tuberculosis; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07.1-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-01. Declaration of legislative intent. It is hereby declared that it is the intent of the legislative assembly, as follows: It is the policy of the state of North Dakota to treat persons having tuberculosis ~~in a communicable and contagious stage~~ as dangerous to the health and welfare of the citizens of the state. It is also the policy of the state to declare that all cases of tuberculosis ~~in a communicable or contagious stage~~ should be treated in a licensed hospital, ~~or at home if such home treatment is approved by the state health officer under the guidelines of the state health council~~ an appropriate facility in order to complete the course of therapy for tuberculosis to lower the risk of relapse. To this end, it is declared that isolation provisions to achieve treatment of such ~~communicable or contagious~~ tuberculous persons should be accomplished to the fullest extent regardless of such person's ability to pay. It is further declared that such persons with ~~communicable or contagious~~ tuberculosis must be given full opportunity to enter treatment voluntarily and to seek treatment from physicians and hospitals of their own choice at their own expense. In order to ~~prevent~~ effectively prevent the spread of this disease it is necessary that the state:

1. Further the discovery, care, supervision, and treatment of persons having tuberculosis ~~in a communicable or contagious stage~~.
2. Encourage the use of all available public and private facilities to that end.
3. Regard this tuberculosis program as one of public health and one to be dealt with according to public health requirements rather than those of indigency.

SECTION 2. A new section to chapter 23-07.1 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter:

1. "Appropriate facility" includes a licensed hospital, a public or private outpatient clinic, a long term care facility, a correctional facility, or a person's home, and may also include directly observed therapy under the supervision of the department.
2. "Department" means the state department of health, including local public health boards.
3. "Medically approved course of treatment" means a treatment regimen or therapy prescribed by a licensed physician.
4. "Tuberculosis" includes those cases in which a person is found to have tuberculosis based upon laboratory testing, clinical evidence, or as diagnosed by a physician, the department, or a local health officer.

SECTION 3. AMENDMENT. Section 23-07.1-04 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-04. State health officer - Designee - Responsibility. The state health officer or his designee, ~~under the guidelines of the state health council,~~ is responsible for the inpatient and outpatient care of persons afflicted or suspected of being afflicted with tuberculosis ~~in a contagious state~~. If the state health officer determines that suspected or actual tuberculous patients may be adequately cared for on an inpatient basis by contract ~~basis~~ with general hospitals or other appropriate facilities, authority for contracting with such ~~hospitals facilities~~ is granted to the state health officer. In addition, the state health officer is authorized to establish and maintain the necessary outpatient clinics for diagnostic workup and evaluation on all suspected or actual tuberculous patients in the state. The state health officer shall pay the contract fee to general hospitals or other appropriate facilities and provide funds to the outpatient evaluation clinics from funds to be appropriated for this purpose by the legislative assembly. The state's claim on patient benefits as provided in section 23-07.1-03 applies insofar as applicable to tuberculous patients in general hospitals and for services rendered in outpatient clinics. The state health officer or his a designee, ~~under the guidelines of the state health council,~~ has the power to:

1. Do any act necessary and proper in the performance of the functions imposed upon the state health officer by the provisions of this chapter.
2. Issue ~~temporary~~ orders and compel obedience thereto.
3. Administer oaths.

SECTION 4. AMENDMENT. Section 23-07.1-05 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-05. Reports - ~~Temporary orders~~ Orders for the custody of persons. Upon a report to or receipt of information by the state health officer or any physician in the state that any person is ~~afflicted with~~ reasonably suspected to have or to have been exposed to tuberculosis ~~and as a source of infection endangers other persons~~, a report must be made to the state health officer. Upon the receipt of the report, the state health officer shall investigate the matter and if the state health officer is convinced that ~~an active case of infectious~~ the person may have, or may have been exposed to, tuberculosis ~~in a communicable and contagious stage which endangers other persons exists~~, the state health officer shall request the person to voluntarily seek appropriate care and treatment. If the person refuses to accept voluntary care and treatment, the state health officer, ~~under the guidelines of the state health council,~~ may issue a temporary order for care and treatment as determined by the state health officer. If the state health officer's temporary order is ignored, the state health officer may issue an order directing the sheriff or any peace officer of the county where the person alleged tubercular person to have tuberculosis resides to compel the attendance of the ~~alleged tubercular~~ person and may provide for suitable housing and care of the person until a hearing is held pursuant to section 23-07.1-08.

Prior to issuing a ~~temporary~~ final order ~~under this section,~~ the state health officer or a designee, ~~under the guidelines of the state health council,~~ shall hear all relevant testimony for or against the ~~temporary~~ final order. The examination and hearing on the order must be in the presence of the person alleged tubercular person to have tuberculosis. The alleged tubercular person and any relative may resist the order and the parties may be represented by counsel.

SECTION 5. AMENDMENT. Section 23-07.1-06 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-06. Physician's examination - Findings - ~~Order~~ Final order. The state health officer, ~~under the guidelines of the state health council,~~ may appoint a practicing physician to make a personal examination of ~~the a person alleged tubercular person to have tuberculosis~~ and to make such thorough investigation of ~~his~~ that person's condition as will enable the state health officer to determine whether or not ~~such that~~ that person has ~~active, infectious tuberculosis in a communicable and contagious stage and is dangerous to the public health~~. As soon as practical after the return of the physician's statement to the state health officer, the state health officer shall conclude ~~his~~ the investigation and

make ~~his~~ a determination. If the state health officer finds that the alleged tubercular person does not have ~~active, infectious~~ tuberculosis and is not dangerous to public health ~~he shall make an order dismissing the case shall be dismissed~~. If the state health officer, ~~under the guidelines of the state health council,~~ finds that the person does have ~~active, infectious~~ tuberculosis and ~~is dangerous to public health,~~ he the state health officer shall issue his temporary a final order which that must:

1. State ~~his~~ findings that ~~such~~ the person does have ~~active, infectious~~ tuberculosis and ~~is dangerous to public health;~~ and
2. State that the person is not undertaking a medically approved course of treatment for tuberculosis; and
3. Authorize ~~the medical~~ an appropriate facility specified in the temporary order to receive and keep such person in its facility for administer necessary and appropriate care, treatment, quarantine, and or isolation until a hearing is held pursuant to section 23-07.1-08.

SECTION 6. AMENDMENT. Section 23-07.1-07 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-07. Sheriff's execution of state health officer's temporary final order. The ~~temporary final~~ order of the state health officer, in duplicate, together with the findings of the physician and the findings of the state health officer must be delivered to the sheriff who shall execute the same by conveying the person named therein to the ~~medical~~ facility specified in the order and delivering ~~him~~ the person, together with the findings of the physician and the state health officer's findings and the duplicate of the order, to the person in charge of such ~~medical~~ facility or to the local health officer or a designee if the person is sent home. ~~The person in charge, over his official signature, shall acknowledge the delivery on the original order and the sheriff shall return the order to the state health officer. Return to the state health officer may be by certified mail.~~ The sheriff must be allowed reasonable travel expenses, paid by the county, in the same manner and at the same rate as the expenses of other county officials are paid.

SECTION 7. AMENDMENT. Section 23-07.1-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.1-08. Hearing - Order. Unless waived by the alleged tubercular person, a hearing must be held by the district judge serving the county in which the person ~~alleged tubercular person to have tuberculosis~~ resides within one hundred twenty hours, exclusive of weekends and holidays, after the date of the state health officer's ~~temporary final~~ order. The court may consider all relevant evidence, including the results of a physical examination made pursuant to section 23-07.1-06, and the state health officer and the alleged tubercular person must be afforded an opportunity to testify, to present and cross-examine witnesses, and to be represented by counsel. Upon the request of the state health officer, the state's attorney of the county wherein the hearing is held shall represent the state health officer without additional compensation.

If, upon completion of the hearing, the court finds that the allegation that the person has ~~active, infectious~~ tuberculosis ~~in a communicable and contagious stage has,~~ and the allegation that that person was not undertaking a medically approved course of treatment for tuberculosis prior to the state health officer's final order, have not been sustained by clear and convincing evidence, the court shall dismiss the case and order that the person ~~alleged tubercular to have tuberculosis~~ be discharged if ~~he had been~~ in custody prior to the hearing. If the court finds that the ~~allegation has~~ allegations have been sustained by clear and convincing evidence, the court shall issue an order ~~which shall that must:~~

1. State its findings that the person does have ~~active, infectious~~ tuberculosis ~~in a communicable and contagious stage and is dangerous to public health;~~ and
2. State that the person has not undertaken a medically approved course of treatment for tuberculosis prior to the state health officer's order; and

3. Authorize the ~~medical~~ facility specified in the state health officer's final order to receive and keep ~~such the~~ person in its facility for necessary and appropriate care, treatment, quarantine, ~~and or~~ isolation for so long as the ~~disease remains in a communicable and contagious stage and the danger to public health exists.~~

SECTION 8. AMENDMENT. Section 23-07.1-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.1-09. Appeal to supreme court - Habeas corpus - Hearing. An appeal from an order of the judge of a district court authorizing a specified medical facility to receive a person for care, treatment, quarantine, and isolation may be taken to the supreme court. In such a proceeding, the state's attorney of the county wherein the appeal is taken, without additional compensation, shall represent the state health officer. The clerk of the district court of the county from which the appeal is taken shall notify the state's attorney of the filing of ~~such the~~ appeal. The appeal must be limited to a review of the procedures, findings, and conclusions of the lower court. All persons placed in the custody of the state health officer under the provisions of this chapter for care, treatment, quarantine, and isolation are entitled to the benefit of the writ of habeas corpus and a determination as to whether a person in ~~such~~ custody has ~~active, infectious tuberculosis in a communicable and contagious stage and is dangerous to public health~~ must be made at the hearing. If the court decides that the person does have ~~active, infectious tuberculosis and is dangerous to public health~~, ~~such the~~ decision does not preclude a subsequent application for a writ or the issuing of a writ upon a subsequent application, if it is alleged that ~~such the~~ person has been restored to health.

SECTION 9. AMENDMENT. Section 23-07.1-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07.1-10. Discharge - Release. All orders of the state health officer or of a judge of a district court authorizing the reception and retention in custody for care, treatment, quarantine, ~~and or~~ isolation of persons having ~~active and infectious~~ tuberculosis endangering public health are effective only during the continuation of ~~such the~~ condition and any person who ~~is cured or who no longer has completed a medically approved course of treatment for tuberculosis in a communicable and contagious stage~~ must be discharged immediately from custody. The discharge must be made by the state health officer or a designee, ~~under the guidelines of the state health council.~~ The person in charge of a medical facility may also release any person admitted to the medical facility under the provisions of this chapter at such times and under such conditions as deemed advisable after consultation with the state health officer or a designee.

SECTION 10. AMENDMENT. Section 23-07.1-12 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-12. Confinement exception - Quarantine. Any person who observes quarantine regulations as established by the state health officer, ~~under the guidelines of the state health council,~~ and undertakes a medically approved course of treatment for tuberculosis may not be subject to confinement under the provisions of this chapter.

SECTION 11. AMENDMENT. Section 23-07.1-13 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-13. Tubercular Indian jurisdiction. Nothing in this chapter requires the admission of an enrolled Indian, resident on any reservation in this state, to any off-reservation institution except upon written request and authorization of the superintendent of the reservation on which said Indian is enrolled. However, in the public interest and with the objective of eradication of tuberculosis in the state of North Dakota, an Indian with ~~active infectious~~ tuberculosis off any reservation is subject to this chapter. It is the responsibility of the Indian affairs commission pursuant to the commission's powers and duties, stated in section 54-36-03, to work closely with the tribal councils and other reservation officials to adopt any agreements found necessary in assisting the state health officer in carrying out his responsibilities under this chapter so that all residents of this state will benefit, and eradication of tuberculosis in North Dakota can be achieved.

SECTION 12. AMENDMENT. Section 23-07.1-14 of the North Dakota Century Code is amended and reenacted as follows:

23-07.1-14. Care of tubercular patients - Acceptance of federal funds - General hospital.

The state health officer, or his a designee, ~~under the guidelines of the state health council~~, is hereby authorized to contract with public or private agencies for the care of ~~tubercular patients~~ persons having tuberculosis. The state health officer is hereby authorized to accept any federal funds or to enter into any federal programs on behalf of ~~tubercular patients~~ persons having tuberculosis in North Dakota. The state health officer may, ~~under the guidelines of the state health council~~, also utilize general hospitals or other appropriate facilities in the placement of recalcitrant ~~tuberculous patients~~ persons having tuberculosis.

SECTION 13. A new section to chapter 23-07.1 of the North Dakota Century Code is created and enacted as follows:

Penalty.

1. A person is guilty of a class A misdemeanor if:
 - a. That person fails to undertake diagnostic examination for tuberculosis upon the request of the state health officer which is based upon the reasonable suspicion that that person has or has been exposed to tuberculosis;
 - b. That person has been diagnosed with tuberculosis and fails to undertake a medically approved course of treatment for tuberculosis; or
 - c. That person is the parent of a minor or guardian of a person who violates subdivision a or b.
2. Upon conviction, the court may order that person to obtain a supervised medically approved course of treatment for tuberculosis until the treatment is completed, in addition to other penalties or conditions provided by law.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2208.

Senate Vote: Yeas 46 Nays 0 Absent 3

House Vote: Yeas 59 Nays 32 Absent 6

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State