

ENROLLED

H. B. 2885

(BY DELEGATES PERDUE, LONG AND HATFIELD)

[Passed April 9, 2005; in effect from passage]

AN ACT to repeal §16-3-4a of the Code of West Virginia, 1931, as amended; to repeal §26-5A-1, §26-5A-2, §26-5A-3, 26-5A-4, 26-5A-5, §26-5A-6 and §26-5A-7 of said code; and to amend said code by adding thereto a new article, designated §16-3D-1, §16-3D-2, §16-3D-3, §16-3D-4, §16-3D-5, §16-3D-6, §16-3D-7, §16-3D-8 and §16-3D-9 all relating to tuberculosis testing, control, treatment and commitment.

Be it enacted by the Legislature of West Virginia:

That §16-3-4a of the Code of West Virginia, 1931, as amended, be repealed; and that §26-5A-1, §26-5A-2, §26-5A-3, 26-5A-4, 26-A-5, §26-5A-6 and §26-5A-7 of said code be repealed; and that said code be amended by adding thereto a new article, designated §16-3D-1, §16-3D-2, §16-3D-3, §16-3D-4, §16-3D-5, §16-3D-6, §16-3D-7, §16-3D-8 and §16-3D-9, all to read as follows:

ARTICLE 3D. TUBERCULOSIS TESTING, CONTROL, TREATMENT AND COMMITMENT.

§16-3D-1. Purpose and legislative findings.

1 (a) The purpose of this article to bring together the state law
2 governing compulsory testing for tuberculosis (TB) of students
3 and school personnel as well as the statutes pertaining to the
4 treatment, control and commitment of persons with the disease
5 at hospitals, clinics and other health care facilities throughout
6 the state.

7 (b) The targeted tuberculin testing and treatment guidelines
8 published by the Centers for Disease Control and Prevention
9 (CDC) in the year two thousand recommends that routine
10 testing of low-risk populations for administrative purposes be
11 discontinued. The elimination of routine retesting of school
12 personnel in accordance with this recommendation will result
13 in significant savings to the state.

14 (c) According to the CDC, high risk groups or persons that
15 should be tested for latent TB infection include:

16 (1) Close contacts of a person known or suspected to have
17 TB;

18 (2) Foreign-born persons from areas where TB is common;

19 (3) Residents and employees of high-risk congregate
20 settings;

21 (4) Health care workers who serve high-risk clients;

22 (5) Medically underserved, low-income populations;

23 (6) High-Risk racial or ethnic minority populations;

24 (7) Children exposed to adults in high-risk categories;

25 (8) Persons who inject illicit drugs;

26 (9) Persons with HIV infection; and

27 (10) Persons with certain medical conditions, such as
28 substance abuse, chest X-ray findings suggestive of previous
29 TB, diabetes mellitus, silicosis, prolonged corticosteroid
30 therapy, other immunosuppressive therapy, cancer of the head
31 and neck, end-stage renal disease, intestinal bypass or
32 gastrectomy, chronic malabsorption syndromes, or low body
33 weight of ten percent or more below the ideal.

34 (d) Early diagnosis, proper and complete treatment for
35 people with active TB disease prevents transmission to others
36 as well as preventing the emergence of multidrug resistant TB.

37 (e) The TB Control Program should be funded at levels
38 necessary to accomplish directly observed therapy for all
39 patients with active TB disease in West Virginia and to imple-
40 ment targeted testing of high-risk groups.

§16-3D-2. Definitions.

1 As used in this article:

2 (1) "Tuberculosis" means a communicable disease caused
3 by the bacteria, *Mycobacterium tuberculosis*, which is demon-
4 strated by clinical, bacteriological, radiographic or epidemio-
5 logical evidence;

6 (2) "Bureau" means the Bureau for Public Health in the
7 Department of Health and Human Resources;

8 (3) "Commissioner" means the Commissioner of the
9 Bureau for Public Health, who is the state health officer;

10 (4) "Local board of health," "local board" or "board" means
11 a board of health serving one or more counties or one or more
12 municipalities or a combination thereof;

13 (5) "Local health department" means the staff of the local
14 board of health; and

15 (6) "Local health officer" means the individual physician
16 with a current West Virginia license to practice medicine who
17 supervises and directs the activities of the local health depart-
18 ment services, staff and facilities and is appointed by the local
19 board of health with approval by the Commissioner.

**§16-3D-3. Compulsory testing for tuberculosis of school children
and school personnel; Commissioner to approve
the test; X-rays required for reactors; suspension
from school or employment for pupils and person-
nel found to have tuberculosis.**

1 (a) All students transferring from a school located outside
2 this state or enrolling for the first time from outside the state
3 shall furnish a certification from a licensed physician stating
4 that a tuberculin skin test, approved by the Commissioner, has
5 been made within four months prior to the beginning of the
6 school year. If the student cannot produce certification from a
7 physician as required by this section then the student shall have
8 an approved tuberculin skin test done with the result read and
9 evaluated prior to admittance to school.

10 (b) Test results must be recorded on the certification
11 required by subsection (a) of this section. Positive reactors to
12 the skin test must be immediately evaluated by a physician and,
13 if medically indicated, X-rayed, and receive periodic X-rays
14 thereafter, when medically indicated. Pupils found to have
15 tuberculosis shall be temporarily removed from school while
16 their case is reviewed and evaluated by their physician and the
17 local health officer. Pupils shall return to school when the local
18 health officer indicates that it is safe and appropriate for them
19 to return.

20 (c) Notwithstanding any other provision of this code to the
21 contrary, all school personnel shall have one approved tubercu-
22 lin skin test at the time of employment performed by the local
23 health department or the person's physician. Additional
24 tuberculosis skin tests or other medical screens may be required
25 by the local health department or Commissioner, if medically
26 indicated. Positive reactors and those with previous positive
27 skin tests are to be immediately referred to a physician for
28 evaluation and treatment or further studies. School personnel
29 found to have tuberculosis shall have their employment
30 suspended until the local health officer, in consultation with the
31 Commissioner, approves a return to work. School personnel
32 who have not had the required examination will be suspended
33 from employment until reports of examination are confirmed by
34 the local health officer.

35 (d) The local health officer shall be responsible for arrang-
36 ing proper follow-up of school personnel and students who are
37 unable to obtain physician evaluation for a positive tuberculin
38 skin test.

39 (e) The Commissioner shall have the authority to require
40 selective testing of students and school personnel for tuberculo-
41 sis when there is reason to believe that they may have been
42 exposed to the tuberculosis organism. School nurses shall
43 identify and refer any students or school personnel to the local
44 health officer in instances where they have reason to suspect
45 that the individual has been exposed to tuberculosis or has
46 symptoms indicative of the disease.

§16-3D-4. Report of cases, admissions, registration of patients.

1 (a) Every physician practicing in this state, every public
2 health officer in the state, and every chief medical officer
3 having charge of any hospital or clinic or other similar public
4 or private institution in the state shall report electronically or in

5 writing to the local health department in the patient's county of
6 residence all information required by the Commissioner for
7 every person having tuberculosis who comes under his or her
8 observation or care. Such report shall be made within
9 twenty-four hours after diagnosis.

10 (b) Every local health department shall forward all reports
11 of tuberculosis cases filed pursuant to this section to the Bureau
12 tuberculosis program within twenty-four hours of receipt of
13 such reports.

14 (c) The chief medical officer of each tuberculosis institu-
15 tion, hospital or other health care facility shall report the
16 admission of any patient with tuberculosis to the Bureau
17 together with any other information the Commissioner may
18 require. He or she shall make a similar report of the discharge
19 or death of any patient. From such reports and other sources,
20 the Bureau shall prepare and keep current a register of persons
21 in this state with tuberculosis. The name of a person so regis-
22 tered shall not be made public nor shall the register be accessi-
23 ble to anyone except by order of the Bureau, the patient, or by
24 the order of the judge of a court of record.

§16-3D-5. Forms for reporting and committing patients; other records.

1 (a) The Bureau shall prescribe the written and electronic
2 forms for reporting all required information regarding patients
3 with tuberculosis.

4 (b) The Bureau shall prescribe the written and electronic
5 forms to be used in committing patients to any state hospital or
6 other health care facility where care and treatment of tuberculo-
7 sis patients is conducted.

§16-3D-6. Cost of maintenance and treatment of patients.

1 The cost of maintenance and treatment of patients admitted
2 to state designated tuberculosis institutions shall be paid out of
3 funds appropriated for the respective institutions. No patient
4 shall be required to pay for such maintenance and treatment, but
5 the institutions are authorized to receive any voluntary pay-
6 ments therefore.

**§16-3D-7. Procedure when patient is a health menace to others;
court ordered treatment; requirements for dis-
charge; appeals.**

1 (a) If any practicing physician, public health officer, or
2 chief medical officer having under observation or care any
3 person with tuberculosis is of the opinion that the environmen-
4 tal conditions of that person are not suitable for proper isolation
5 or control by any type of local quarantine as prescribed by the
6 Bureau, and that the person is unable or unwilling to conduct
7 himself or herself and to live in such a manner as not to expose
8 members of his or her family or household or other persons
9 with whom he or she may be associated to danger of infection,
10 he or she shall report the facts to the Bureau which shall
11 investigate or have investigated the circumstances alleged.

12 (b) If the Commissioner or local health officer finds that
13 any person's physical condition is a health menace to others,
14 the Commissioner or local health officer shall petition the
15 circuit court of the county in which the person resides, request-
16 ing an individualized course of treatment to deal with the
17 person's current or inadequately treated tuberculosis. Refusal
18 to adhere to prescribed treatment may result in an order of the
19 court committing the person to a health care facility equipped
20 for the treatment of tuberculosis: *Provided*, That if the Commis-
21 sioner or local health officer determines that an emergency
22 situation exists which warrants the immediate detention and
23 commitment of a person with tuberculosis, an application for

24 immediate involuntary commitment may be filed pursuant to
25 section nine of this article.

26 (c) Upon receiving the petition, the court shall fix a date for
27 hearing thereof and notice of the petition and the time and place
28 for hearing shall be served personally, at least seven days
29 before the hearing, upon the person with tuberculosis alleged to
30 be dangerous to the health of others.

31 (d) If, upon hearing, it appears that the complaint of the
32 Bureau is well founded, that other less restrictive treatment
33 options have been exhausted, that the person has tuberculosis,
34 and that the person is a danger to others, the court shall commit
35 the individual to a health care facility equipped for the care and
36 treatment of persons with tuberculosis. The person shall be
37 deemed to be committed until discharged in the manner
38 authorized in subsection (e) of this section: *Provided*, That the
39 hearing and notice provisions of this subsection do not apply to
40 immediate involuntary commitments as provided in section
41 nine of this article.

42 (e) The chief medical officer of the institution to which any
43 person with tuberculosis has been committed may discharge
44 that person when, after consultation with the Commissioner and
45 the local health officer in the patient's county of residence, it is
46 agreed that the person may be discharged without danger to the
47 health of others. The chief medical officer shall report immedi-
48 ately to the Commissioner and to the local health officer in the
49 patient's county of residence each discharge of a person with
50 tuberculosis.

51 (f) Every person committed under the provisions of this
52 section shall observe all the rules of the institution. Any patient
53 so committed may, by direction of the chief medical officer of
54 the institution, be placed apart from the others and restrained

55 from leaving the institution so long as he or she continues to
56 have tuberculosis and remains a health menace.

57 (g) Nothing in this section may be construed to prohibit any
58 person committed to any institution under the provisions of this
59 section from applying to the Supreme Court of Appeals for a
60 review of the evidence on which the commitment was made.
61 Nothing in this section may be construed or operate to empower
62 or authorize the Commissioner or the chief medical officer of
63 the institution to restrict in any manner the individual's right to
64 select any method of tuberculosis treatment offered by the
65 institution.

§16-3D-8. Return of escapees from state tuberculosis institutions.

1 If any person confined in a state tuberculosis institution by
2 virtue of an order of a circuit court as provided in sections
3 seven and nine of this article shall escape, the chief medical
4 officer shall issue a notice giving the name and description of
5 the person escaping and requesting his or her apprehension and
6 return to the hospital. The chief medical officer shall issue a
7 warrant directed to the sheriff of the county commanding him
8 or her to arrest and carry the escaped person back to the
9 hospital, which warrant may be executed in any part of the
10 state. If the person flees to another state, the chief medical
11 officer shall notify the appropriate state health official in the
12 state where the person has fled, and that state health official
13 may take the actions that are necessary for the return of the
14 person to the hospital.

**§16-3D-9. Procedures for immediate involuntary commitment;
rules.**

1 (a) An application for immediate involuntary commitment
2 of a person with tuberculosis may be filed by the Commissioner
3 or local health officer, in the circuit court of the county in
4 which the person resides. The application shall be filed under
5 oath, and shall present information and facts which establish

6 that the person with tuberculosis has been uncooperative or
7 irresponsible with regard to treatment, quarantine or safety
8 measures, presents a health menace to others, and is in need of
9 immediate hospitalization.

10 (b) Upon receipt of the application, the circuit court may
11 enter an order for the individual named in the action to be
12 detained and taken into custody for the purpose of holding a
13 probable cause hearing. The order shall specify that the hearing
14 be held forthwith and shall appoint counsel for the individual:
15 *Provided*, That in the event immediate detention is believed to
16 be necessary for the protection of the individual or others at a
17 time when no circuit court judge is available for immediate
18 presentation of the application, a magistrate may accept the
19 application and, upon a finding that immediate detention is
20 necessary, may order the individual to be temporarily commit-
21 ted until the earliest reasonable time that the application can be
22 presented to the circuit court, which period of time shall not
23 exceed twenty-four hours except as provided in subsection (c)
24 of this section.

25 (c) A probable cause hearing shall be held before a magis-
26 trate or circuit judge of the county in which the individual is a
27 resident or where he or she was found. If requested by the
28 individual or his or her counsel, the hearing may be postponed
29 for a period not to exceed forty-eight hours, or as soon thereaf-
30 ter as possible.

31 (d) The individual shall be present at the probable cause
32 hearing and shall have the right to present evidence, confront all
33 witnesses and other evidence against him or her, and to
34 examine testimony offered, including testimony by the Bureau
35 or its designees.

36 (e) At the conclusion of the hearing the magistrate or circuit
37 court judge shall enter an order stating whether there is proba-

38 ble cause to believe that the individual is likely to cause serious
39 harm to himself, herself or others as a result of his or her
40 disease and actions. If probable cause is found, the individual
41 shall be immediately committed to a health care facility
42 equipped for the care and treatment of persons with tuberculo-
43 sis. The person shall remain so committed until discharged in
44 the manner authorized pursuant to subsection (e), section seven
45 of this article: *Provided*, That in the case of an alcoholic or drug
46 user, the judge or magistrate shall first order the individual
47 committed to a detoxification center for detoxification prior to
48 commitment to health care facility equipped for the care and
49 treatment of persons with tuberculosis.

50 (f) The Bureau shall propose rules for legislative approval
51 in accordance with the provisions of article three, chapter
52 twenty-nine-a of this code to implement the provisions of this
53 article, including, but not limited to, rules relating to the
54 transport and temporary involuntary commitment of patients.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within _____ this the _____
day of _____, 2005.

Governor