

# ENROLLED

## H. B. 2885

(BY DELEGATES PERDUE, LONG AND HATFIELD)

---

[Passed April 9, 2003; 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That §16-3-4a of the Code of West Virginia, 1931, as amended, be repealed; and that §26-5A-1, §26-5A-2, §26-5A-3, 26-5A-4, 26-A-5, §26-5A-6 and §26-5A-7 of said code be repealed; and that said code be amended by adding thereto a new article, designated §16-3D-1, §16-3D-2, §16-3D-3, §16-3D-4, §16-3D-5, §16-3D-6, §16-3D-7, §16-3D-8 and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*