

**FIRST ENGROSSMENT
with House Amendments**

ENGROSSED SENATE BILL NO. 2166

Introduced by

Senators DeMers, Kilzer, Lee

(At the request of the State Department of Health)

1 A BILL for an Act to create and enact chapter 23-01.3 and a new section to chapter 23-17.3 of
2 the North Dakota Century Code, relating to confidential or protected health information in
3 possession of a public health authority; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 23-01.3 of the North Dakota Century Code is created and
6 enacted as follows:

7 **23-01.3-01. Definitions.** As used in this chapter:

- 8 1. "Confidential information" includes any confidential record as defined in
9 subsection 3 of section 44-04-17.1, any protected health information, and any
10 other information declared confidential by law.
- 11 2. "Disclose" means to disclose, transfer, permit access to, or otherwise divulge
12 protected health information to any person other than the individual who is the
13 subject of that information and includes the initial disclosure and any subsequent
14 redisclosures of individually identifiable health care information.
- 15 3. "Institutional review board" means any board, committee, or other group formally
16 designated by an institution or public health authority or authorized under federal
17 or state law to review, approve the initiation of, or conduct a periodic review of
18 research programs to assure the protection of the rights and welfare of human
19 research subjects.
- 20 4. "Law enforcement inquiry" means any executive branch investigation or official
21 proceeding inquiring into a violation of, or failure to comply with, any criminal or
22 civil statute or any regulation, rule, or order issued pursuant to such a statute.
- 23 5. "Nonidentifiable health information" means any information that would otherwise
24 be protected health information except that it does not reveal the identity of the

1 individual whose health or health care is the subject of the information and there is
2 no reasonable basis to believe that the information could be used to identify that
3 individual.

4 6. "Person" means a government, governmental subdivision of an executive branch
5 agency or authority, corporation, company, association, firm, partnership, society,
6 estate, trust, joint venture, individual, individual representative, tribal government,
7 and any other legal entity.

8 7. "Protected health information" means any information, including genetic
9 information, demographic information, and fluid or tissue samples collected from
10 an individual, diagnostic and test results, whether oral or recorded in any form or
11 medium, which:

12 a. Is created or received by a health care provider, health researcher, health
13 plan, health oversight authority, public health authority, employer, health or
14 life insurer, school or university; and

15 b. (1) Relates to the past, present, or future physical or mental health or
16 condition of an individual, including individual cells and their
17 components; the provision of health care to an individual; or the past,
18 present, or future payment for the provision of health care to an
19 individual; or the past, present, or future payment for the provision of
20 health care to an individual; and

21 (2) (a) Identifies an individual; or

22 (b) With respect to which there is a reasonable basis to believe that
23 the information can be used to identify an individual.

24 8. "Public health authority" means the state department of health, a local public
25 health unit, and any authority or instrumentality of the United States, a tribal
26 government, a state, or a political subdivision of a state, a foreign nation, or a
27 political subdivision of a foreign nation, which is:

28 a. Primarily responsible for public health matters; and

29 b. Primarily engaged in activities such as injury reporting, public health
30 surveillance, and public health investigation or intervention.

1 9. "School or university" means an institution or place for instruction or education,
2 including an elementary school, secondary school, or institution of higher learning,
3 a college, or an assemblage of colleges united under one corporate organization
4 or government.

5 10. "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam,
6 American Samoa, and the Northern Mariana Islands.

7 11. "Writing" or "written" means writing in either a paper-based or computer-based
8 form, including electronic signatures.

9 **23-01.3-02. Disclosure of protected health information - In general.** Protected
10 health information in possession of a public health authority may be disclosed only as
11 authorized by this chapter or another law of this state explicitly authorizing the disclosure of that
12 information, except that protected health information received or maintained under chapter
13 23-01.1 may be disclosed only as authorized by that chapter. Subject to section 23-01-15,
14 subsection 1 of section 23-07-02.2, and any other requirements of this title, this chapter does
15 not prohibit a public health authority from disclosing protected health information for use in a
16 biomedical research project approved by an institutional review board or public health
17 information that has been transformed to protect the identity of the patient through coding or
18 encryption if the information is disclosed for use in an epidemiological or statistical study.

19 **23-01.3-03. Disclosure of a patient's own record.** Notwithstanding any other law,
20 any confidential or protected health information may be disclosed by a public health authority to
21 the person to whom the record pertains, that person's physician, or their legal or designated
22 agent or guardian, if no other person is identified in the record. The public health authority may
23 require a signed consent from the person prior to disclosing any information. This section does
24 not apply to an agent or guardian if disclosing information to the agent or guardian is prohibited
25 by law.

26 **23-01.3-04. Nonpublic disclosure to a public health authority.**

27 1. A health care provider, public health authority, law enforcement official, school or
28 university, or the agent of any such individual or entity, may disclose protected
29 health information concerning an individual to a public health authority if:
30 a. There is a specific nexus between the individual's identity and a threat of a
31 specific disease, death, or injury to any individual or to the public health; and

- 1 b. The individual's identity would allow that public health authority to prevent or
2 significantly reduce the possibility of disease, injury, or death to any individual
3 or the public health.
- 4 2. An entity described in subsection 1 is not liable for the disclosure of protected
5 health information:
- 6 a. To a public health authority based upon a good-faith belief and credible
7 representation made by that authority that this information is required to
8 protect an individual or the public health from a threat of a specific disease,
9 injury, or death; or
- 10 b. If that disclosure is made pursuant to a federal or state law that is designed to
11 protect the public health or safety.
- 12 3. Except for the failure to report information required by chapters 23-07, 23-07.1,
13 23-07.3, or 23-07.4, or any other law requiring disclosure of information regarding
14 a disease or condition, an entity described in subsection 1 is not liable for the
15 failure to disclose protected health information to a public health authority.
- 16 4. Any disclosure of protected health information under this section must be limited to
17 the minimum amount of information necessary to achieve the purposes of this
18 section.
- 19 5. A recipient of information pursuant to this section may use or disclose that
20 information solely to achieve the purposes of this section.
- 21 6. Nothing in this section permitting the disclosure of protected health information
22 may be construed to require that disclosure, unless disclosure is otherwise
23 required by law.
- 24 7. Protected health information disclosed under this section must be clearly identified
25 as protected health information that is subject to this chapter.

26 **23-01.3-05. Nonpublic disclosure in emergency circumstances.**

- 27 1. In the event of a threat of imminent physical or mental harm to the subject of
28 protected health information, a public health authority, in order to allay or remedy
29 that threat, may disclose protected health information about that subject to a health
30 care practitioner, health care facility, law enforcement authority, or emergency
31 medical personnel to protect the health or safety of that subject.

- 1 2. In the event of a threat of harm to an individual other than the subject of protected
2 health information, a public health authority may disclose protected health
3 information about that subject if:
- 4 a. There is an identifiable threat of serious disease, injury, or death to an
5 identifiable individual or group of individuals;
- 6 b. The subject of the protected health information has the ability to carry out that
7 threat; and
- 8 c. The disclosure of that information is necessary to prevent or significantly
9 reduce the possibility of that threat.
- 10 3. Any disclosure of protected health information under this section must be limited to
11 the minimum amount of information necessary to achieve the purposes of this
12 section.
- 13 4. A recipient of information pursuant to this section may use or disclose that
14 information solely to carry out the purposes of this section.
- 15 5. Protected health information disclosed under this section must be clearly identified
16 as protected health information that is subject to this section.

17 **23-01.3-06. Disclosure for law enforcement purposes.**

- 18 1. Notwithstanding any other law, a public health authority, or the agent of any such
19 entity, may disclose protected health information to a law enforcement authority if
20 the state health officer determines that:
- 21 a. The protected health information is necessary to a legitimate law enforcement
22 inquiry that has begun or may be initiated into a particular violation of a
23 criminal law or public health law being conducted by the authority; and
- 24 b. The investigative or evidentiary needs of the law enforcement authority
25 cannot be satisfied by nonidentifiable health information or by any other
26 information.
- 27 2. If a public health authority discloses protected health information under this
28 section, that authority shall impose appropriate written safeguards to ensure the
29 confidentiality of the information and to protect against unauthorized or improper
30 use or disclosure.

- 1 3. Protected health information about an individual that is disclosed under this section
2 may not be used in, or disclosed to any person for use in, any administrative, civil,
3 or criminal action or investigation directed against the individual, unless the action
4 or investigation arises out of, or is directly related to, the law enforcement inquiry
5 for which the information was obtained.
- 6 4. When the matter or need for which protected health information was disclosed to a
7 law enforcement authority or grand jury has concluded, including any derivative
8 matters arising from that matter or need, the law enforcement authority or grand
9 jury must either destroy the protected health information, or return it to the person
10 from whom it was obtained.
- 11 5. To the extent practicable, and consistent with the requirements of due process, a
12 law enforcement authority shall redact personally identifying information from
13 protected health information prior to the public disclosure of that protected
14 information in a judicial or administrative proceeding.
- 15 6. Any disclosure of protected health information under this section must be limited to
16 the minimum amount of information necessary to fulfill the purposes of this section.
- 17 7. A recipient of information pursuant to this section may use or disclose that
18 information solely to fulfill the purposes of this section.
- 19 8. Protected health information disclosed under this section must be clearly identified
20 as protected health information that is subject to this chapter.
- 21 9. This section may not be construed to limit or restrict the ability of law enforcement
22 authorities to gain information while in hot pursuit of a suspect or if other exigent
23 circumstances exist.

24 **23-01.3-07. Disclosure of a public health incident.**

- 25 1. Notwithstanding any other law, the state health officer may disclose confidential
26 information or protected health information to a health care provider or the public if
27 the state health officer determines that:
 - 28 a. Disclosure of information is required to prevent the spread of disease;
 - 29 b. Disclosure of information is required to identify the cause or source of
30 disease; or

1 c. Disclosure of information is required to allay fear and aid the public in
2 understanding the risk of its exposure to disease.

3 2. The state health officer may disclose protected health information only to the
4 extent necessary to accomplish the purposes of this section, and may require any
5 health care provider receiving confidential or protected health information under
6 this section to keep that information confidential under written terms.

7 **23-01.3-08. Status of information in possession of a local public health authority.**

8 Any protected health information that is created or received by a local public health authority,
9 and that is submitted or is required to be submitted to the state department of health, is
10 confidential and subject to the protection of, and may be disclosed only as authorized by, this
11 chapter.

12 **23-01.3-09. Penalty for unauthorized disclosure.** A person who knowingly discloses
13 protected health information in violation of this chapter is guilty of a class A misdemeanor.

14 **SECTION 2.** A new section to chapter 23-17.3 of the North Dakota Century Code is
15 created and enacted as follows:

16 **Information confidential.** Information received under this chapter by the state
17 department of health, through inspection or otherwise, is confidential and may not be disclosed
18 except:

- 19 1. In a proceeding involving the question of license;
20 2. In a judicial proceeding, upon a court order; or
21 3. To a health or social services agency with specific responsibility for a patient's
22 care.