

**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 other  
10 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. "Law enforcement inquiry" means any executive branch investigation or official  
16 proceeding inquiring into a violation of, or failure to comply with, any criminal or  
17 civil statute or any regulation, rule, or order issued pursuant to such a statute.
- 18 4. "Nonidentifiable health information" means any information that would otherwise be  
19 protected health information except that it does not reveal the identity of the  
20 individual whose health or health care is the subject of the information and there is  
21 no reasonable basis to believe that the information could be used to identify that  
22 individual.
- 23 5. "Person" means a government, governmental subdivision of an executive branch  
24 agency or authority, corporation, company, association, firm, partnership, society,

- 1 estate, trust, joint venture, individual, individual representative, tribal government,  
2 and any other legal entity.
- 3 6. "Protected health information" means any information, including genetic  
4 information, demographic information, and fluid or tissue samples collected from an  
5 individual, diagnostic and test results, whether oral or recorded in any form or  
6 medium, which:
- 7 a. Is created or received by a health care provider, health researcher, health  
8 plan, health oversight authority, public health authority, employer, health or life  
9 insurer, school or university; and
- 10 b. (1) Relates to the past, present, or future physical or mental health or  
11 condition of an individual, including individual cells and their  
12 components; the provision of health care to an individual; or the past,  
13 present, or future payment for the provision of health care to an  
14 individual; or the past, present, or future payment for the provision of  
15 health care to an individual; and
- 16 (2) (a) Identifies an individual; or  
17 (b) With respect to which there is a reasonable basis to believe that  
18 the information can be used to identify an individual.
- 19 7. "Public health authority" means the state department of health, a local public health  
20 unit, and any authority or instrumentality of the United States, a tribal government,  
21 a state, or a political subdivision of a state, a foreign nation, or a political  
22 subdivision of a foreign nation, which is:
- 23 a. Primarily responsible for public health matters; and  
24 b. Primarily engaged in activities such as injury reporting, public health  
25 surveillance, and public health investigation or intervention.
- 26 8. "School or university" means an institution or place for instruction or education,  
27 including an elementary school, secondary school, or institution of higher learning,  
28 a college, or an assemblage of colleges united under one corporate organization or  
29 government.
- 30 9. "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam,  
31 American Samoa, and the Northern Mariana Islands.



- 1           3. Any disclosure of protected health information under this section must be limited to  
2           the minimum amount of information necessary to achieve the purposes of this  
3           section.
- 4           4. A recipient of information pursuant to this section may use or disclose that  
5           information solely to achieve the purposes of this section.
- 6           5. Nothing in this section permitting the disclosure of protected health information  
7           may be construed to require that disclosure, unless disclosure is otherwise  
8           required by law.
- 9           6. Protected health information disclosed under this section must be clearly identified  
10          as protected health information that is subject to this chapter.

11          **23-01.3-05. Nonpublic disclosure in emergency circumstances.**

- 12          1. In the event of a threat of imminent physical or mental harm to the subject of  
13          protected health information, a public health authority, in order to allay or remedy  
14          that threat, may disclose protected health information about that subject to a health  
15          care practitioner, health care facility, law enforcement authority, or emergency  
16          medical personnel to protect the health or safety of that subject.
- 17          2. In the event of a threat of harm to an individual other than the subject of protected  
18          health information, a public health authority may disclose protected health  
19          information about that subject if:
- 20               a. There is an identifiable threat of serious disease, injury, or death to an  
21               identifiable individual or group of individuals;
- 22               b. The subject of the protected health information has the ability to carry out that  
23               threat; and
- 24               c. The disclosure of that information is necessary to prevent or significantly  
25               reduce the possibility of that threat.
- 26          3. Any disclosure of protected health information under this section must be limited to  
27          the minimum amount of information necessary to achieve the purposes of this  
28          section.
- 29          4. A recipient of information pursuant to this section may use or disclose that  
30          information solely to carry out the purposes of this section.

1           5.   Protected health information disclosed under this section must be clearly identified  
2                   as protected health information that is subject to this section.

3           **23-01.3-06. Disclosure for law enforcement purposes.**

4           1.   Notwithstanding any other law, a public health authority, or the agent of any such  
5                   entity, may disclose protected health information to a law enforcement authority if  
6                   the state health officer determines that:

7                   a.   The protected health information is necessary to a legitimate law enforcement  
8                         inquiry that has begun or may be initiated into a particular violation of a  
9                         criminal law or public health law being conducted by the authority; and

10                  b.   The investigative or evidentiary needs of the law enforcement authority cannot  
11                         be satisfied by nonidentifiable health information or by any other information.

12           2.   If a public health authority discloses protected health information under this  
13                   section, that authority shall impose appropriate written safeguards to ensure the  
14                   confidentiality of the information and to protect against unauthorized or improper  
15                   use or disclosure.

16           3.   Protected health information about an individual that is disclosed under this section  
17                   may not be used in, or disclosed to any person for use in, any administrative, civil,  
18                   or criminal action or investigation directed against the individual, unless the action  
19                   or investigation arises out of, or is directly related to, the law enforcement inquiry  
20                   for which the information was obtained.

21           4.   When the matter or need for which protected health information was disclosed to a  
22                   law enforcement authority or grand jury has concluded, including any derivative  
23                   matters arising from that matter or need, the law enforcement authority or grand  
24                   jury must either destroy the protected health information, or return it to the person  
25                   from whom it was obtained.

26           5.   To the extent practicable, and consistent with the requirements of due process, a  
27                   law enforcement authority shall redact personally identifying information from  
28                   protected health information prior to the public disclosure of that protected  
29                   information in a judicial or administrative proceeding.

30           6.   Any disclosure of protected health information under this section must be limited to  
31                   the minimum amount of information necessary to fulfill the purposes of this section.

1           7. A recipient of information pursuant to this section may use or disclose that  
2           information solely to fulfill the purposes of this section.

3           8. Protected health information disclosed under this section must be clearly identified  
4           as protected health information that is subject to this chapter.

5           9. This section may not be construed to limit or restrict the ability of law enforcement  
6           authorities to gain information while in hot pursuit of a suspect or if other exigent  
7           circumstances exist.

8           **23-01.3-07. Disclosure of a public health incident.**

9           1. Notwithstanding any other law, the state health officer may disclose confidential  
10           information or protected health information to a health care provider or the public if  
11           the state health officer determines that:

12           a. Disclosure of information is required to prevent the spread of disease;

13           b. Disclosure of information is required to identify the cause or source of  
14           disease; or

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

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

21           **23-01.3-08. Status of information in possession of a local public health authority.**

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

26           **23-01.3-09. Penalty for unauthorized disclosure.** A person who knowingly discloses  
27           protected health information in violation of this chapter is guilty of a class A misdemeanor.

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

- 1           **Information confidential.** Information received under this chapter by the state  
2 department of health, through inspection or otherwise, is confidential and may not be disclosed  
3 except:
- 4           1. In a proceeding involving the question of license;
  - 5           2. In a judicial proceeding, upon a court order; or
  - 6           3. To a health or social services agency with specific responsibility for a patient's  
7           care.