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COMMITTEE REPORT

May 24, 2011

**H. 3378**

Introduced by Reps. Crawford and McLeod

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Read the first time March 9, 2011.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Bill (H. 3378) to amend Article 3, Chapter 31, Title 44, Code of Laws of South Carolina, 1976, relating to commitment of tuberculosis patients, so as to provide for an emergency, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

HARVEY S. PEELER, JR. for Committee.

**A** **BILL**

TO AMEND ARTICLE 3, CHAPTER 31, TITLE 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO COMMITMENT OF TUBERCULOSIS PATIENTS, SO AS TO PROVIDE FOR AN EMERGENCY ORDER ISSUED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL OR AN ORDER ISSUED BY THE PROBATE COURT FOR THE DETENTION, EXAMINATION, ISOLATION, AND TREATMENT OF A PERSON WITH TUBERCULOSIS WHO POSES A RISK TO THE PUBLIC; TO PROVIDE FOR THE CIRCUMSTANCES UNDER WHICH AN EMERGENCY ORDER MAY BE ISSUED AND THE SCOPE OF AN EMERGENCY ORDER; TO PROVIDE REVIEW AND APPEAL PROCEDURES FOR AN EMERGENCY ORDER; TO AUTHORIZE THE COURT TO WAIVE NOTICE REQUIREMENTS UNDER CERTAIN CIRCUMSTANCES; TO PROHIBIT STAYING A COMMITMENT ORDER PENDING APPEAL; TO PROVIDE THAT INVOLUNTARY EXAMINATION OF A PERSON WITH SUSPECTED TUBERCULOSIS IS NOT COMPULSORY TREATMENT; AND TO DELETE PROVISIONS PERTAINING TO THE ESTABLISHMENT OF TUBERCULOSIS FACILITIES AT THE STATE PARK HEALTH CENTER AND THAT THE ENFORCEMENT OF THIS ARTICLE IS CONTINGENT UPON THE AVAILABILITY OF FACILITIES FOR HOSPITALIZATION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 3, Chapter 31, Title 44 of the 1976 Code is amended to read:

“Article 3

The Emergency Detention and Commitment of Tuberculosis Patients

Section 44‑31‑100. (A) The General Assembly finds that:

(1) Pulmonary tuberculosis is a life‑threatening airborne disease. Tuberculosis has reemerged as an epidemic disease nationally. The number and types of cases in South Carolina each year, including drug‑resistant tuberculosis, demonstrate that timely, effective public health intervention is necessary to prevent an epidemic and to protect the residents of this State.

(2) In order to limit the spread of tuberculosis, it is essential that persons with the disease are diagnosed and treated before they infect others. Diagnosis requires a variety of methodologies, including skin tests, x‑rays, blood tests, and laboratory analysis of sputum samples.

(3) A person with tuberculosis who does not voluntarily submit to appropriate testing, treatment, or infection control methods poses an unreasonable risk of spreading the disease to those who come into contact with the person.

(4) Although the recommended course of treatment for tuberculosis varies somewhat from one individual to another, at a minimum, effective treatment requires a long‑term regimen of multiple drug therapy. The development of the appropriate course of treatment for any one individual may require trying different combinations of drugs and repeated drug susceptibility testing. The course of treatment may require as long as several years to complete.

(5) A noninfectious person who begins a course of treatment for tuberculosis and fails to follow the recommended course through to completion is highly likely to become infectious. The person can infect others and possibly develop drug resistant tuberculosis, which is more difficult to treat, and more likely to result in death. A person who is infectious with multidrug resistant tuberculosis poses a significant risk of transmitting drug resistant tuberculosis to other persons, unless appropriate treatment and infection control methods are followed. It is therefore critical that individuals with tuberculosis, whether infectious or not, complete a course of treatment to avoid relapse, infectiousness, and drug resistance.

(B) The purposes of this article are to:

(1) assure the timely diagnosis, treatment, and prevention of tuberculosis;

(2) provide appropriate individualized preventive and curative treatment to the people of South Carolina in the least restrictive setting; and

(3) protect the public from the spread of infectious tuberculosis.

Section 44‑31‑105. (A) If the Department of Health and Environmental Control determines that the public health or the health of any individual is endangered by a case of tuberculosis, or a suspected case of tuberculosis, the commissioner, or his or her designee, may issue an emergency order he or she considers necessary to protect the public health or the health of any person, and law enforcement shall aid and assist the department in accordance with Section 44‑1‑100.

(B) An emergency order issued pursuant to this section may include, but is not limited to:

(1) authorizing the emergency removal to and detention in a hospital or other treatment facility for examination of a person who is unable or unwilling to voluntarily submit to an examination by a physician or by the department for the purpose of determining whether the person is infected with active tuberculosis and presents a danger to himself or others;

(2) requiring compliance with an appropriate, prescribed course of medication for tuberculosis and contagion precautions;

(3) requiring compliance with a course of directly observed therapy in which the prescribed antituberculosis medication is administered under direct observation as specified by the department;

(4) authorizing the emergency removal to and isolation in a hospital or other treatment facility of a person who fails to comply with an emergency order issued by the department, fails to comply with a medically ordered treatment regimen, and presents a substantial risk and likelihood of exposure of active tuberculosis to other persons;

(5) requiring the emergency detention and isolation by a hospital of a hospital patient with active tuberculosis disease who is threatening or attempting to leave the hospital against medical advice.

(C) An emergency order issued pursuant to this section must include:

(1) an individualized assessment of the person’s circumstances or behavior, or both, constituting the basis for the issuance of the order;

(2) the purposes of the isolation or detention;

(3) notice that the respondent has the right to request release from isolation and detention by contacting a person designated in the order; and

(4) in the absence of a court order, that the detention must not continue for more than thirty days.

(D) The probate court shall enforce the provisions of an emergency order issued pursuant to this section. If a person being isolated or detained pursuant to an emergency order requests release from isolation or detention, the department, within three working days of the request for release, shall file a petition in the probate court of the county in which the person is being held seeking continued isolation or detention. The probate court must schedule a hearing to review the request for continued isolation or detention within ten days of the filing of the petition.

Section 44‑31‑110. (A) When it is brought to the attention of a ~~county~~ Department of Health and Environmental Control health officer that ~~any~~ a person ~~afflicted~~ with active ~~pulmonary~~ tuberculosis is unable or unwilling to conduct himself so as not to expose others to danger, the ~~county health officer is directed to investigate the circumstances. If he finds that the diagnosis of active pulmonary tuberculosis is conclusive and that the person concerned is in fact a menace to others, he shall lodge a complaint with the judge of~~ department shall issue an emergency order pursuant to Section 44‑31‑105 or file a petition in the probate court of the county ~~concerned~~ in which the person resides or is situated seeking commitment of the person to a facility for isolation and treatment. In case of the absence of the ~~county~~ health officer or ~~his~~ the department’s failure to act, any other interested person may ~~lodge a complaint with the judge of~~ petition the probate~~,~~ court for commitment of the person for isolation and treatment. ~~Such complaint to~~ A petition seeking commitment must be based on proper records and affidavits.

(B) The probate court may waive the requirement of notice to the person who is the subject of the emergency order or petition seeking commitment if the health officer demonstrates that the person is:

(1) hiding from the health department staff;

(2) evading attempts by health department staff or law enforcement to serve notice of the proceedings; or

(3) refusing to accept service of pleadings or motions.

Section 44‑31‑120. If the judge of probate, after ~~due~~ notice and hearing, is satisfied that ~~such complaint~~ the petition is well founded, ~~he~~ the judge may commit the person ~~against whom the complaint has been lodged~~ to ~~the State Park Health Center~~ a facility designated by the department, ~~such~~ and the commitment ~~to continue~~ continues until the ~~medical director~~ department notifies the probate judge that the person ~~concerned~~ is no longer a ~~menace to others~~ threat to the public’s health.

Section 44‑31‑130. ~~Any~~ A person committed to a ~~sanatorium~~  facility under the terms of this article ~~shall have~~ has the right to appeal to ~~any~~ a court having jurisdiction for review of the evidence under which ~~he~~ the person was committed. The order of commitment must not be stayed pending appeal.

Section 44‑31‑140. If a person ~~concerned is~~ committed to ~~the State Park Health Center and if he~~ a facility pursuant to this article leaves without permission or ~~conducts himself so as to jeopardize the morale or well‑being of his fellow~~, in the opinion of the department, endangers the public, staff, or other patients ~~in the opinion of the medical director, the director~~, the department is empowered to isolate ~~him~~ and forceably detain ~~him~~ the person if necessary until such time as ~~he is~~ the person no longer poses a ~~menace~~ risk to others.

Section 44‑31‑150. ~~Necessary facilities shall be established at the State Park Health Center for the forcible detention of patients committed under the provisions of this article whom the medical director orders to be isolated when, in the opinion of the medical director, provision of such facilities is necessary.~~ A person committed under the provisions of this article who is detained solely for treatment or isolation in a facility designated by the department may not be committed to a local detention facility.

Section 44‑31‑160. If ~~any~~ a person ~~so~~ lawfully detained or committed pursuant to this article to ~~the State Park Health Center shall leave~~ a facility leaves the ~~health center~~ facility without permission of the ~~medical director, the director~~ attending physician, the department shall report ~~that fact~~ this information to the judge of probate of the county from which the patient was committed, and the judge of probate shall call upon the sheriff of the county to return the patient to the ~~State Park Health Center or shall take any other lawful steps which he deems necessary to insure his return~~ facility or to a secure prison facility if necessary.

Section 44‑31‑170. ~~No~~ A person ~~shall~~ must not be required to take ~~any~~ compulsory treatment under the provisions of this article until ~~it shall have first been certified by~~ two ~~doctors~~ physicians licensed to practice in ~~the~~ this State~~, or the county or district health officer,~~ certify that the person sought to be confined for treatment ~~actually~~ has tuberculosis in a contagious state and ~~that he~~ constitutes a danger ~~and menace~~ to the health of others unless ~~he be~~ the person is hospitalized and given treatment. ~~One of such two doctors shall be appointed by the person suspected of being diseased and the other shall be a local doctor appointed by some member of the Tuberculosis Association or a member of the county medical society~~ An examination conducted pursuant to Section 44‑31‑105 of a person with suspected tuberculosis is not compulsory treatment.

~~Section 44‑31‑180.~~ ~~The provisions of this article shall be contingent upon there being adequate and available facilities for hospitalization of persons committed hereunder.~~

Section 44‑31‑190. ~~Nothing in~~ No provision of this article ~~shall~~ may be construed as interfering with the ordinary admission of tuberculosis patients to ~~the State Park Health Center~~ a facility through channels ~~which~~ that have customarily been followed in the past, and this article ~~shall be applied~~ applies only to cases ~~which~~ that have proved to be beyond ordinary, reasonable methods of control. This article ~~shall~~ does not ~~be applied~~ apply to ~~mental cases~~ persons suffering from mental illness~~, and such cases shall~~; these persons must be ~~treated at the State Hospital~~ treated by the Department of Mental Health.

Section 44‑31‑200. The department may promulgate regulations to carry out the purposes and provisions of this chapter.”

SECTION 2. This act takes effect upon approval by the Governor.

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