

## Article 22.

### A Terrorist Incident Using Nuclear, Biological, or Chemical Agents.

#### **§ 130A-475. Suspected terrorist attack.**

(a) If the State Health Director reasonably suspects that a public health threat may exist and that the threat may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the State Health Director is authorized to order any of the following:

- (1) Require any person or animal to submit to examinations and tests to determine possible exposure to the nuclear, biological, or chemical agents.
- (2) Test any real or personal property necessary to determine the presence of nuclear, biological, or chemical agents.
- (3) Evacuate or close any real property, including any building, structure, or land when necessary to investigate suspected contamination of the property. The period of closure during an investigation shall not exceed 10 calendar days. If the State Health Director determines that a longer period of closure is necessary to complete the investigation, the Director may institute an action in superior court to order the property to remain closed until the investigation is completed.
- (4) Limit the freedom of movement or action of a person or animal that is contaminated with, or reasonably suspected of being contaminated with, a biological, chemical or nuclear agent that may be conveyed to other persons or animals.
- (5) Limit access by any person or animal to an area or facility that is housing persons or animals whose movement or action has been limited under subdivision (4) of this subsection or to an area or facility that is contaminated with, or reasonably suspected of being contaminated with, a biological, chemical or nuclear agent that may be conveyed to other persons or animals. Nothing in this subdivision shall be construed to restrict the access of authorized health care, law enforcement, or emergency medical services personnel to quarantine or isolation premises as necessary in conducting their duties.

(b) The authority under subsection (a) of this section shall be exercised only when and so long as a public health threat may exist, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. Before applying the authority under subdivision (4) or (5) of subsection (a) of this section to livestock or poultry for the purpose of preventing the direct or indirect conveyance of a biological, chemical or nuclear agent to persons, the State Health Director shall consult with the State Veterinarian in the Department of Agriculture and Consumer Services.

The period of limited freedom of movement or access under subdivisions (4) and (5) of subsection (a) of this section shall not exceed 30 calendar days. Any person substantially affected by that limitation may institute, in superior court in Wake County or in the county in which the limitation is imposed, an action to review the limitation. The State Health Director shall give the persons known by the State Health Director to be substantially affected by the limitation reasonable notice under the circumstances of the right to institute an action to review the limitation. If a person or a person's representative requests a hearing, the hearing shall be held within 72 hours of the filing of the request, excluding Saturdays and Sundays. The person substantially affected by that limitation is entitled to be represented by counsel of the person's own choice or if the person is indigent, the person shall be represented by counsel appointed in accordance with Article 36 of Chapter 7A of the General Statutes and the rules adopted by the Office of Indigent Defense

Services. The court shall reduce or terminate the limitation unless it determines, by the preponderance of the evidence, that the limitation is reasonably necessary to prevent or limit the conveyance of biological, chemical or nuclear agents to others, and may apply such conditions to the limitation as the court deems reasonable and necessary.

If the State Health Director determines that a 30-calendar-day limitation on freedom of movement or access is not adequate to protect the public health, the State Health Director must institute in superior court in the county in which the limitation is imposed, an action to obtain an order extending the period limiting the freedom of movement or access. If the person substantially affected by the limitation has already instituted an action in superior court in Wake County, the State Health Director must institute the action in superior court in Wake County or as a counterclaim in the pending case. The court shall continue the limitation for a period not to exceed 30 days, subject to conditions it deems reasonable and necessary, if it determines by the preponderance of the evidence, that additional limitation is reasonably necessary to prevent or limit the conveyance of biological, chemical, or nuclear agents to others. The court order shall specify the period of time the limitation is to be continued and shall provide for automatic termination of the order upon written determination by the State Health Director or local health director that the limitation on freedom of movement or access is no longer necessary to protect the public health. In addition, where the petitioner can prove by a preponderance of the evidence that the limitation on freedom of movement or access was not or is no longer needed for protection of the public health, the person so limited may move the trial court to reconsider its order extending the limitation on freedom of movement or access before the time for the order otherwise expires and may seek immediate or expedited termination of the order. Before the expiration of an order issued under this section, the State Health Director may move to continue the order for additional periods not to exceed 30 days each.

(c) If the State Health Director reasonably suspects that there exists a public health threat that may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the State Health Director shall notify the Governor and the Secretary of Public Safety. If the Secretary of Public Safety reasonably suspects that a public health threat may exist and that the threat may have been caused by a terrorist incident using nuclear, biological, or chemical agents, the Secretary shall notify the Governor and the State Health Director.

(d) For the purpose of this Article, the term "public health threat" means a situation that is likely to cause an immediate risk to human life, an immediate risk of serious physical injury or illness, or an immediate risk of serious adverse health effects.

(e) Nothing in this section shall limit any authority otherwise granted to local or State public health officials under this Chapter. (2002-179, s. 1; 2004-80, s. 3; 2004-199, s. 33; 2011-145, s. 19.1(g).)

#### **§ 130A-476. Access to health information.**

(a) Notwithstanding any other provision of law, a health care provider, a person in charge of a health care facility, or a unit of State or local government may report to the State Health Director or a local health director any events that may indicate the existence of a case or outbreak of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents. Events that may be reported include unusual types or numbers of symptoms or illnesses presented to the provider, unusual trends in health care visits, or unusual trends in prescriptions or purchases of over-the-counter pharmaceuticals. To the extent practicable, a person who makes a report under this subsection shall not disclose personally

identifiable information. A person disclosing or not disclosing information pursuant to this subsection is immune from any civil or criminal liability that might otherwise be incurred or imposed based on the disclosure or lack of disclosure provided that the health care provider was acting in good faith and without malice. In any proceeding involving liability, good faith and lack of malice are presumed. Notwithstanding the foregoing, if a health care provider or unit of State or local government willfully does not disclose information pursuant to this subsection, the immunity from civil or criminal liability provided under this subsection shall not be available if the person had actual knowledge that a condition or illness was caused by use of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21(c).

(b) The State Health Director may issue a temporary order requiring health care providers to report symptoms, diseases, conditions, trends in use of health care services, or other health-related information when necessary to conduct a public health investigation or surveillance of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents. The order shall specify which health care providers must report, what information is to be reported, and the period of time for which reporting is required. The period of time for which reporting is required pursuant to a temporary order shall not exceed 90 days. The Commission may adopt rules to continue the reporting requirement when necessary to protect the public health.

(c) Health care providers and persons in charge of health care facilities or laboratories shall, upon request and proper identification, permit the State Health Director or a local health director to examine, review, and obtain a copy of records containing confidential or protected health information, or a summary of pertinent portions of those records, (i) that pertain to a report authorized by subsection (a) or required by subsection (b) of this section, or (ii) that, in the opinion of the State Health Director or local health director, are necessary for an investigation of a case or outbreak of an illness, condition, or health hazard that may have been caused by a terrorist incident using nuclear, biological, or chemical agents.

(d) A person who makes a report pursuant to subsection (b) of this section or permits examination, review, or copying of medical records pursuant to subsection (c) of this section is immune from any civil or criminal liability that otherwise might be incurred or imposed as a result of complying with those subsections.

(e) Confidential or protected health information received by the State Health Director or a local health director pursuant to this section shall be confidential and shall not be released, except when the release is:

- (1) Made pursuant to any other provision of law;
- (2) To another federal, state, or local public health agency for the purpose of preventing or controlling a public health threat; or
- (3) To a court or law enforcement official or law enforcement officer for the purpose of enforcing the provisions of this Chapter or for the purpose of investigating a terrorist incident using nuclear, biological, or chemical agents. A court or law enforcement official or law enforcement officer who receives the information shall not disclose it further, except (i) when necessary to conduct an investigation of a terrorist incident using nuclear, biological, or chemical agents, or (ii) when the State Health Director or a local health director seeks the assistance of the court or law enforcement official or law enforcement officer in preventing or controlling the public health threat and expressly authorizes the disclosure as necessary for that purpose.

- (f) Repealed by Session Laws 2004-124, s. 10.34(a), effective January 1, 2005.
- (g) In this section the following terms shall include:
  - (1) "Health care provider" includes a physician licensed to practice medicine in North Carolina or a person who is licensed, certified, or credentialed to practice or provide health care services, including, but not limited to, pharmacists, dentists, physician assistants, registered nurses, licensed practical nurses, advanced practice nurses, chiropractors, respiratory care therapists, and emergency medical technicians; and
  - (2) "Health care facility" includes hospitals, skilled nursing facilities, intermediate care facilities, psychiatric facilities, rehabilitation facilities, home health agencies, ambulatory surgical facilities, or any other health care related facility, whether publicly or privately owned. (2002-179, s. 1; 2004-80, s. 7; 2004-124, s. 10.34(a).)

**§ 130A-477. Abatement of public health threat.**

If it is determined that a public health threat may exist because of the contamination of property caused by a terrorist incident using nuclear, biological, or chemical agents, the State Health Director may order any action to abate that public health threat. To the extent that any owner, lessee, operator, or other person in control of the property is innocent of culpability in the creation of the public health threat, that person shall not be responsible for the costs of abating the public health threat. (2002-179, s. 1.)

**§ 130A-478. Tort liability.**

Article 31 of Chapter 143 applies to negligent acts committed by any officer, employee, involuntary servant or agent of the State acting pursuant to this Article. (2002-179, s. 1.)

**§ 130A-479. Biological agents registry; rules; penalties.**

(a) The Department shall establish and administer a program for the registration of biological agents. The biological agents registry shall identify the biological agents possessed and maintained by any person in this State and shall contain other information required under rules adopted by the Commission.

(b) The following definitions apply in this section:

(1) "Biological agent" means:

- a. Any select agent that is a microorganism, virus, bacterium, fungus, rickettsia, or toxin listed in Appendix A of Part 72 of Title 42 of the Code of Federal Regulations.
- b. Any genetically modified microorganisms or genetic elements from an organism on Appendix A of Part 72 of Title 42 of the Code of Federal Regulations, shown to produce or encode for a factor associated with a disease.
- c. Any genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins listed on Appendix A of Part 72 of Title 42 of the Code of Federal Regulations, or their toxic submits.

- (2) "Person" means any association, business, corporation, facility, firm, individual, institution of higher education, organization, partnership, society, State agency, or other legal entity.

(c) The Commission shall adopt rules for the implementation of the registry program, as follows:

- (1) Determining and listing the biological agents required to be reported under this section.
- (2) Designating persons required to make reports and specific information required to be reported including time limits for reporting, form of reports, and to whom reports shall be submitted.
- (3) Providing for the release of information in the registry to State and federal law enforcement agencies and the United States Centers for Disease Control and Prevention pursuant to a communicable disease investigation commenced or conducted by the Department, the Commission, or other state or federal law enforcement agency having investigatory authority, or in connection with any investigation involving release, theft, or loss of biological agents.
- (4) Establishing a system of safeguards that requires persons possessing and maintaining biological agents subject to this section to comply with the same federal standards that apply to persons registered to possess the same agents under federal law.
- (5) Establishing a process for persons that possess and maintain biological agents to alert appropriate authorities of unauthorized possession or attempted possession of biological agents. The rules shall designate appropriate authorities for receipt of alerts from these persons.

(d) Any person that possesses and maintains any biological agent required to be reported under this section shall report to the Department the information required by the Commission for inclusion in the biological agent registry.

(e) Except as otherwise provided in this section, information prepared for or maintained in the registry under this section shall be confidential and shall not be a public record under G.S. 132-1. The Department may, in accordance with rules adopted by the Commission, release information contained in the biological agent registry for the purpose of conducting or aiding in a communicable disease investigation. The Department shall cooperate with and may share information contained in the biological agent registry with the United States Centers for Disease Control and Prevention, and state and federal law enforcement agencies in any investigation involving the release, theft, or loss of a biological agent required to be reported under this section. Release of information from the registry as authorized under this subsection shall not render the information released a public record under G.S. 132-1. Release of information from the registry as authorized under this subsection also shall not render the information prepared for or maintained in the registry a public record under G.S. 132-1.

(f) The Department shall impose a civil penalty for a willful or knowing violation of this section in the amount of up to one thousand dollars (\$1,000). Each day of a continuing violation shall be a separate offense. Any person wishing to contest a penalty shall be entitled to an administrative hearing in accordance with Chapter 150B of the General Statutes. (2001-469, s. 1; 2002-179, s. 2(a).)

### **§ 130A-480. Emergency department data reporting.**

(a) For the purpose of ensuring the protection of the public health, the State Health Director shall develop a syndromic surveillance program for hospital emergency departments in order to detect and investigate public health threats that may result from (i) a terrorist incident using nuclear, biological, or chemical agents or (ii) an epidemic or infectious, communicable, or other disease. The State Health Director shall specify the data to be reported by hospitals pursuant to this program, subject to the following:

- (1) Each hospital shall submit electronically available emergency department data as specified by rule by the Commission. The Commission, in consultation with hospitals, shall establish by rule a schedule for the implementation of full electronic reporting capability of all data elements by all hospitals. The schedule shall take into consideration the number of data elements already reported by the hospital, the hospital's capacity to electronically maintain the remaining elements, available funding, and other relevant factors.
- (2) None of the following data for patients or their relatives, employers, or household members may be collected by the State Health Director: names; postal or street address information, other than town or city, county, state, and the first five digits of the zip code; geocode information; telephone numbers; fax numbers; electronic mail addresses; social security numbers; health plan beneficiary numbers; account numbers; certificate or license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; web universal resource locators (URLs); Internet protocol (IP) address numbers; biometric identifiers, including finger and voice prints; and full face photographic images and any comparable images.

(b) The following are not public records under Chapter 132 of the General Statutes and are privileged and confidential:

- (1) Data reported to the State Health Director pursuant to this section.
- (2) Data collected or maintained by any entity with whom the State Health Director contracts for the reporting, collection, or analysis of data pursuant to this section.

The State Health Director shall maintain the confidentiality of the data reported pursuant to this section and shall ensure that adequate measures are taken to provide system security for all data and information. The State Health Director may share data with local health departments and the Centers for Disease Control and Prevention (CDC) for public health purposes. Local health departments are bound by the confidentiality provisions of this section. The Department shall enter into an agreement with the CDC to ensure that the CDC complies with the confidentiality provisions of this section. The State Health Director shall not allow information that it receives pursuant to this section to be used for commercial purposes and shall not release data except as authorized by other provisions of law.

(c) A person is immune from liability for actions arising from the required submission of data under this Article.

(d) For purposes of this section, "hospital" means a hospital, as defined in G.S. 131E-214.1(3), that operates an emergency room on a 24-hour basis. The term does not include a psychiatric hospital that operates an emergency room.

(e) Administrative emergency department data shall be reported by hospitals under Article 11A of Chapter 131E of the General Statutes. (2004-124, s. 10.34(b); 2006-264, s. 64(a); 2007-8, s. 1.)

**§ 130A-481. Food defense.**

The Department of Agriculture and Consumer Services, Department of Environmental Quality, and Department of Health and Human Services shall jointly develop a plan to protect the food supply from intentional contamination. The plan shall address protection of the food supply from production to consumption, including, but not limited to, the protection of plants, crops, and livestock. (2006-80, s. 2; 2015-241, s. 14.30(u).)

**§ 130A-482. Reserved for future codification purposes.**

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**§ 130A-485. Vaccination program established; definitions.**

(a) The Department and local health departments shall offer a vaccination program for first responders who may be exposed to infectious diseases when deployed to disaster locations. The vaccinations shall include, but are not limited to, hepatitis A vaccination, hepatitis B vaccination, diphtheria-tetanus vaccination, influenza vaccination, pneumococcal vaccination, and other vaccinations when recommended by the United States Public Health Service and in accordance with Federal Emergency Management Directors Policy. Immune globulin will be made available when necessary, as determined by the State Health Director.

(b) Participation in the vaccination program is voluntary by the first responders, except for first responders who are classified as having "occupational exposure" to bloodborne pathogens as defined by the Occupational Safety and Health Administration Standard contained at 29 C.F.R. § 1910.10300 who shall be required to take the designated vaccinations or otherwise required by law.

(c) Nothing in this section shall require first responders, except first responders for whom the vaccination program is not voluntary as set forth in subsection (b) of this section, who present a written statement from a licensed physician indicating that a vaccine is medically contraindicated for the first responder or who sign a written statement that the administration of a vaccination conflicts with the first responder's religious tenets, to receive a vaccine.

(d) In the event of a vaccine shortage, the State Public Health Director, in consultation with the Centers for Disease Control and Prevention, shall give priority for vaccination to first responders deployed to a disaster location.

(e) The Department shall notify first responders of the availability of the vaccination program and shall provide educational materials on ways to prevent exposure to infectious diseases.

(f) As used in this section, unless the context clearly requires otherwise, the term:

- (1) "Bioterrorism" means the intentional use of any microorganism, virus, infectious substance, biological product, or biological agent as defined in G.S. 130A-479 that may be engineered as a result of biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious

substance, or biological product to cause or attempt to cause death, disease, or other biological malfunction in any living organism.

- (2) "Disaster location" means any geographical location where a bioterrorism attack, terrorist incident, catastrophic or natural disaster, or emergency occurs.
- (3) "First responders" means State and local law enforcement personnel, fire department personnel, and emergency medical personnel who will be deployed to bioterrorism attacks, terrorist attacks, catastrophic or natural disasters, or emergencies. (2003-227, s. 1.)

**§§ 130A-486 through 130A-490. Reserved for future codification purposes.**