

Sixty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2181

Introduced by

Senators Clemens, Heitkamp, Larson

Representatives Paur, Satrom, Schauer

1 A BILL for an Act to amend and reenact subsection 12 of section 23-01-05 and  
2 section 37-17.1-05 of the North Dakota Century Code, relating to the state health officer's  
3 authority and the governor's authority during a declared disaster or emergency; and to provide a  
4 penalty.

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

6 **SECTION 1. AMENDMENT.** Subsection 12 of section 23-01-05 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8 12. Issue any orders relating to disease control measures deemed necessary to prevent  
9 the spread of communicable disease. Disease control measures may include special  
10 immunization activities and decontamination measures. Written orders issued under  
11 this section shall have the same effect as a physician's standing medical order. The  
12 state health officer may apply to the district court in a judicial district where a  
13 communicable disease is present for an injunction canceling public events or closing  
14 places of business. On application of the state health officer showing the necessity of  
15 such cancellation, the court may issue an ex parte preliminary injunction, pending a  
16 full hearing.

17 a. Notwithstanding any other provision of law, an order issued pursuant to this  
18 subsection may not:

19 (1) Substantially burden a person's exercise of religion unless the order is in  
20 furtherance of a compelling governmental interest and is the least restrictive  
21 means of furthering that compelling governmental interest;

22 (2) Treat religious conduct more restrictively than any secular conduct of  
23 reasonably comparable risk, unless the government demonstrates through

- 1                   clear and convincing scientific evidence that a particular religious activity  
2                   poses an extraordinary health risk; or  
3                   (3) Treat religious conduct more restrictively than comparable secular conduct  
4                   because of alleged economic need or benefit.  
5                   b. A person claiming to be aggrieved by a violation of subdivision a may assert that  
6                   violation as a claim or defense in a judicial proceeding and obtain appropriate  
7                   relief, including costs and reasonable attorney's fees.

8                   **SECTION 2. AMENDMENT.** Section 37-17.1-05 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10                   **37-17.1-05. The governor and disasters or emergencies - Penalty.**

- 11                   1. The governor is responsible to minimize or avert the adverse effects of a disaster or  
12                   emergency.  
13                   2. Under this chapter, the governor may issue executive orders and proclamations, and  
14                   amend or rescind them. Executive orders, proclamations, and regulations have the  
15                   force of law.  
16                   3. A disaster or emergency must be declared by executive order or proclamation of the  
17                   governor if the governor determines a disaster has occurred or a state of emergency  
18                   exists. The state of disaster or emergency shall continue until the governor determines  
19                   that the threat of an emergency has passed or the disaster has been dealt with to the  
20                   extent that emergency conditions no longer exist. The legislative assembly by  
21                   concurrent resolution may terminate a state of disaster or emergency at any time. All  
22                   executive orders or proclamations issued under this subsection must indicate the  
23                   nature of the disaster or emergency, the area or areas threatened, the conditions  
24                   which have brought it about or which make possible termination of the state of disaster  
25                   or emergency. An executive order or proclamation must be disseminated promptly by  
26                   means calculated to bring its contents to the attention of the general public, unless the  
27                   circumstances attendant upon the disaster or emergency prevent or impede such  
28                   dissemination, and it must be promptly filed with the department of emergency  
29                   services, the secretary of state, and the county or city auditor of the jurisdictions  
30                   affected.

- 1           4.   An executive order or proclamation of a state of disaster or emergency shall activate  
2           the state and local operational plans applicable to the political subdivision or area in  
3           question and be authority for the deployment and use of any forces to which the plan  
4           or plans apply and for use or distribution of any supplies, equipment, and materials  
5           and facilities assembled, stockpiled, or arranged to be made available pursuant to this  
6           chapter or any other provision of law relating to a disaster or emergency.
- 7           5.   During the continuance of any state of disaster or emergency declared by the  
8           governor, the governor is commander in chief of the emergency management  
9           organization and of all other forces available for emergency duty. To the greatest  
10          extent practicable, the governor shall delegate or assign command authority by prior  
11          arrangement embodied in appropriate executive orders or emergency operational  
12          plans, but nothing herein restricts the governor's authority to do so by orders issued at  
13          the time of the disaster or emergency.
- 14          6.   In addition to any other powers conferred upon the governor by law, the governor may:
- 15           a.   Suspend the provisions of any regulatory statute prescribing the procedures for  
16           conduct of state business, or the orders, rules, or regulations of any state agency,  
17           if strict compliance with the provisions of any statute, order, rule, or regulation  
18           would in any way prevent, hinder, or delay necessary action in managing a  
19           disaster or emergency.
- 20           b.   Utilize all available resources of the state government as reasonably necessary  
21           to manage the disaster or emergency and of each political subdivision of the  
22           state.
- 23           c.   Transfer the direction, personnel, or functions of state departments and agencies  
24           or units thereof for the purpose of performing or facilitating emergency  
25           management activities.
- 26           d.   Subject to any applicable requirements for compensation under section  
27           37-17.1-12, commandeer or utilize any private property if the governor finds this  
28           necessary to manage the disaster or emergency.
- 29           e.   Direct and compel the evacuation of all or part of the population from any stricken  
30           or threatened area within the state if the governor deems this action necessary

- 1 for the preservation of life or other disaster or emergency mitigation, response, or  
2 recovery.
- 3 f. Prescribe routes, modes of transportation, and destinations in connection with an  
4 evacuation.
- 5 g. Control ingress and egress in a designated disaster or emergency area, the  
6 movement of persons within the area, and the occupancy of premises therein.
- 7 h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,  
8 explosives, and combustibles, not including ammunition.
- 9 i. Make provision for the availability and use of temporary emergency housing.
- 10 j. Make provisions for the control, allocation, and the use of quotas for critical  
11 shortages of fuel or other life and property sustaining commodities.
- 12 k. Designate members of the highway patrol, North Dakota national guard, or others  
13 trained in law enforcement, as peace officers.
- 14 7. Any person who willfully violates any provision of an executive order or proclamation  
15 issued by the governor pursuant to this chapter is guilty of an infraction.
- 16 8. Authorize the adjutant general to recall to state active duty, on a volunteer basis,  
17 former members of the North Dakota national guard. Those recalled must possess the  
18 qualifications required by the disaster or emergency. Recall under this subsection is  
19 effective only for the duration of the disaster or emergency and recalled personnel will  
20 be released from state active duty upon competent authority that the requirement of  
21 their service under this subsection has passed. Compensation for personnel recalled  
22 under this subsection will be based upon section 37-07-05.
- 23 9. Notwithstanding any other provision of law, an order, proclamation, rule, or regulation  
24 issued pursuant to this section may not:
- 25 a. Substantially burden a person's exercise of religion unless the order is in  
26 furtherance of a compelling governmental interest and is the least restrictive  
27 means of furthering that compelling governmental interest;
- 28 b. Treat religious conduct more restrictively than any secular conduct of reasonably  
29 comparable risk, unless the government demonstrates through clear and  
30 convincing scientific evidence that a particular religious activity poses an  
31 extraordinary health risk; or

- 1           c. Treat religious conduct more restrictively than comparable secular conduct  
2                 because of alleged economic need or benefit.
- 3        10. A person claiming to be aggrieved by a violation of subsection 9 may assert that  
4        violation as a claim or defense in a judicial proceeding and obtain appropriate relief,  
5        including costs and reasonable attorney's fees.