

**Sixty-seventh Legislative Assembly of North Dakota
In Special Session Commencing Monday, November 8, 2021**

HOUSE BILL NO. 1511
(Representatives Weisz, Becker, Devlin, Lefor, Meier, Paulson, Porter, Schauer)
(Senators Lee, Wardner)
(Approved by the Delayed Bills Committee)

AN ACT to create and enact a new section to chapter 34-03 of the North Dakota Century Code, relating to employer-required COVID-19 vaccinations; to amend and reenact sections 23-01-05.3 and 23-12-20 of the North Dakota Century Code, relating to vaccine passports and limitations on requiring documentation of COVID-19 vaccinations, antibodies, and post-transmission recovery status; to repeal section 23-12-20 of the North Dakota Century Code and section 2 of this Act, relating to limitations on requiring documentation of COVID-19 vaccinations, antibodies, and post-transmission recovery status and employer-required COVID-19 vaccinations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-05.3 of the North Dakota Century Code is amended and reenacted as follows:

23-01-05.3. Immunization data. (Effective through August 31, 2022)

1. The state department of health may establish an immunization information system and may require the childhood immunizations specified in subsection 1 of section 23-07-17.1 and other information be reported to the department. The state department of health may only require the reporting of childhood immunizations and other data upon completion of the immunization information reporting system. A health care provider who administers a childhood immunization shall report the patient's identifying information, the immunization that is administered, and other required information to the department. The report must be submitted using electronic media, and must contain the data content and use the format and codes specified by the department.
2. If a health care provider fails to submit an immunization report required under this section within four weeks of vaccination:
 - a. That health care provider may not order or receive any vaccine from the North Dakota immunization program until that provider submits all reports required under this section.
 - b. The state department of health shall make a report to that health care provider's occupational licensing entity outlining that provider's failure to comply with the reporting requirements under this section.
3. Notwithstanding any other provision of law, a health care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the state health officer may exchange immunization data in any manner with one another. Immunization data that may be exchanged under this section is limited to the date and type of immunization administered to a patient and may be exchanged regardless of the date of the immunization.
4. The state department of health may not create, administer, provide, or contract for electronic machine-readable code or a vaccine passport.

Immunization data. (Effective after August 31, 2022)

1. The department of health and human services may establish an immunization information system and may require the childhood immunizations specified in subsection 1 of section 23-07-17.1 and other information be reported to the department. The department of health and human services may only require the reporting of childhood immunizations and other data upon completion of the immunization information reporting system. A health care provider who administers a childhood immunization shall report the patient's identifying information, the immunization that is administered, and other required information to the department. The report must be submitted using electronic media, and must contain the data content and use the format and codes specified by the department.
2. If a health care provider fails to submit an immunization report required under this section within four weeks of vaccination:
 - a. That health care provider may not order or receive any vaccine from the North Dakota immunization program until that provider submits all reports required under this section.
 - b. The department of health and human services shall make a report to that health care provider's occupational licensing entity outlining that provider's failure to comply with the reporting requirements under this section.
3. Notwithstanding any other provision of law, a health care provider, elementary or secondary school, early childhood facility, public or private postsecondary educational institution, city or county board of health, district health unit, and the state health officer may exchange immunization data in any manner with one another. Immunization data that may be exchanged under this section is limited to the date and type of immunization administered to a patient and may be exchanged regardless of the date of the immunization.
4. The department of health and human services may not create, administer, provide, or contract for electronic machine-readable code or a vaccine passport.

SECTION 2. AMENDMENT. Section 23-12-20 of the North Dakota Century Code is amended and reenacted as follows:

23-12-20. ~~Vaccine~~COVID-19 vaccination and infection information.

1. ~~Except as provided under sections 15.1-23-02, 23-01-05.3, and 23-07-17.1, neither~~Neither a state government entity nor any of its political subdivisions, agents, or assigns may:
 - a. Require documentation, whether physical or electronic, for the purpose of certifying or otherwise communicating the following before providing access to state property, funds, or services:
 - (1) An individual's COVID-19 vaccination status;
 - (2) The presence of COVID-19 pathogens, antigens, or antibodies; or
 - (3) An individual's COVID-19 post-transmission recovery status;
 - b. Otherwise publish or share an individual's COVID-19 vaccination record or similar health information, except as specifically authorized by the individual or otherwise authorized by statute; or
 - c. Require a private business to obtain documentation, whether physical or electronic, for purposes of certifying or otherwise communicating the following before employment or providing access to property, funds, or services based on:
 - (1) An individual's COVID-19 vaccination status;
 - (2) The presence of COVID-19 pathogens, antigens, or antibodies; or

(3) An individual's COVID-19 post-transmission recovery status.

2. Subsection 1 does not apply to the department of corrections and rehabilitation, a correctional facility as defined under section 12-44.1-01, the state hospital, or a public health unit.
3. A private business located in this state or doing business in this state may not require a patron, client, or customer in this state to provide any documentation certifying COVID-19 vaccination, the presence of COVID-19 pathogens, antigens, or antibodies, or COVID-19 post-transmission recovery to gain access to, entry upon, or services from the business. This subsection does not apply to a developmental disability residential facility or a health care provider, including a long-term care provider, basic care provider, and assisted living provider. As used in this subsection, a private business does not include a nonprofit entity that does not sell a product or a service.
- ~~3.4.~~ This section may not be construed to interfere with an individual's rights to access that individual's own personal health information or with a person's right to access personal health information of others which the person otherwise has a right to access.
- ~~4.5.~~ Subsection 1 is not applicable to the state board of higher education, the university system, or institutions under the control of the state board of higher education to the extent the entity has adopted policies and procedures governing the type of documentation required, the circumstances under which such documentation may be shared, and exemptions from providing such documentation.
- ~~5.6.~~ This section is not applicable during a public health disaster or emergency declared in accordance with chapter 37-17.1.
- ~~6.~~ This section is limited in application to a vaccination authorized by the federal food and drug administration pursuant to an emergency use authorization
7. As used in this section, the term "COVID-19" means severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2 and any mutation or viral fragments of SARS-CoV-2.

SECTION 3. A new section to chapter 34-03 of the North Dakota Century Code is created and enacted as follows:

COVID-19 vaccination requirements - Exemptions.

1. As used in this section, the term "COVID-19" means severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2 and any mutation or viral fragments of SARS-CoV-2.
2. If an employer or contractor requires an employee, prospective employee, or independent contractor in this state to be vaccinated against COVID-19 as a condition of employment or a term of a contract:
 - a. The employer or contractor shall allow the employee, prospective employee, or independent contractor to submit proof of COVID-19 antibodies as an exemption to the vaccination requirement. Such proof is valid for six months from the date of the antibody test.
 - b. The employer or contractor shall allow the employee, prospective employee, or independent contractor to submit to periodic COVID-19 tests as an exemption to the vaccination requirement.
 - c. The employer or contractor shall allow the employee, prospective employee, or independent contractor to submit one of the following certificates as an exemption to the vaccination requirement:

- (1) A certificate from a North Dakota licensed physician, physician assistant, or advanced practice registered nurse stating the physical condition of the employee, prospective employee, or independent contractor is such that immunization would endanger the life or health of the employee, prospective employee, or independent contractor; or
 - (2) A certificate signed by the employee, prospective employee, or independent contractor stating the employee's, prospective employee's, or independent contractor's religious, philosophical, or moral beliefs are opposed to such immunization.
3. This section does not apply to the extent an employer or an independent contractor is required to comply with federal law, rules, or guidance relating to requirements for vaccinations for COVID-19 or resulting from Title 42, Code of Federal Regulations, part 416 et seq. [86 FR 61555 et seq. (2021)]; Title 29, Code of Federal Regulations, part 1910 et seq. [86 FR 61555 et seq. (2021)]; or the presidential executive order on ensuring adequate COVID safety protocols for federal contractors, issued September 9, 2021.

SECTION 4. REPEAL. Section 23-12-20 of the North Dakota Century Code and section 3 of this Act are repealed.

SECTION 5. EFFECTIVE DATE. Section 4 of this Act becomes effective August 1, 2023. The remainder of this Act becomes effective upon its filing with the secretary of state.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1511.

House Vote: Yeas 76 Nays 11 Absent 7

Senate Vote: Yeas 33 Nays 14 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State