

HOUSE BILL NO. 1510

Introduced by

Representatives Paulson, Meier, Steiner, Thomas

Senators Clemens, Lemm, Luick

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to create and enact chapter 14-02.7 of the North Dakota Century Code,
2 relating to discrimination based on vaccination status or possession of an immunity passport; ~~to~~
3 ~~amend and reenact section 23-07-17.1 of the North Dakota Century Code, relating to childhood~~
4 ~~immunizations~~; and to provide an effective date.

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

6 **SECTION 1.** Chapter 14-02.7 of the North Dakota Century Code is created and enacted as
7 follows:

8 **14-02.7-01. Definitions.**

9 As used in this chapter:

- 10 1. "Department" means the division of human rights within the department of labor and
11 human rights.
- 12 2. "Employee" means an individual who performs services for an employer, who employs
13 one or more individuals, for compensation, whether in the form of wages, salaries,
14 commission, or otherwise. The term does not include an individual elected to public
15 office in the state or political subdivision by the qualified voters thereof, or an individual
16 chosen by the officer to be on the officer's political staff, or an appointee on the
17 policymaking level or an immediate adviser with respect to the exercise of the
18 constitutional or legal powers of the office. However, the term does include an
19 individual subject to the civil service or merit system or civil service laws of the state
20 government, governmental agency, or a political subdivision.
- 21 3. "Employer" means a person within the state which employs one or more employees
22 for more than one quarter of the year and a person wherever situated which employs
23 one or more employees whose services are to be partially or wholly performed in the
24 state.

1 4. "Immunity passport" means a document, digital record, or software application
2 indicating an individual is immune to a disease, either through vaccination or through
3 infection and recovery.

4 5. "Public accommodation" means every place, establishment, or facility of whatever
5 kind, nature, or class which caters or offers services, facilities, or goods to the general
6 public for a fee, charge, or gratuity. The term does not include a bona fide private club
7 or other place, establishment, or facility that is by its nature distinctly private; provided,
8 however, the distinctly private place, establishment, or facility is a "public
9 accommodation" during the period it caters or offers services, facilities, or goods to the
10 general public for a fee, charge, or gratuity.

11 6. "Reasonable accommodations" means accommodations by an employer which do not:

12 a. Unduly disrupt or interfere with the employer's normal operations;

13 b. Threaten the health or safety of the individual seeking reasonable
14 accommodations or others;

15 c. Contradict a business necessity of the employer; or

16 d. Impose undue hardship on the employer, based on the size of the employer's
17 business, the type of business, the financial resources of the employer, and the
18 estimated cost and extent of the accommodations.

19 7. "Vaccination status" means an indication of whether an individual has received one or
20 more doses of a vaccine.

21 **14-02.7-02. Discrimination based on vaccination status or possession of immunity**
22 **passport prohibited.**

23 Except as otherwise provided in section 14-02.7-03, it is an unlawful discriminatory practice
24 for:

25 1. A person to refuse, withhold from, or deny to an individual any local or state services,
26 goods, facilities, advantages, privileges, licensing, educational opportunities, health
27 care access, or employment opportunities based on the individual's vaccination status
28 or whether the individual has an immunity passport.

29 2. An employer to refuse employment to an individual, to bar an individual from
30 employment, or to discriminate against an individual in compensation or in a term.

1 condition, or privilege of employment based on the individual's vaccination status or
2 whether the individual has an immunity passport.

3 3. A public accommodation to exclude, limit, segregate, refuse to serve, or otherwise
4 discriminate against an individual based on the individual's vaccination status or
5 whether the individual has an immunity passport.

6 **14-02.7-03. Exceptions.**

7 1. Section 14-02.7-02 does not apply to a vaccination requirement provided under
8 section 15.1-23-02 or 23-07-17.1.

9 2. It is not a violation of section 14-02.7-02 for a:

10 a. Person to recommend an employee receive a vaccine.

11 b. Health care facility to ask an employee to volunteer the employee's vaccination or
12 immunization status if the inquiry is for the purpose of determining whether the
13 health care facility should implement reasonable accommodations to protect the
14 safety and health of employees, patients, visitors, and other individuals from
15 communicable diseases. The health care facility may implement reasonable
16 accommodations for employees, patients, visitors, and other individuals who are
17 not vaccinated or not immune to protect the safety and health of employees.
18 patients, visitors, and other individuals from communicable diseases. The health
19 care facility may consider an employee to be nonvaccinated or nonimmune if the
20 employee declines to provide the employee's vaccination or immunization status
21 to the health care facility for purposes of determining whether reasonable
22 accommodations should be implemented.

23 3. A health care facility or a licensed nursing home, long-term care facility, basic care
24 facility, or assisted living facility is exempt from compliance with section 14-02.7-02
25 during any period of time for which compliance would result in a violation of federal law
26 addressing Medicare or Medicaid or in a violation of regulations or guidance issued by
27 the centers for Medicare and Medicaid services. If a facility in this state requires an
28 individual to be vaccinated under this subsection:

29 a. The facility shall allow the individual to submit proof of applicable antibodies as
30 an exemption to the vaccination requirement. Such proof is valid for twelve
31 months from the date of the antibody test.

1 b. The facility shall allow the individual to submit one of the following certificates as
2 an exemption to the vaccination requirement:

3 (1) A certificate from a licensed physician stating the physical condition of the
4 individual is such that immunization would endanger the life or health of the
5 individual; or

6 (2) A certificate signed by the individual stating the individual's religious beliefs
7 are opposed to such immunization.

8 **14-02.7-04. Investigations - Retaliation prohibited - Actions - Relief - Records.**

9 The department shall receive and investigate complaints alleging violations of this chapter
10 in the same manner as provided under section 14-02.4-22. Additionally, sections 14-02.4-18,
11 14-02.4-19, 14-02.4-20, and 14-02.4-21, regarding retaliation, civil actions, relief, and exempt
12 records apply to this chapter.

13 ~~— **SECTION 2. AMENDMENT.** Section 23-07-17.1 of the North Dakota Century Code is~~
14 ~~amended and reenacted as follows:~~

15 ~~— **23-07-17.1. Inoculation required before admission to school. (Effective through**~~
16 ~~**August 31, 2022)**~~

17 ~~— 1. A child may not be admitted to any public, private, or parochial school, or day care~~
18 ~~center, child care facility, head start program, or nursery school operating in this state~~
19 ~~or be supervised through home based instruction unless the child's parent or guardian~~
20 ~~presents to the institution authorities a certification from a licensed physician or~~
21 ~~authorized representative of the state department of health that the child has received~~
22 ~~age appropriate immunization against diphtheria, pertussis, tetanus, measles, rubella~~
23 ~~(German measles), mumps, hepatitis B, haemophilus influenza type b (Hib), varicella~~
24 ~~(chickenpox), poliomyelitis, pneumococcal disease, meningococcal disease, rotavirus,~~
25 ~~and hepatitis A. Under this section, a required age appropriate immunization does not~~
26 ~~include an immunization against severe acute respiratory syndrome coronavirus 2~~
27 ~~identified as SARS-CoV-2 or any mutation or viral fragments of SARS-CoV-2. In the~~
28 ~~case of a child receiving home based instruction, the child's parent or legal guardian~~
29 ~~shall file the certification with the public school district in which the child resides.~~

30 ~~— 2. A child may enter an institution upon submitting written proof from a licensed physician~~
31 ~~or authorized representative of the state department of health stating that the child has~~

1 ~~started receiving the required immunization or has a written consent by the child's~~
2 ~~parent or guardian for a local health service or department to administer the needed~~
3 ~~immunization without charge or has complied with the requirements for certificate of~~
4 ~~exemption as provided for in subsection 3.~~

5 ~~3. Any minor child, through the child's parent or guardian, may submit to the institution-~~
6 ~~authorities either a certificate from a licensed physician stating that the physical~~
7 ~~condition of the child is such that immunization would endanger the life or health of the~~
8 ~~child or a certificate signed by the child's parent or guardian whose religious,~~
9 ~~philosophical, or moral beliefs are opposed to such immunization. The minor child is~~
10 ~~then exempt from the provisions of this section.~~

11 ~~4. The enforcement of subsections 1, 2, and 3 is the responsibility of the designated~~
12 ~~institution authority.~~

13 ~~5. The immunizations required, and the procedure for their administration, as prescribed~~
14 ~~by the state department of health, must conform to recognized standard medical~~
15 ~~practices in the state. The state department of health shall administer the provisions of~~
16 ~~this section and shall promulgate rules and regulations in the manner prescribed by~~
17 ~~chapter 28-32 for the purpose of administering this section.~~

18 ~~6. When, in the opinion of the health officer, danger of an epidemic exists from any of the~~
19 ~~communicable diseases for which immunization is required under this section, the~~
20 ~~exemptions from immunization against such disease may not be recognized and~~
21 ~~children not immunized must be excluded from an institution listed in subsection 1~~
22 ~~until, in the opinion of the health officer, the danger of the epidemic is over. The~~
23 ~~designated institution authority shall notify those parents or guardians taking legal~~
24 ~~exception to the immunization requirements that their children are excluded from~~
25 ~~school during an epidemic as determined by the state department of health.~~

26 ~~7. When, in the opinion of the health officer, extenuating circumstances make it difficult or~~
27 ~~impossible to comply with immunization requirements, the health officer may authorize~~
28 ~~children who are not immunized to be admitted to an institution listed in subsection 1~~
29 ~~until the health officer determines that the extenuating circumstances no longer exist.~~
30 ~~Extenuating circumstances include a shortage of vaccine and other temporary~~
31 ~~circumstances.~~

~~— Inoculation required before admission to school. (Effective after August 31, 2022)~~

~~1. A child may not be admitted to any public, private, or parochial school, or day care center, child care facility, head start program, or nursery school operating in this state or be supervised through home based instruction unless the child's parent or guardian presents to the institution authorities a certification from a licensed physician or authorized representative of the department of health and human services that the child has received age appropriate immunization against diphtheria, pertussis, tetanus, measles, rubella (German measles), mumps, hepatitis B, haemophilus influenza type b (Hib), varicella (chickenpox), poliomyelitis, pneumococcal disease, meningococcal disease, rotavirus, and hepatitis A. Under this section, a required age appropriate immunization does not include an immunization against severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2 or any mutation or viral fragments of SARS-CoV-2. In the case of a child receiving home based instruction, the child's parent or legal guardian shall file the certification with the public school district in which the child resides.~~

~~2. A child may enter an institution upon submitting written proof from a licensed physician or authorized representative of the department of health and human services stating that the child has started receiving the required immunization or has a written consent by the child's parent or guardian for a local health service or department to administer the needed immunization without charge or has complied with the requirements for certificate of exemption as provided for in subsection 3.~~

~~3. Any minor child, through the child's parent or guardian, may submit to the institution authorities either a certificate from a licensed physician stating that the physical condition of the child is such that immunization would endanger the life or health of the child or a certificate signed by the child's parent or guardian whose religious, philosophical, or moral beliefs are opposed to such immunization. The minor child is then exempt from the provisions of this section.~~

~~4. The enforcement of subsections 1, 2, and 3 is the responsibility of the designated institution authority.~~

~~5. The immunizations required, and the procedure for their administration, as prescribed by the department of health and human services, must conform to recognized~~

1 ~~standard medical practices in the state. The department of health and human services~~
2 ~~shall administer the provisions of this section and shall promulgate rules and~~
3 ~~regulations in the manner prescribed by chapter 28-32 for the purpose of~~
4 ~~administering this section.~~

5 ~~6. When, in the opinion of the health officer, danger of an epidemic exists from any of the~~
6 ~~communicable diseases for which immunization is required under this section, the~~
7 ~~exemptions from immunization against such disease may not be recognized and~~
8 ~~children not immunized must be excluded from an institution listed in subsection 1~~
9 ~~until, in the opinion of the health officer, the danger of the epidemic is over. The~~
10 ~~designated institution authority shall notify those parents or guardians taking legal~~
11 ~~exception to the immunization requirements that their children are excluded from~~
12 ~~school during an epidemic as determined by the department of health and human~~
13 ~~services.~~

14 ~~7. When, in the opinion of the health officer, extenuating circumstances make it difficult or~~
15 ~~impossible to comply with immunization requirements, the health officer may authorize~~
16 ~~children who are not immunized to be admitted to an institution listed in subsection 1~~
17 ~~until the health officer determines that the extenuating circumstances no longer exist.~~
18 ~~Extenuating circumstances include a shortage of vaccine and other temporary~~
19 ~~circumstances.~~

20 **SECTION 2. EFFECTIVE DATE.** This Act becomes effective upon its filing with the
21 secretary of state.