

Sixty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1200

Introduced by

Representatives Hoverson, K. Anderson, Bellew, Christensen, Fisher, Meier, Prichard,  
Schatz, VanWinkle

Senators Boehm, Clemens, Paulson

1 A BILL ~~for an Act to create and enact a new section to chapter 15-10 of the North Dakota~~  
2 ~~Century Code, relating to COVID-19 vaccinations and emergency-use authorized vaccines for~~  
3 ~~students at institutions of higher education; and to amend and reenact subsection 1 of section~~  
4 ~~23-07-17.1 and section 23-12-20 of the North Dakota Century Code, relating to school and day~~  
5 ~~care immunizations and COVID-19 vaccination and infection information;~~ for an Act to amend  
6 and reenact sections 14-02.4-01, 14-02.4-02, 14-02.4-03, 14-02.4-04, 14-02.4-05, 14-02.4-06,  
7 14-02.4-08, and 14-02.4-09, subsection 1 of section 14-02.4-14, subsection 1 of section  
8 14-02.4-15, and sections 14-02.4-16 and 14-02.4-17 of the North Dakota Century Code, relating  
9 to creating a new status related to human rights and antidiscrimination policies.

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

11 ~~— **SECTION 1.** A new section to chapter 15-10 of the North Dakota Century Code is created~~  
12 ~~and enacted as follows:~~

13 ~~— **COVID-19 and emergency-use authorized vaccinations – Limitations.**~~

14 ~~— **1.** An institution under the control of the state board of higher education may not:~~

15 ~~— **a.** Require a student to be vaccinated against severe acute respiratory syndrome~~  
16 ~~coronavirus 2, identified as SARS-CoV-2 (COVID-19) or receive an~~  
17 ~~emergency-use authorized vaccine, as a condition of enrollment or in-person~~  
18 ~~attendance.~~

19 ~~— **b.** Promote student vaccination against COVID-19 or receipt of an emergency-use~~  
20 ~~authorized vaccine.~~

21 ~~— **SECTION 2. AMENDMENT.** Subsection 1 of section 23-07-17.1 of the North Dakota~~  
22 ~~Century Code is amended and reenacted as follows:~~

1 ~~1. A child may not be admitted to any public, private, or parochial school, or day care-~~  
2 ~~center, child care facility, head start program, or nursery school operating in this state-~~  
3 ~~or be supervised through home-based instruction unless the child's parent or guardian-~~  
4 ~~presents to the institution authorities a certification from a licensed physician or-~~  
5 ~~authorized representative of the department of health and human services that the-~~  
6 ~~child has received age-appropriate immunization against diphtheria, pertussis,-~~  
7 ~~tetanus, measles, rubella (German measles), mumps, hepatitis B, haemophilus-~~  
8 ~~influenza type b (Hib), varicella (chickenpox), poliomyelitis, pneumococcal disease,-~~  
9 ~~meningococcal disease, rotovirus, and hepatitis A. The immunizations required under~~  
10 ~~this section do not include the severe acute respiratory syndrome coronavirus 2,-~~  
11 ~~identified as SARS-CoV-2 (COVID-19), vaccine. Any political subdivision, school,-~~  
12 ~~department, or institution of higher education shall differentiate between-~~  
13 ~~recommended and required vaccination on any form. An immunization listed under this-~~  
14 ~~subsection is not required if the immunization is provided by an emergency-use-~~  
15 ~~authorized vaccine. In the case of a child receiving home-based instruction, the child's-~~  
16 ~~parent or legal guardian shall file the certification with the public school district in which~~  
17 ~~the child resides.~~

18 ~~**SECTION 3. AMENDMENT.** Section 23-12-20 of the North Dakota Century Code is-~~  
19 ~~amended and reenacted as follows:~~

20 ~~**23-12-20. COVID-19 vaccination and infection information. (Repealed effective August-**~~  
21 ~~**1, 2023~~2025~~)**~~

22 ~~1. Neither a state government entity nor any of its political subdivisions, agents, or~~  
23 ~~assigns may:~~

24 ~~a. Require documentation, whether physical or electronic, for the purpose of~~  
25 ~~certifying or otherwise communicating the following before providing access to~~  
26 ~~property, funds, or services:~~

27 ~~(1) An individual's COVID-19 vaccination status;~~

28 ~~(2) The presence of COVID-19 pathogens, antigens, or antibodies; or~~

29 ~~(3) An individual's COVID-19 post-transmission recovery status;~~

- 1 ~~— b. — Otherwise publish or share an individual's COVID-19 vaccination record or similar~~  
2 ~~health information, except as specifically authorized by the individual or otherwise~~  
3 ~~authorized by statute; or~~
- 4 ~~— c. — Require a private business to obtain documentation, whether physical or~~  
5 ~~electronic, for purposes of certifying or otherwise communicating the following~~  
6 ~~before employment or providing access to property, funds, or services based on:~~
- 7 ~~— (1) — An individual's COVID-19 vaccination status;~~  
8 ~~— (2) — The presence of COVID-19 pathogens, antigens, or antibodies; or~~  
9 ~~— (3) — An individual's COVID-19 post-transmission recovery status.~~
- 10 ~~— 2. — Subsection 1 does not apply to the department of corrections and rehabilitation, a~~  
11 ~~correctional facility as defined under section 12-44.1-01, the state hospital, or a public-~~  
12 ~~health unit.~~
- 13 ~~— 3. — A private business located in this state or doing business in this state may not require~~  
14 ~~a patron, client, or customer in this state to provide any documentation certifying~~  
15 ~~COVID-19 vaccination, the presence of COVID-19 pathogens, antigens, or antibodies,~~  
16 ~~or COVID-19 post-transmission recovery to gain access to, entry upon, or services~~  
17 ~~from the business. This subsection does not apply to a developmental disability-~~  
18 ~~residential facility or a health care provider, including a long-term care provider, basic-~~  
19 ~~care provider, and assisted living provider. As used in this subsection, a private-~~  
20 ~~business does not include a nonprofit entity that does not sell a product or a service.~~
- 21 ~~— 4. — This section may not be construed to interfere with an individual's rights to access that~~  
22 ~~individual's own personal health information or with a person's right to access personal~~  
23 ~~health information of others which the person otherwise has a right to access.~~
- 24 ~~— 5. — Subsection 1 is not applicable to the state board of higher education, the university-~~  
25 ~~system, or institutions under the control of the state board of higher education to the~~  
26 ~~extent the entity has adopted policies and procedures governing the type of~~  
27 ~~documentation required, the circumstances under which such documentation may be~~  
28 ~~shared, and exemptions from providing such documentation.~~
- 29 ~~— 6. — This section is not applicable during a public health disaster or emergency declared in~~  
30 ~~accordance with chapter 37-17.1.~~

~~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 1. AMENDMENT.** Section 14-02.4-01 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-01. State policy against discrimination.**

It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, health status, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions; and to deter those who aid, abet, or induce discrimination or coerce others to discriminate.

**SECTION 2. AMENDMENT.** Section 14-02.4-02 of the North Dakota Century Code is amended and reenacted as follows:

**14-02.4-02. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age.
2. "Aggrieved person" includes any person who claims to have been injured by a discriminatory practice.
3. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
4. "Department" means the division of human rights within the department of labor and human rights.
5. "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of this impairment, or being regarded as having this impairment.
6. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental disability, status with regard to

1 marriage or public assistance, or participation in lawful activity off the employer's  
2 premises during nonworking hours which is not in direct conflict with the essential  
3 business-related interests of the employer results in the unequal treatment or  
4 separation or segregation of any persons, or denies, prevents, limits, or otherwise  
5 adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely  
6 affect, the benefit of enjoyment by any person of employment, labor union  
7 membership, public accommodations, public services, or credit transactions. The term  
8 "discriminate" includes segregate or separate and for purposes of discrimination  
9 based on sex, it includes sexual harassment. Sexual harassment includes unwelcome  
10 sexual advances, requests for sexual favors, sexually motivated physical conduct or  
11 other verbal or physical conduct or communication of a sexual nature when:

- 12 a. Submission to that conduct or communication is made a term or condition, either  
13 explicitly or implicitly, of obtaining employment, public accommodations or public  
14 services, or education;
- 15 b. Submission to or rejection of that conduct or communication by an individual is  
16 used as a factor in decisions affecting that individual's employment, public  
17 accommodations or public services, education, or housing; or
- 18 c. That conduct or communication has the purpose or effect of substantially  
19 interfering with an individual's employment, public accommodations, public  
20 services, or educational environment; and in the case of employment, the  
21 employer is responsible for its acts and those of its supervisory employees if it  
22 knows or should know of the existence of the harassment and fails to take timely  
23 and appropriate action.

- 24 7. "Employee" means a person who performs services for an employer, who employs  
25 one or more individuals, for compensation, whether in the form of wages, salaries,  
26 commission, or otherwise. "Employee" does not include a person elected to public  
27 office in the state or political subdivision by the qualified voters thereof, or a person  
28 chosen by the officer to be on the officer's political staff, or an appointee on the  
29 policymaking level or an immediate adviser with respect to the exercise of the  
30 constitutional or legal powers of the office. Provided, "employee" does include a

1 person subject to the civil service or merit system or civil service laws of the state  
2 government, governmental agency, or a political subdivision.

3 8. "Employer" means a person within the state who employs one or more employees for  
4 more than one quarter of the year and a person wherever situated who employs one  
5 or more employees whose services are to be partially or wholly performed in the state.

6 9. "Employment agency" means a person regularly undertaking, with or without  
7 compensation, to procure employees for an employer or to procure for employees  
8 opportunity to work for an employer and includes any agent of the person.

9 10. "Health status" means an individual's medical records or preferences relating to the  
10 right to refuse a medical procedure, treatment, injection, device, vaccine, or  
11 prophylactic.

12 11. "Labor organization" means a person, employee representation committee, plan in  
13 which employees participate, or other organization which exists solely or in part for the  
14 purpose of dealing with employers concerning grievances, labor disputes, wages,  
15 rates of pay, hours, or other terms or conditions of employment.

16 11.12. "National origin" means the place of birth of an individual or any of the individual's  
17 lineal ancestors.

18 12.13. "Otherwise qualified person" means a person who is capable of performing the  
19 essential functions of the particular employment in question.

20 13.14. "Person" means an individual, partnership, association, corporation, limited liability  
21 company, unincorporated organization, mutual company, joint stock company, trust,  
22 agent, legal representative, trustee, trustee in bankruptcy, receiver, labor organization,  
23 public body, public corporation, and the state and a political subdivision and agency  
24 thereof.

25 14.15. "Public accommodation" means every place, establishment, or facility of whatever  
26 kind, nature, or class that caters or offers services, facilities, or goods to the general  
27 public for a fee, charge, or gratuity. "Public accommodation" does not include a bona  
28 fide private club or other place, establishment, or facility which is by its nature distinctly  
29 private; provided, however, the distinctly private place, establishment, or facility is a  
30 "public accommodation" during the period it caters or offers services, facilities, or  
31 goods to the general public for a fee, charge, or gratuity.

1 ~~15.16.~~ "Public service" means a public facility, department, agency, board, or commission  
2 owned, operated, or managed by or on behalf of this state, a political subdivision  
3 thereof, or a public corporation.

4 ~~16.17.~~ "Readily achievable" means easily accomplishable and able to be carried out without  
5 much difficulty or expense by a person engaged in the provision of public  
6 accommodations.

7 ~~17.18.~~ "Reasonable accommodations" means accommodations by an employer that do not:  
8 a. Unduly disrupt or interfere with the employer's normal operations;  
9 b. Threaten the health or safety of the individual with a disability or others;  
10 c. Contradict a business necessity of the employer; or  
11 d. Impose undue hardship on the employer, based on the size of the employer's  
12 business, the type of business, the financial resources of the employer, and the  
13 estimated cost and extent of the accommodation.

14 ~~18.19.~~ "Sex" includes pregnancy, childbirth, and disabilities related to pregnancy or childbirth.

15 ~~19.20.~~ "Status with regard to public assistance" means the condition of being a recipient of  
16 federal, state, or local assistance, including medical assistance, or of being a tenant  
17 receiving federal, state, or local subsidies, including rental assistance or rent  
18 supplements.

19 **SECTION 3. AMENDMENT.** Section 14-02.4-03 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **14-02.4-03. Employer's discriminatory practices.**

- 22 1. It is a discriminatory practice for an employer to fail or refuse to hire an individual; to  
23 discharge an employee; or to accord adverse or unequal treatment to an individual or  
24 employee with respect to application, hiring, training, apprenticeship, tenure,  
25 promotion, upgrading, compensation, layoff, or a term, privilege, or condition of  
26 employment, because of race, color, religion, sex, national origin, age, physical or  
27 mental disability, health status, status with respect to marriage or public assistance, or  
28 participation in lawful activity off the employer's premises during nonworking hours  
29 which is not in direct conflict with the essential business-related interests of the  
30 employer.

1        2. It is a discriminatory practice for an employer to fail or refuse to make reasonable  
2 accommodations for an otherwise qualified individual with a physical or mental  
3 disability, because that individual is pregnant, ~~or~~ because of that individual's religion,  
4 or because of that individual's health status. An employer is not required to provide an  
5 accommodation that would disrupt or interfere with the employer's normal business  
6 operations; threaten an individual's health or safety; contradict a business necessity of  
7 the employer; or impose an undue hardship on the employer, taking into consideration  
8 the size of the employer's business, the type of business, the financial resources of  
9 the employer, and the estimated cost and extent of the accommodation.

10       3. This chapter does not prohibit compulsory retirement of any employee who has  
11 attained sixty-five years of age, but not seventy years of age, and who, for the  
12 two-year period immediately before retirement, is employed in a bona fide executive or  
13 high policymaking position, if the employee is entitled to an immediate nonforfeiture  
14 annual retirement benefit from a pension, profit-sharing, savings, or deferred  
15 compensation plan, or any combination of those plans, of the employer of the  
16 employee, which equal, in the aggregate, at least forty-four thousand dollars.

17       **SECTION 4. AMENDMENT.** Section 14-02.4-04 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19       **14-02.4-04. Employment agency's discriminatory practices.**

20       It is a discriminatory practice for an employment agency to accord adverse or unequal  
21 treatment to a person in connection with an application for employment, referral, or request for  
22 assistance in procurement of employees because of race, color, religion, sex, national origin,  
23 age, physical or mental disability, health status, or status with respect to marriage or public  
24 assistance, or to accept a listing of employment on that basis.

25       **SECTION 5. AMENDMENT.** Section 14-02.4-05 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27       **14-02.4-05. Labor organization's discriminatory practices.**

28       It is a discriminatory practice for a labor organization to deny full and equal membership  
29 rights to an applicant for membership or to a member; to expel, suspend, or otherwise discipline  
30 a member; or to accord adverse, unlawful, or unequal treatment to a person with respect to the  
31 person's hiring, apprenticeship, training, tenure, compensation, upgrading, layoff, or a term or



1 condition of employment because of race, color, religion, sex, national origin, age, physical or  
2 mental disability, [health status](#), or status with respect to marriage or public assistance.

3 **SECTION 6. AMENDMENT.** Section 14-02.4-06 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **14-02.4-06. Certain employment advertising deemed discriminatory.**

6 It is a discriminatory practice for an employer, employment agency, or labor organization, or  
7 the employees, agents, or members thereof directly or indirectly to advertise or in any other  
8 manner indicate or publicize that individuals of a particular race, color, religion, sex, national  
9 origin, age, physical or mental disability, [health status](#), or status with respect to marriage or  
10 public assistance, or who participate in lawful activity off the employer's premises during  
11 nonworking hours which activity is not in direct conflict with the essential business-related  
12 interests of the employer, are unwelcome, objectionable, not acceptable, or not solicited.

13 **SECTION 7. AMENDMENT.** Section 14-02.4-08 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **14-02.4-08. Qualification based on religion, sex, national origin, physical or mental**  
16 **disability, [health status](#), or marital status.**

17 Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice  
18 for an employer to fail or refuse to hire and employ an individual for a position, to discharge an  
19 individual from a position, or for an employment agency to fail or refuse to refer an individual for  
20 employment in a position, or for a labor organization to fail or refuse to refer an individual for  
21 employment, on the basis of religion, sex, national origin, physical or mental disability, [health](#)  
22 [status](#), or marital status in those circumstances where religion, sex, national origin, physical or  
23 mental disability, [health status](#), or marital status is a bona fide occupational qualification  
24 reasonably necessary to the normal operation of that particular business or enterprise; nor is it  
25 a discriminatory practice for an employer to fail or refuse to hire and employ an individual for a  
26 position, or to discharge an individual from a position on the basis of that individual's  
27 participation in a lawful activity that is off the employer's premises and that takes place during  
28 nonworking hours and which is not in direct conflict with the essential business-related interests  
29 of the employer, if that participation is contrary to a bona fide occupational qualification that  
30 reasonably and rationally relates to employment activities and the responsibilities of a particular  
31 employee or group of employees, rather than to all employees of that employer.

1       **SECTION 8. AMENDMENT.** Section 14-02.4-09 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **14-02.4-09. Seniority, merit, or other measuring systems and ability tests not**  
4 **discriminatory.**

5       Notwithstanding sections 14-02.4-03 through 14-02.4-06, it is not a discriminatory practice  
6 for an employer to apply different standards of compensation, or different terms, conditions, or  
7 privileges of employment pursuant to a bona fide seniority or merit system, or a system which  
8 measures earnings by quantity or quality of production or to employees who work in different  
9 locations provided that the differences are not the result of an intention to discriminate because  
10 of race, color, religion, sex, national origin, age, health status, physical or mental disability,  
11 status with respect to marriage or public assistance, or participation in lawful activity off the  
12 employer's premises during nonworking hours; or for an employer to give and to act upon the  
13 results of any professionally developed ability test; provided, that the test, its administration, or  
14 action upon the results is not designed, intended, or used to discriminate because of race, color,  
15 religion, sex, national origin, age, health status, physical or mental disability, status with respect  
16 to marriage or public assistance, or participation in a lawful activity off the employer's premises  
17 during nonworking hours.

18       **SECTION 9. AMENDMENT.** Subsection 1 of section 14-02.4-14 of the North Dakota  
19 Century Code is amended and reenacted as follows:

- 20       1. It is a discriminatory practice for a person engaged in the provision of public  
21 accommodations to fail to provide to a person access to the use of any benefit from  
22 the services and facilities of the public accommodations; or to give adverse, unlawful,  
23 or unequal treatment to a person with respect to the availability to the services and  
24 facilities, the price or other consideration therefor, the scope and equality thereof, or  
25 the terms and conditions under which the same are made available because of the  
26 person's race, color, religion, sex, national origin, age, health status, physical or  
27 mental disability, or status with respect to marriage or public assistance.

28       **SECTION 10. AMENDMENT.** Subsection 1 of section 14-02.4-15 of the North Dakota  
29 Century Code is amended and reenacted as follows:

- 30       1. It is a discriminatory practice for a person engaged in the provision of public services  
31 to fail to provide to an individual access to the use of and benefit thereof, or to give

1           adverse or unequal treatment to an individual in connection therewith because of the  
2           individual's race, color, religion, sex, national origin, age, health status, physical or  
3           mental disability, or status with respect to marriage or public assistance.

4           **SECTION 11. AMENDMENT.** Section 14-02.4-16 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6           **14-02.4-16. Advertising public accommodations or services - Discriminatory**  
7 **practices - Exceptions.**

8           It is a discriminatory practice for a person to advertise or in any other manner indicate or  
9 publicize that the patronage of persons of a particular race, color, religion, sex, national origin,  
10 age, health status, physical or mental disability, or status with respect to marriage or public  
11 assistance is unwelcome, objectionable, not acceptable, or not solicited. This section does not  
12 prohibit a notice or advertisement banning minors from places where alcoholic beverages are  
13 being served.

14           **SECTION 12. AMENDMENT.** Section 14-02.4-17 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16           **14-02.4-17. Credit transactions - Discriminatory practices.**

17           It is a discriminatory practice, except as permitted or required by the Equal Credit  
18 Opportunity Act [15 U.S.C. 1691], for a person, whether acting as an individual or for another, to  
19 deny credit, increase the charges or fees for or collateral required to secure credit, restrict the  
20 amount or use of credit extended, impose different terms or conditions with respect to the credit  
21 extended to a person, or item or service related thereto because of race, color, religion, sex,  
22 national origin, age, health status, physical or mental disability, or status with respect to  
23 marriage or public assistance. This section does not prohibit a party to a credit transaction from  
24 considering the credit history of a person or from taking reasonable action thereon.