

SENATE BILL NO. 2274

Introduced by

Senators Clemens, Beard, Larsen, Magrum

Representative Vetter

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~~for
3 an Act to amend and reenact section 23-12-20 of the North Dakota Century Code, relating to
4 vaccination and infection information.

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,~~

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

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

~~**14-02.7-03. Exceptions.**~~

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

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

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

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

~~3. A licensed nursing home, long-term care facility, basic care facility, or assisted living facility is exempt from compliance with section 14-02.7-02 during any period of time for which compliance would result in a violation of regulations or guidance issued by the centers for Medicare and Medicaid services or the centers for disease control and prevention.~~

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

~~The department shall receive and investigate complaints alleging violations of this chapter in the same manner as provided under section 14-02.4-22. Additionally, sections 14-02.4-18,~~

~~14-02.4-19, 14-02.4-20, and 14-02.4-21, regarding retaliation, civil actions, relief, and exempt records apply to this chapter.~~

SECTION 1. AMENDMENT. Section 23-12-20 of the North Dakota Century Code is amended and reenacted as follows:

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

1. 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 property, funds, or services:
 - (1) An individual's COVID-19 vaccination status or vaccination status for a vaccine that is under emergency use authorization from the federal food and drug administration;
 - (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 or vaccination status for a vaccine that is under emergency use authorization from the federal food and drug administration;
 - (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.

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