

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

1. The governor is responsible to minimize or avert the adverse effects of a disaster or emergency.

2. Under this chapter, the governor may issue executive orders and proclamations, and amend or rescind them. Executive orders, proclamations, and regulations have the force of law.

3. A disaster or emergency must be declared by executive order or proclamation of the governor if the governor determines a disaster has occurred or a state of emergency exists.

a. Except as provided in subdivision b, the state of disaster or emergency continues until the governor determines the threat of an emergency has passed or the governor determines the disaster has been dealt with to the extent emergency conditions no longer exist, whichever occurs first.

b. If a state of disaster or emergency relating to public health is declared and in effect and the legislative assembly is not in session, the legislative management may meet to vote on whether the legislative management should request the governor call a special session of the legislative assembly. If the governor does not call a special session within seven days after the legislative management sends a request to the governor, the declared state of disaster or emergency relating to public health terminates thirty days after the request from the legislative management was sent to the governor. If the governor calls a special session within seven days after the request from the legislative management was sent, the special session must be held within fifteen days of the governor's call for a special session. If the legislative assembly meets to address a declared state of disaster or emergency, the legislative assembly by concurrent resolution may terminate, extend, or modify the state of disaster or emergency.

c. The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time.

d. All executive orders or proclamations issued under this subsection must indicate the nature of the disaster or emergency, the area or areas threatened, the conditions that have brought it about or which make possible termination of the state of disaster or emergency. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it must be filed promptly with the department of emergency services, the legislative council, the secretary of state, and the county or city auditor of the jurisdictions affected.

4. An executive order or proclamation of a state of disaster or emergency shall activate the state and local operational plans applicable to the political subdivision or area in question and be authority for the deployment and use of any forces to which the plan or plans apply and for use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or

arranged to be made available pursuant to this chapter or any other provision of law relating to a disaster or emergency.

5. During the continuance of any state of disaster or emergency declared by the governor, the governor is commander in chief of the emergency management organization and of all other forces available for emergency duty. To the greatest extent practicable, the governor shall delegate or assign command authority by prior arrangement embodied in appropriate executive orders or emergency operational plans, but nothing herein restricts the governor's authority to do so by orders issued at the time of the disaster or emergency.

6. In addition to any other powers conferred upon the governor by law, the governor may:

a. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.

b. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.

c. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities.

d. Subject to any applicable requirements for compensation under section 37-17.1-12, commandeer or utilize any private property if the governor finds this necessary to manage the disaster or emergency.

e. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the governor deems this action necessary for the preservation of life or other disaster or emergency mitigation, response, or recovery.

f. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.

g. Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises therein.

h. Suspend or limit the sale, dispensing, or transportation of explosives, and combustibles, not including ammunition.

i. Make provision for the availability and use of temporary emergency housing.

j. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life and property sustaining commodities.

k. Designate members of the highway patrol, North Dakota national guard, or others trained in law enforcement, as peace officers.

7. Notwithstanding subsection 3, if a state of disaster or emergency relating to public health is declared and in effect, the governor may not issue an executive order under this section unless the executive order specifically addresses the mitigation of the declared state of disaster or emergency relating to public health.

8. Any person who willfully violates any provision of an executive order or proclamation issued by the governor pursuant to this chapter is guilty of an infraction.

9. The governor may authorize the adjutant general to recall to state active duty, on a volunteer basis, former members of the North Dakota national guard. Those recalled must possess the qualifications required by the disaster or emergency. Recall under this subsection is effective only for the duration of the disaster or emergency and recalled personnel will be released from state active duty upon competent authority that the requirement of their service under this subsection has passed. Compensation for personnel recalled under this subsection will be based upon section 37-07-05.

10. Notwithstanding any other provision of law, an order, proclamation, rule, or regulation issued pursuant to this section may not:

a. Substantially burden a person's exercise of religion unless the order is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest;

b. Treat religious conduct more restrictively than any secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing evidence that a particular religious activity poses an extraordinary health risk; or

c. Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.

11. A person claiming to be aggrieved by a violation of subsection 10 may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

Source:

S.L. 1973, ch. 281, § 5; 1983, ch. 392, § 1; 1983, ch. 393, § 1; 1985, ch. 398, § 5; 2005, ch. 16, § 14; 2011, ch. 258, § 1; 2013, ch. 272, § 2; 2021, ch. 92, § 5, effective August 1, 2021; 2021, ch. 191, §§ 2, 3, effective April 22, 2021; 2021, ch. 192, § 2, effective August 1, 2021; 2021, ch. 272, § 1, effective August 1, 2021.

Effective Date.

The 2013 amendment of this section by section 2 of chapter 272, S.L. 2013 became effective August 1, 2013.

Law Reviews.

Emergency Powers of the Governor in North Dakota, 50 N.D. L. Rev. 45 (1973).

Note.

Section 37-17.1-05 was amended 5 times by the 2021 Legislative Assembly. Pursuant to Section 1-02-09.1, the section is printed above to harmonize and give effect to the changes made in Section 5 of Chapter 92, Session Laws 2021, House Bill 1410; Section 2 of Chapter 191, Session Laws 2021, House Bill 1118; Section 3 of Chapter 191, Session Laws 2021, House Bill 1118; Section 1 of Chapter 272, Session Laws 2021, House Bill 1180; and Section 2 of Chapter 192, Session Laws 2021, Senate Bill 2181.

Notes to Decisions

Constitutionality.

In an action concerning an executive order which ordered the closure of salons and licensed cosmetologists to cease operations due to COVID-19, the governor did not exceed the statutory authority delegated to him through N.D.C.C. ch. 37-17.1 and plaintiff failed to adequately support her challenge that Executive Order 2020-06.2 was unconstitutional because it restricted her right to conduct business and failed to adequately support her contention the executive order and the criminal penalties imposed were unconstitutionally vague and overbroad. *State v. Riggins*, 2021 ND 87, 959 N.W.2d 855, 2021 N.D. LEXIS 88 (N.D. 2021), cert. denied, — U.S. —, 142 S. Ct. 763, 211 L. Ed. 2d 477, 2022 U.S. LEXIS 170 (U.S. 2022).