

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1410

Introduced by

Representatives Vetter, Damschen, Karls, Klemin, B. Koppelman, K. Koppelman, Pollert,
Satrom

Senators Kannianen, Meyer, Vedaa

1 A BILL for an Act to create and enact a new section to chapter 25-01 of the North Dakota
2 Century Code, relating to prohibiting department of human services from substantially
3 burdening the exercise of religion by a patient or resident under the department's care; to
4 amend and reenact sections 12-44.1-14 and 12-47-26, subsection 12 of section 23-01-05, and
5 section 37-17.1-05 of the North Dakota Century Code, relating to prohibiting a correctional
6 facility or facility under the control of the department of corrections and rehabilitation from
7 substantially burdening the exercise of religion by an offender in the facility's custody, the state
8 health officer's authority, and the governor's authority during a declared disaster or emergency;
9 and to provide a penalty.

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

11 **SECTION 1. AMENDMENT.** Section 12-44.1-14 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **12-44.1-14. Inmate rights.**

- 14 1. Subject to reasonable safety, security, discipline, and correctional facility
15 administration requirements, the administrator of each correctional facility shall:
- 16 4. a. Ensure inmates have confidential access to attorneys and their authorized
17 representatives.
- 18 2. b. Ensure that inmates are not subjected to discrimination based on race, national
19 origin, color, creed, sex, economic status, or political belief.
- 20 3. c. Ensure equal access by male and female inmates to programs and services
21 available through the correctional facility.
- 22 4. d. Ensure access to mail, telephone use, and visitors.
- 23 5. e. Ensure that inmates are properly fed, clothed, and housed.

1 6. f. Ensure that inmates have adequate medical care. Adequate medical care means
2 necessary treatment for a medical or health condition for which serious pain or
3 hardship would occur if care is not given. A correctional facility may not deny
4 adequate medical care to an inmate who does not have health insurance or does
5 not have the ability to pay the costs of the medical or health care.

6 7. g. Ensure that inmates may reasonably exercise their religious beliefs.

7 2. Correctional facility staff or an administrator of a correctional facility may not:

8 a. Substantially burden the exercise of religion by an offender in the custody of the
9 correctional facility unless the burden is in furtherance of a compelling
10 governmental interest and is the least restrictive means of furthering that
11 compelling governmental interest;

12 b. Treat religious conduct more restrictively than any comparable secular conduct
13 unless the correctional facility demonstrates the disparate treatment is necessary
14 to further a compelling penological interest and is the least restrictive means of
15 furthering that compelling penological interest; or

16 c. Deny clergy access to an offender in the custody of the correctional facility for the
17 purpose of providing religious services unless the correctional facility
18 demonstrates the denial is necessary to further a compelling penological interest
19 and is the least restrictive means of furthering that compelling penological
20 interest.

21 3. An offender in the custody of a correctional facility claiming to be aggrieved by a
22 violation of subsection 2 may assert, after exhausting appropriate administrative
23 remedies, that violation as a claim or defense in a judicial proceeding and obtain
24 appropriate relief, including costs and reasonable attorney's fees.

25 **SECTION 2. AMENDMENT.** Section 12-47-26 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **12-47-26. Uniform kindly treatment of inmates.**

28 1. The warden and all officers of the penitentiary uniformly shall treat the inmates
29 thereof of the penitentiary with kindness, and the warden shall require of the officers
30 and guards that, in the execution of ~~their~~the officers' and guards' respective duties,
31 ~~they~~the officers and guards in all cases shall refrain from boisterous and unbecoming

1 language in giving their orders and commands. ~~No corporal~~Corporal or other painful or
2 unusual punishment ~~shall~~may not be inflicted upon the inmates of the penitentiary for
3 violation of the rules and regulations ~~thereof~~of the penitentiary.

4 2. A facility under the control of the department of corrections and rehabilitation may not:

5 a. Substantially burden the exercise of religion by an offender in the custody of the
6 facility unless the burden is in furtherance of a compelling governmental interest
7 and is the least restrictive means of furthering that compelling governmental
8 interest;

9 b. Treat religious conduct more restrictively than any comparable secular conduct
10 unless the facility demonstrates the disparate treatment is necessary to further a
11 compelling penological interest and is the least restrictive means of furthering
12 that compelling penological interest; or

13 c. Deny clergy access to an offender in the custody of the facility for the purpose of
14 providing religious services unless the facility demonstrates the denial is
15 necessary to further a compelling penological interest and is the least restrictive
16 means of furthering that compelling penological interest.

17 3. An offender in the custody of a facility claiming to be aggrieved by a violation of
18 subsection 2 may assert, **after exhausting appropriate administrative remedies,** that
19 violation as a claim or defense in a judicial proceeding and obtain appropriate relief,
20 including costs and reasonable attorney's fees.

21 **SECTION 3. AMENDMENT.** Subsection 12 of section 23-01-05 of the North Dakota Century
22 Code is amended and reenacted as follows:

23 12. Issue any orders relating to disease control measures deemed necessary to prevent
24 the spread of communicable disease. Disease control measures may include special
25 immunization activities and decontamination measures. Written orders issued under
26 this section shall have the same effect as a physician's standing medical order. The
27 state health officer may apply to the district court in a judicial district where a
28 communicable disease is present for an injunction canceling public events or closing
29 places of business. On application of the state health officer showing the necessity of
30 such cancellation, the court may issue an ex parte preliminary injunction, pending a
31 full hearing.

- 1 a. Notwithstanding any other provision of law, an order issued pursuant to this
2 subsection may not:
3 (1) Substantially burden a person's exercise of religion unless the order is in
4 furtherance of a compelling governmental interest and is the least restrictive
5 means of furthering that compelling governmental interest;
6 (2) Treat religious conduct more restrictively than any secular conduct of
7 reasonably comparable risk, unless the government demonstrates through
8 clear and convincing evidence that a particular religious activity poses an
9 extraordinary health risk; or
10 (3) Treat religious conduct more restrictively than comparable secular conduct
11 because of alleged economic need or benefit.
12 b. A person claiming to be aggrieved by a violation of subdivision a may assert,
13 ~~after exhausting appropriate administrative remedies,~~ that violation as a claim or
14 defense in a judicial proceeding and obtain appropriate relief, including costs and
15 reasonable attorney's fees.

16 **SECTION 4.** A new section to chapter 25-01 of the North Dakota Century Code is created
17 and enacted as follows:

18 **Religious exercise of patient or resident under the care of the department of human**
19 **services.**

- 20 1. The department of human services may not:
21 a. Substantially burden the exercise of religion by patient or resident under the
22 department's care unless the burden is in furtherance of a compelling
23 governmental interest and is the least restrictive means of furthering that
24 compelling governmental interest;
25 b. Treat religious conduct more restrictively than any comparable secular conduct
26 unless the department demonstrates the disparate treatment is necessary to
27 further a compelling governmental interest and is the least restrictive means of
28 furthering that compelling governmental interest; or
29 c. Deny clergy access to a patient or resident for the purpose of providing religious
30 services unless the department demonstrates the denial is necessary to further a

1 compelling governmental interest and is the least restrictive means of furthering
2 that compelling governmental interest.

3 2. A patient or resident of the department of human services claiming to be aggrieved by
4 a violation of this section, may assert, after exhausting appropriate administrative
5 remedies, that violation as a claim or defense in a judicial proceeding and obtain
6 appropriate relief, including costs and reasonable attorney's fees.

7 **SECTION 5. AMENDMENT.** Section 37-17.1-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **37-17.1-05. The governor and disasters or emergencies - Penalty.**

- 10 1. The governor is responsible to minimize or avert the adverse effects of a disaster or
11 emergency.
- 12 2. Under this chapter, the governor may issue executive orders and proclamations, and
13 amend or rescind them. Executive orders, proclamations, and regulations have the
14 force of law.
- 15 3. A disaster or emergency must be declared by executive order or proclamation of the
16 governor if the governor determines a disaster has occurred or a state of emergency
17 exists. The state of disaster or emergency shall continue until the governor determines
18 that the threat of an emergency has passed or the disaster has been dealt with to the
19 extent that emergency conditions no longer exist. The legislative assembly by
20 concurrent resolution may terminate a state of disaster or emergency at any time. All
21 executive orders or proclamations issued under this subsection must indicate the
22 nature of the disaster or emergency, the area or areas threatened, the conditions
23 which have brought it about or which make possible termination of the state of disaster
24 or emergency. An executive order or proclamation must be disseminated promptly by
25 means calculated to bring its contents to the attention of the general public, unless the
26 circumstances attendant upon the disaster or emergency prevent or impede such
27 dissemination, and it must be promptly filed with the department of emergency
28 services, the secretary of state, and the county or city auditor of the jurisdictions
29 affected.
- 30 4. An executive order or proclamation of a state of disaster or emergency shall activate
31 the state and local operational plans applicable to the political subdivision or area in

1 question and be authority for the deployment and use of any forces to which the plan
2 or plans apply and for use or distribution of any supplies, equipment, and materials
3 and facilities assembled, stockpiled, or arranged to be made available pursuant to this
4 chapter or any other provision of law relating to a disaster or emergency.

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

12 6. In addition to any other powers conferred upon the governor by law, the governor may:
13 a. Suspend the provisions of any regulatory statute prescribing the procedures for
14 conduct of state business, or the orders, rules, or regulations of any state agency,
15 if strict compliance with the provisions of any statute, order, rule, or regulation
16 would in any way prevent, hinder, or delay necessary action in managing a
17 disaster or emergency.
18 b. Utilize all available resources of the state government as reasonably necessary
19 to manage the disaster or emergency and of each political subdivision of the
20 state.
21 c. Transfer the direction, personnel, or functions of state departments and agencies
22 or units thereof for the purpose of performing or facilitating emergency
23 management activities.
24 d. Subject to any applicable requirements for compensation under section
25 37-17.1-12, commandeer or utilize any private property if the governor finds this
26 necessary to manage the disaster or emergency.
27 e. Direct and compel the evacuation of all or part of the population from any stricken
28 or threatened area within the state if the governor deems this action necessary
29 for the preservation of life or other disaster or emergency mitigation, response, or
30 recovery.

- 1 f. Prescribe routes, modes of transportation, and destinations in connection with an
2 evacuation.
- 3 g. Control ingress and egress in a designated disaster or emergency area, the
4 movement of persons within the area, and the occupancy of premises therein.
- 5 h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,
6 explosives, and combustibles, not including ammunition.
- 7 i. Make provision for the availability and use of temporary emergency housing.
- 8 j. Make provisions for the control, allocation, and the use of quotas for critical
9 shortages of fuel or other life and property sustaining commodities.
- 10 k. Designate members of the highway patrol, North Dakota national guard, or others
11 trained in law enforcement, as peace officers.
- 12 7. Any person who willfully violates any provision of an executive order or proclamation
13 issued by the governor pursuant to this chapter is guilty of an infraction.
- 14 8. AuthorizeThe governor may authorize the adjutant general to recall to state active
15 duty, on a volunteer basis, former members of the North Dakota national guard. Those
16 recalled must possess the qualifications required by the disaster or emergency. Recall
17 under this subsection is effective only for the duration of the disaster or emergency
18 and recalled personnel will be released from state active duty upon competent
19 authority that the requirement of their service under this subsection has passed.
20 Compensation for personnel recalled under this subsection will be based upon section
21 37-07-05.
- 22 9. Notwithstanding any other provision of law, an order, proclamation, rule, or regulation
23 issued pursuant to this section may not:
- 24 a. Substantially burden a person's exercise of religion unless the order is in
25 furtherance of a compelling governmental interest and is the least restrictive
26 means of furthering that compelling governmental interest;
- 27 b. Treat religious conduct more restrictively than any secular conduct of reasonably
28 comparable risk, unless the government demonstrates through clear and
29 convincing evidence that a particular religious activity poses an extraordinary
30 health risk; or

- 1 c. Treat religious conduct more restrictively than comparable secular conduct
2 because of alleged economic need or benefit.
- 3 10. A person claiming to be aggrieved by a violation of subsection 9 may assert that
4 violation as a claim or defense in a judicial proceeding and obtain appropriate relief,
5 including costs and reasonable attorney's fees.