

HOUSE BILL NO. 1386

Introduced by

Representatives Becker, Fegley, Lefor, Rohr, Schauer

Senators Anderson, Kannianen, Klein

1 A BILL ~~for an Act to create and enact a new subsection to section 37-17.1-05 of the North~~
2 ~~Dakota Century Code, relating to executive orders issued during a declared state of disaster or~~
3 ~~emergency.~~ for an Act to create and enact a new section to chapters 40-01 and 54-06 of the
4 North Dakota Century Code, relating to prohibition of governmental limitations on hours of
5 business and capacity.

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

7 ~~SECTION 1. A new subsection to section 37-17.1-05 of the North Dakota Century Code is~~
8 ~~created and enacted as follows:~~

9 ~~An executive order issued under this section which limits the operation of a business~~
10 ~~or industry must be applied equally to all businesses and industries, except if there is a~~
11 ~~specific threat to a particular business or industry, the executive order must indicate~~
12 ~~why disparate treatment is justified by including specific findings as to why the~~
13 ~~business or industry is being treated differently.~~

14 **SECTION 1.** A new section to chapter 40-01 of the North Dakota Century Code is created
15 and enacted as follows:

16 **Prohibition on limiting hours of operation and capacity.**

17 1. A political subdivision, including a local health department or officer, may not limit or
18 otherwise regulate the hours of operation or capacity of a private business or other
19 nongovernmental entity, including a sole proprietorship or association, regardless of
20 whether the entity is declared to be essential or nonessential, except to the extent:

21 a. Either:

22 (1) The hours or capacity are expressly set by a state law, federal law, or
23 federal regulation;

1 (2) A state law, federal law, or federal regulation expressly specifies the number
2 of hours the entity must be available to provide services or the number of
3 patrons who physically may be present on the entity's premises; or

4 (3) A state law expressly authorizes a state agency to limit or otherwise
5 regulate the hours or capacity; and

6 b. If the relevant provision in subdivision a is a state law, state law expressly
7 authorizes the political subdivision to enforce the state law.

8 2. A rule, ordinance, or other policy that is inconsistent with this section is void.

9 **SECTION 2.** A new section to chapter 54-06 of the North Dakota Century Code is created
10 and enacted as follows:

11 **Prohibition on limiting hours of operation and capacity.**

12 1. A state agency may not limit or otherwise regulate the hours of operation or capacity of
13 a private business or other nongovernmental entity, including a sole proprietorship or
14 association, regardless of whether the entity is declared to be essential or
15 nonessential, except to the extent:

16 a. The hours or capacity limits are expressly set by a state law, federal law, or
17 federal regulation;

18 b. A state law, federal law, or federal regulation expressly specifies the number of
19 hours the entity must be available to provide services or the number of patrons
20 who physically may be present on the entity's premises; or

21 c. A state law expressly authorizes the state agency to limit or otherwise regulate
22 the hours or capacity.

23 2. An executive order issued under section 37-17.1-05 and any other executive order
24 issued by the governor, an administrative rule of the state department of health, and
25 an order of the state health officer are subject to this section.

26 3. An administrative rule or an executive order that is inconsistent with this section is
27 void.