

Introduced by

Representative Paulson

(Approved by the Delayed Bills Committee)

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; to  
3 amend and reenact section 23-07-17.1 of the North Dakota Century Code, relating to childhood  
4 immunizations; and to provide an effective date.

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,

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

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

6 **14-02.7-03. Exceptions.**

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

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

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

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

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

27 **14-02.7-04. Investigations - Retaliation prohibited - Actions - Relief - Records.**

28 The department shall receive and investigate complaints alleging violations of this chapter  
29 in the same manner as provided under section 14-02.4-22. Additionally, sections 14-02.4-18,  
30 14-02.4-19, 14-02.4-20, and 14-02.4-21, regarding retaliation, civil actions, relief, and exempt  
31 records apply to this chapter.

1       **SECTION 2. AMENDMENT.** Section 23-07-17.1 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **23-07-17.1. Inoculation required before admission to school. (Effective through**  
4 **August 31, 2022)**

- 5       1. A child may not be admitted to any public, private, or parochial school, or day care  
6 center, child care facility, head start program, or nursery school operating in this state  
7 or be supervised through home-based instruction unless the child's parent or guardian  
8 presents to the institution authorities a certification from a licensed physician or  
9 authorized representative of the state department of health that the child has received  
10 age-appropriate immunization against diphtheria, pertussis, tetanus, measles, rubella  
11 (German measles), mumps, hepatitis B, haemophilus influenza type b (Hib), varicella  
12 (chickenpox), poliomyelitis, pneumococcal disease, meningococcal disease, rotovirus,  
13 and hepatitis A. Under this section, a required age-appropriate immunization does not  
14 include an immunization against severe acute respiratory syndrome coronavirus 2  
15 identified as SARS-CoV-2 or any mutation or viral fragments of SARS-CoV-2. In the  
16 case of a child receiving home-based instruction, the child's parent or legal guardian  
17 shall file the certification with the public school district in which the child resides.
- 18       2. A child may enter an institution upon submitting written proof from a licensed physician  
19 or authorized representative of the state department of health stating that the child has  
20 started receiving the required immunization or has a written consent by the child's  
21 parent or guardian for a local health service or department to administer the needed  
22 immunization without charge or has complied with the requirements for certificate of  
23 exemption as provided for in subsection 3.
- 24       3. Any minor child, through the child's parent or guardian, may submit to the institution  
25 authorities either a certificate from a licensed physician stating that the physical  
26 condition of the child is such that immunization would endanger the life or health of the  
27 child or a certificate signed by the child's parent or guardian whose religious,  
28 philosophical, or moral beliefs are opposed to such immunization. The minor child is  
29 then exempt from the provisions of this section.
- 30       4. The enforcement of subsections 1, 2, and 3 is the responsibility of the designated  
31 institution authority.

- 1       5. The immunizations required, and the procedure for their administration, as prescribed  
2       by the state department of health, must conform to recognized standard medical  
3       practices in the state. The state department of health shall administer the provisions of  
4       this section and shall promulgate rules and regulations in the manner prescribed by  
5       chapter 28-32 for the purpose of administering this section.
- 6       6. When, in the opinion of the health officer, danger of an epidemic exists from any of the  
7       communicable diseases for which immunization is required under this section, the  
8       exemptions from immunization against such disease may not be recognized and  
9       children not immunized must be excluded from an institution listed in subsection 1  
10      until, in the opinion of the health officer, the danger of the epidemic is over. The  
11      designated institution authority shall notify those parents or guardians taking legal  
12      exception to the immunization requirements that their children are excluded from  
13      school during an epidemic as determined by the state department of health.
- 14     7. When, in the opinion of the health officer, extenuating circumstances make it difficult or  
15      impossible to comply with immunization requirements, the health officer may authorize  
16      children who are not immunized to be admitted to an institution listed in subsection 1  
17      until the health officer determines that the extenuating circumstances no longer exist.  
18      Extenuating circumstances include a shortage of vaccine and other temporary  
19      circumstances.

20      **Inoculation required before admission to school. (Effective after August 31, 2022)**

- 21     1. A child may not be admitted to any public, private, or parochial school, or day care  
22      center, child care facility, head start program, or nursery school operating in this state  
23      or be supervised through home-based instruction unless the child's parent or guardian  
24      presents to the institution authorities a certification from a licensed physician or  
25      authorized representative of the department of health and human services that the  
26      child has received age-appropriate immunization against diphtheria, pertussis,  
27      tetanus, measles, rubella (German measles), mumps, hepatitis B, haemophilus  
28      influenza type b (Hib), varicella (chickenpox), poliomyelitis, pneumococcal disease,  
29      meningococcal disease, rotovirus, and hepatitis A. Under this section, a required  
30      age-appropriate immunization does not include an immunization against severe acute  
31      respiratory syndrome coronavirus 2 identified as SARS-CoV-2 or any mutation or viral

- 1           fragments of SARS-CoV-2. In the case of a child receiving home-based instruction, the  
2           child's parent or legal guardian shall file the certification with the public school district  
3           in which the child resides.
- 4           2. A child may enter an institution upon submitting written proof from a licensed physician  
5           or authorized representative of the department of health and human services stating  
6           that the child has started receiving the required immunization or has a written consent  
7           by the child's parent or guardian for a local health service or department to administer  
8           the needed immunization without charge or has complied with the requirements for  
9           certificate of exemption as provided for in subsection 3.
- 10          3. Any minor child, through the child's parent or guardian, may submit to the institution  
11          authorities either a certificate from a licensed physician stating that the physical  
12          condition of the child is such that immunization would endanger the life or health of the  
13          child or a certificate signed by the child's parent or guardian whose religious,  
14          philosophical, or moral beliefs are opposed to such immunization. The minor child is  
15          then exempt from the provisions of this section.
- 16          4. The enforcement of subsections 1, 2, and 3 is the responsibility of the designated  
17          institution authority.
- 18          5. The immunizations required, and the procedure for their administration, as prescribed  
19          by the department of health and human services, must conform to recognized  
20          standard medical practices in the state. The department of health and human services  
21          shall administer the provisions of this section and shall promulgate rules and  
22          regulations in the manner prescribed by chapter 28-32 for the purpose of  
23          administering this section.
- 24          6. When, in the opinion of the health officer, danger of an epidemic exists from any of the  
25          communicable diseases for which immunization is required under this section, the  
26          exemptions from immunization against such disease may not be recognized and  
27          children not immunized must be excluded from an institution listed in subsection 1  
28          until, in the opinion of the health officer, the danger of the epidemic is over. The  
29          designated institution authority shall notify those parents or guardians taking legal  
30          exception to the immunization requirements that their children are excluded from

1 school during an epidemic as determined by the department of health and human  
2 services.

3 7. When, in the opinion of the health officer, extenuating circumstances make it difficult or  
4 impossible to comply with immunization requirements, the health officer may authorize  
5 children who are not immunized to be admitted to an institution listed in subsection 1  
6 until the health officer determines that the extenuating circumstances no longer exist.  
7 Extenuating circumstances include a shortage of vaccine and other temporary  
8 circumstances.

9 **SECTION 3. EFFECTIVE DATE.** This Act becomes effective upon its filing with the  
10 secretary of state.