

January 20, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2181

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 12 of section 23-01-05 and section 37-17.1-05 of the North Dakota Century Code, relating to the state health officer's authority and the governor's authority during a declared disaster or emergency; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 12 of section 23-01-05 of the North Dakota Century Code is amended and reenacted as follows:

12. Issue any orders relating to disease control measures deemed necessary to prevent the spread of communicable disease. Disease control measures may include special immunization activities and decontamination measures. Written orders issued under this section shall have the same effect as a physician's standing medical order. The state health officer may apply to the district court in a judicial district where a communicable disease is present for an injunction canceling public events or closing places of business. On application of the state health officer showing the necessity of such cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.
  - a. Notwithstanding any other provision of law, an order issued pursuant to this subsection may not:
    - (1) 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;
    - (2) Treat religious conduct more restrictively than any secular conduct of reasonably comparable risk, unless the government demonstrates through clear and convincing scientific evidence that a particular religious activity poses an extraordinary health risk; or
    - (3) Treat religious conduct more restrictively than comparable secular conduct because of alleged economic need or benefit.
  - b. A person claiming to be aggrieved by a violation of subdivision a may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees.

**SECTION 2. AMENDMENT.** Section 37-17.1-05 of the North Dakota Century Code is amended and reenacted as follows:

### **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. The state of disaster or emergency shall continue until the governor determines that the threat of an emergency has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist. The legislative assembly by concurrent resolution may terminate a state of disaster or emergency at any time. 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 which 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 promptly filed with the department of emergency services, 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 alcoholic beverages, 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. 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.
8. 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.
9. 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 scientific 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.
10. A person claiming to be aggrieved by a violation of subsection 9 may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief, including costs and reasonable attorney's fees."

Renumber accordingly