

Sixty-seventh  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2124

Introduced by

Senators Myrdal, Burckhard, Dever, Hogue

Representatives Louser, Rohr

1 A BILL ~~for an Act to create and enact a new section to chapter 54-03 of the North Dakota~~  
 2 ~~Century Code, relating to permitting a virtual session of the legislative assembly during an~~  
 3 ~~emergency or disaster; to amend and reenact subsection 12 of section 23-01-05 and section~~  
 4 ~~37-17.1-05 of the North Dakota Century Code, relating to the state health officer's and~~  
 5 ~~governor's authority during a declared disaster or emergency; and to provide a penalty for an~~  
 6 Act to create and enact a new section to chapter 23-12, two new subsections to section  
 7 37-17.1-05, a new section to chapter 50-11, and a new section to chapter 54-03 of the North  
 8 Dakota Century Code, relating to prohibitions on vaccine passports, the governor's authority to  
 9 issue executive orders, unaccompanied undocumented children, and permitting a virtual  
 10 meeting of the legislative management and a virtual session of the legislative assembly during a  
 11 declared disaster or emergency; to amend and reenact subsection 12 of section 23-01-05 and  
 12 subsections 3 and 6 of section 37-17.1-05 of the North Dakota Century Code and section  
 13 50-25.1-11.1 of the North Dakota Century Code, as amended in section 2 of Senate Bill No.  
 14 2131, as approved by the sixty-seventh legislative assembly, relating to the authority of the state  
 15 health officer, the gubernatorial declaration of disaster or emergency powers of the department  
 16 of human services, and criminal history record checks for children's advocacy centers; and to  
 17 declare an emergency.

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

19 ~~**SECTION 1. AMENDMENT.** Subsection 12 of section 23-01-05 of the North Dakota Century~~  
 20 ~~Code is amended and reenacted as follows: \_\_\_\_\_~~  
 21 ~~— 12. — Issue any orders relating to disease control measures deemed necessary to prevent~~  
 22 ~~the spread of communicable disease during an emergency or disaster declared by the~~  
 23 ~~governor or as otherwise specifically authorized in this title. Disease control measures~~  
 24 ~~may include special immunization activities and decontamination measures. Written~~

1 orders issued under this section shall have the same effect as a physician's standing  
2 medical order. The state health officer may apply to the district court in a judicial  
3 district where a communicable disease is present for an injunction canceling public  
4 events or closing places of business. On application of the state health officer showing  
5 the necessity of such ~~the~~ cancellation, the court may issue an ex parte preliminary  
6 injunction, pending a full hearing. ~~An order issued under this subsection during an~~  
7 ~~emergency or disaster may not exceed in duration or scope the authority of the~~  
8 ~~governor under chapter 37.1-17.1.~~

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

11 ~~37-17.1-05. The governor and disasters or emergencies - Penalty.~~

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

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

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

20 ~~a. Except as provided in subdivisions b and c, the state of disaster or emergency~~  
21 ~~shall continue continues until the governor determines that the threat of an~~  
22 ~~emergency has passed or, the disaster has been dealt with to the extent that~~  
23 ~~emergency conditions no longer exist, or the declared state of disaster or~~  
24 ~~emergency has been in effect for thirty days, whichever occurs first.~~

25 ~~b. If the governor, before or on the thirtieth day of the declared state of disaster or~~  
26 ~~emergency, calls a special session of the legislative assembly to be held between~~  
27 ~~the thirty-first and sixtieth day after the original declaration, the declared state of~~  
28 ~~disaster or emergency remains in effect through the sixtieth day after the original~~  
29 ~~declaration, unless terminated or extended by a concurrent resolution of the~~  
30 ~~legislative assembly.~~

- 1 ~~c.~~ The legislative assembly by concurrent resolution may terminate or extend a  
2 state of disaster or emergency at any time.
- 3 ~~d.~~ If a state of disaster or emergency terminates after thirty or sixty days or is  
4 terminated by concurrent resolution of the legislative assembly, the governor may  
5 not declare another state of disaster or emergency for the same disaster or  
6 emergency conditions.
- 7 ~~e.~~ When a state of disaster or emergency terminates, an executive order issued  
8 under this section in response to the disaster or emergency ceases to be  
9 effective.
- 10 ~~f.~~ All executive orders or proclamations issued under this subsection must indicate  
11 the nature of the disaster or emergency, the area or areas threatened, the  
12 conditions which~~that~~ have brought it~~the~~ disaster or emergency about or which  
13 make possible termination of the state of disaster or emergency. An executive  
14 order or proclamation must be disseminated promptly by means calculated to  
15 bring it~~the~~ order's contents to the attention of the general public, unless the  
16 circumstances attendant upon the disaster or emergency prevent or impede such  
17 dissemination, and it~~the~~ order must be promptly filed promptly with the  
18 department of emergency services, ~~the legislative council,~~ the secretary of state,  
19 and the county or city auditor of the jurisdictions affected.
- 20 ~~4.~~ An executive order or proclamation of a state of disaster or emergency shall activate  
21 the state and local operational plans applicable to the political subdivision or area in  
22 question and be authority for the deployment and use of any forces to which the plan  
23 or plans apply and for use or distribution of any supplies, equipment, and materials  
24 and facilities assembled, stockpiled, or arranged to be made available pursuant to this  
25 chapter or any other provision of law relating to a disaster or emergency.
- 26 ~~5.~~ During the continuance of any state of disaster or emergency declared by the  
27 governor, the governor is commander in chief of the emergency management  
28 organization and of all other forces available for emergency duty. To the greatest  
29 extent practicable, the governor shall delegate or assign command authority by prior  
30 arrangement embodied in appropriate executive orders or emergency operational

1 plans, but nothing herein restricts the governor's authority to do so by orders issued at  
2 the time of the disaster or emergency.

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

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

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

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

15 ~~d. Subject to any applicable requirements for compensation under section~~  
16 ~~37-17.1-12, commandeer or utilize any private property if the governor finds this~~  
17 ~~necessary to manage the disaster or emergency.~~

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

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

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

26 ~~h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,~~  
27 ~~explosives, and combustibles, not including ammunition.~~

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

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

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

3 ~~\_\_\_\_\_ 7. During a declared state of disaster or emergency, a public official or executive branch~~  
4 ~~employee may not withhold, direct, or require the use or expenditure of any money in~~  
5 ~~a manner or for a purpose other than the manner or purpose for which the money was~~  
6 ~~appropriated by the legislative assembly, emergency commission, or budget section.~~

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

9 ~~\_\_\_\_\_ 8. Authorize~~

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

17 ~~\_\_\_\_\_ **SECTION 3.** A new section to chapter 54-03 of the North Dakota Century Code is created~~  
18 ~~and enacted as follows:~~

19 ~~\_\_\_\_\_ **Virtual session of the legislative assembly during emergency or disaster.**~~

20 ~~\_\_\_\_\_ 1. If the governor calls a special session of the legislative assembly to address a state of~~  
21 ~~emergency or disaster or if the legislative assembly reconvenes to address a state of~~  
22 ~~emergency or disaster, the legislative assembly may use any technology or electronic~~  
23 ~~means available to conduct meetings and transact legislative business.~~

24 ~~\_\_\_\_\_ 2. For purposes of section 7 of article IV of the Constitution of North Dakota, a~~  
25 ~~meeting of the legislative assembly which occurs under this section is deemed to have~~  
26 ~~occurred at the seat of the government, and all actions taken during the meeting have~~  
27 ~~the same legal effect as if the members of the legislative assembly were physically~~  
28 ~~present at the seat of government.~~

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

1 12. Issue ~~any orders~~ a written order relating to a disease control ~~measures-~~  
2 ~~deemed~~ measure necessary to prevent the spread of a communicable disease.  
3 ~~Disease~~ A disease control ~~measures~~ measure may include a special immunization  
4 ~~activities~~ activity and decontamination ~~measures~~ measure. ~~Written orders~~

5 a. The state health officer shall limit a written order issued under this section to the  
6 geographical area affected by the communicable disease. The state health officer  
7 may not issue a statewide order under this section unless the governor has  
8 declared a statewide disaster or emergency under chapter 37-17.1 and the  
9 governor consents to the order. The statewide order is limited in duration to the  
10 duration of the declared disaster or emergency unless terminated earlier  
11 pursuant to chapter 37-17.1.

12 b. A written order issued under this section ~~shall have~~ has the same effect as a  
13 physician's standing medical order.

14 c. The state health officer may ~~shall~~ apply to the district court in a judicial district  
15 where a communicable disease is present for an injunction ~~canceled~~ if the state  
16 health officer seeks to cancel a public ~~events~~ event or ~~closing places~~ close a place  
17 of business. On application of the state health officer showing the necessity of  
18 ~~such~~ the cancellation or closure, the court may issue an ex parte preliminary  
19 injunction, pending a full hearing.

20 **SECTION 2.** A new section to chapter 23-12 of the North Dakota Century Code is created  
21 and enacted as follows:

22 **Vaccine passports - Prohibition.**

23 Except as provided under section 23-07-17.1, a state or local government may not mandate  
24 that a private entity require documentation of an individual's vaccination status.

25 **SECTION 3. AMENDMENT.** Subsection 3 of section 37-17.1-05 of the North Dakota  
26 Century Code is amended and reenacted as follows:

27 3. A disaster or emergency must be declared by executive order or proclamation of the  
28 governor if the governor determines a disaster has occurred or a state of emergency  
29 exists. ~~The-~~

30 a. Except as provided in subdivision b, the state of disaster or emergency ~~shall-~~  
31 ~~continue~~ continues until the governor determines ~~that~~ the threat of an emergency

1 has passed or the governor determines the disaster has been dealt with to the  
2 extent ~~that~~ emergency conditions no longer exist, whichever occurs first.

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

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

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

27 **SECTION 4. AMENDMENT.** Subsection 6 of section 37-17.1-05 of the North Dakota  
28 Century Code is amended and reenacted as follows:

29 6. ~~In~~The governor may not amend or repeal the provisions of a statute, but subject to  
30 prohibitions and limitations in law, and in addition to any other powers conferred upon  
31 the governor by law, the governor may:

- 1 a. Suspend the provisions of any regulatory statute prescribing the procedures for
- 2 conduct of state business, or the orders, rules, or regulations of any state agency,
- 3 if strict compliance with the provisions of any statute, order, rule, or regulation
- 4 would in any way prevent, hinder, or delay necessary action in managing a
- 5 disaster or emergency.
- 6 b. Utilize all available resources of the state government as reasonably necessary
- 7 to manage the disaster or emergency and of each political subdivision of the
- 8 state.
- 9 c. Transfer the direction, personnel, or functions of state departments and agencies
- 10 or units thereof for the purpose of performing or facilitating emergency
- 11 management activities.
- 12 d. Subject to any applicable requirements for compensation under section
- 13 37-17.1-12, commandeer or utilize any private property if the governor finds this
- 14 necessary to manage the disaster or emergency.
- 15 e. Direct and compel the evacuation of all or part of the population from any stricken
- 16 or threatened area within the state if the governor deems this action necessary
- 17 for the preservation of life or other disaster or emergency mitigation, response, or
- 18 recovery.
- 19 f. Prescribe routes, modes of transportation, and destinations in connection with an
- 20 evacuation.
- 21 g. Control ingress and egress in a designated disaster or emergency area, the
- 22 movement of persons within the area, and the occupancy of premises therein.
- 23 h. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,
- 24 explosives, and combustibles, not including ammunition.
- 25 i. Make provision for the availability and use of temporary emergency housing.
- 26 j. Make provisions for the control, allocation, and the use of quotas for critical
- 27 shortages of fuel or other life and property sustaining commodities.
- 28 k. Designate members of the highway patrol, North Dakota national guard, or others
- 29 trained in law enforcement, as peace officers.

30 **SECTION 5.** A new subsection to section 37-17.1-05 of the North Dakota Century Code is  
31 created and enacted as follows:

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

5 **SECTION 6.** A new subsection to section 37-17.1-05 of the North Dakota Century Code is  
6 created and enacted as follows:

7 The governor may not take any action under this section which violates a resident's  
8 due process rights.

9 **SECTION 7.** A new section to chapter 50-11 of the North Dakota Century Code is created  
10 and enacted as follows:

11 **Unaccompanied undocumented children.**

12 A person may not arrange for or promote care provided in a facility for unaccompanied  
13 undocumented children unless the facility has a license or approval issued by the department.

14 **SECTION 8. AMENDMENT.** Section 50-25.1-11.1 of the North Dakota Century Code, as  
15 amended in section 2 of Senate Bill No. 2131, as approved by the sixty-seventh legislative  
16 assembly, is amended and reenacted as follows:

17 **50-25.1-11.1. Children's advocacy centers - Confidentiality of records - Criminal**  
18 **history record checks.**

19 1. Records and digital media in the possession of a children's advocacy center relating to  
20 a forensic medical examination, forensic interview, or therapy are confidential and may  
21 be released only to a person other than a law enforcement agency, the department or  
22 the department's authorized agent, or a medical or mental health professional when  
23 the child comes before the medical or mental health professional in that person's  
24 professional capacity, upon service of a subpoena signed by a judge.

25 2. ~~Upon receipt of a request by a children's advocacy center, the~~The department may  
26 submit a request for a criminal history record check under section 12-60-24. ~~Under this~~  
27 ~~subsection, a children's advocacy center may require the following individuals to~~  
28 ~~submit to a criminal history record check:~~

29 ~~a.~~ ~~An~~ on an employee, final applicant for employment, contractor, multidisciplinary  
30 team member, or volunteer, of a children's advocacy center who has contact with  
31 a child at or through a children's advocacy center; ~~and~~

~~b. An individual a children's advocacy center determines requires a criminal history record check to participate in services at a center.~~

**SECTION 9.** A new section to chapter 54-03 of the North Dakota Century Code is created and enacted as follows:

**Virtual session of the legislative management and legislative assembly during emergency or disaster.**

1. If the legislative management meets to vote on whether the legislative management should request the governor call a special session of the legislative assembly, the legislative management may use any technology or electronic means available to conduct meetings and transact legislative business.

2. If the governor calls a special session of the legislative assembly to address a state of emergency or disaster or if the legislative assembly reconvenes to address a state of emergency or disaster, the legislative assembly may use any technology or electronic means available to conduct meetings and transact legislative business.

3. For purposes of section 7 of article IV of the Constitution of North Dakota, a meeting of the legislative assembly which occurs under this section is deemed to have occurred at the seat of the government, and all actions taken during the meeting have the same legal effect as if the members of the legislative assembly were physically present at the seat of government.

**SECTION 10. EMERGENCY.** This Act is declared to be an emergency measure.