

Introduced by

Senators J. Lee, Dever, Heckaman

Representatives Kaldor, Weisz

1 A BILL for an Act to create and enact a new chapter to title 23 of the North Dakota Century  
2 Code, relating to creating a state vaccine fund and a North Dakota vaccine group purchasing  
3 board; to amend and reenact section 23-01-05.3 of the North Dakota Century Code, relating to  
4 reporting immunization data; to provide a penalty; and to declare an emergency.

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

6 **SECTION 1.** A new chapter to title 23 of the North Dakota Century Code is created and  
7 enacted as follows:

8 **Definitions.**

9 As used in this chapter:

- 10 1. "Board" means the North Dakota vaccine group purchasing board.  
11 2. "Department" means the state department of health.  
12 3. "Director" means the director of the North Dakota vaccine group purchasing program.  
13 4. "Fund" means the North Dakota vaccine fund.  
14 5. "Health insurance coverage" and "insurer" have the same meaning as provided under  
15 section 26.1-08-01.  
16 6. "Health officer" means the state health officer.  
17 7. "North Dakota immunization advisory committee" means the group of private health  
18 care providers, local public health units, department staff, and other applicable  
19 individuals which makes immunization and vaccine selection recommendations to the  
20 North Dakota immunization program.  
21 8. "North Dakota immunization information system" is the population-based  
22 computerized information system established under section 23-01-05.3.

- 1       9. "North Dakota immunization program" means the program administered by the  
2       department to provide vaccinations to North Dakota children consistent with state and  
3       federal law.
- 4       10. "Plan of operation" means the plan of operation of the fund as established by the  
5       board.
- 6       11. "Program-eligible child" means any child, who is under nineteen years of age, whose  
7       custodial parent or legal guardian resides in this state and who is not eligible for the  
8       federal vaccines for children program.
- 9       12. "Vaccine" means any vaccine recommended by the federal advisory committee on  
10      immunization practices of the centers for disease control and prevention.
- 11      13. "Vaccines for children program" is a federally funded program that provides vaccines  
12      at no cost to eligible children pursuant to section 1928 of the Social Security Act  
13      [42 U.S.C. 1396s].

14      **State department of health - Duties.**

- 15      1. There is established in the department a vaccine group purchasing program.
- 16      2. The health officer shall appoint the director of the North Dakota vaccine group  
17      purchasing program who may be an employee of the department.
- 18      3. The health officer, or the health officer's designee, in consultation with the North  
19      Dakota immunization advisory committee shall determine which brands of vaccines  
20      are purchased under this chapter.

21      **North Dakota vaccine group purchasing board.**

- 22      1. There is created in the department the North Dakota vaccine group purchasing board,  
23      which shall operate as a governmental authority as defined in subsection 7 of section  
24      32-12.2-01.
- 25      2. The board consists of nine members:
- 26          a. Six members must be appointed by the health officer and serve at the pleasure of  
27          the health officer. In selecting the members of the board, the health officer shall  
28          appoint:
- 29              (1) Three members representing insurers, one of whom shall represent  
30              administrators or third-party administrators;

- 1                   (2) One member representing business managers of private health care  
2                   practices;
- 3                   (3) One member representing local public health units; and
- 4                   (4) One member representing the North Dakota business community;
- 5                   b. The department's immunization program manager;
- 6                   c. One member designated by the insurance commissioner; and
- 7                   d. The health officer, or the director as the health officer's designated  
8                   representative, shall serve as an ex officio, nonvoting member of the board.
- 9                   3. Board members appointed by the health officer pursuant to subdivision a of  
10                   subsection 2 shall serve for terms of three years, except the initial board members  
11                   appointed by the health officer pursuant to subdivision a of subsection 2 must be  
12                   appointed as follows:
- 13                   a. Two members, as determined by the health officer, shall serve an initial term of  
14                   two years;
- 15                   b. Two members, as determined by the health officer, shall serve an initial term of  
16                   three years; and
- 17                   c. Two members, as determined by the health officer, shall serve an initial term of  
18                   four years.
- 19                   4. The health officer shall fill any vacancy on the board appointed by the health officer  
20                   pursuant to subdivision a of subsection 2.
- 21                   5. Members of the board who are not state employees or employees of a political  
22                   subdivision are entitled to receive reimbursement for their necessary mileage and  
23                   travel expenses as provided in sections 44-08-04 and 54-06-09 while attending board  
24                   meetings.
- 25                   **Plan of operation.**
- 26                   1. Annually, the board shall submit a plan of operation to the director. Amendments to the  
27                   plan may be made as needed. The plan of operation, and any amendments to the  
28                   plan, become effective upon board approval.
- 29                   2. The plan of operation must:
- 30                   a. Identify methodology and procedures for determining assessments that are fair  
31                   and equitable for insurers and third-party administrators, including a third-party

1                    administrator for a self-insurance plan. The board may assess a subgroup of the  
2                    insurers and third-party administrators to be assessed based on immunization  
3                    volume or other factors as approved by the board;

4                    b. Establish and approve procedures for the director to collect assessments from  
5                    insurers and third-party administrators as identified in the plan of operation to  
6                    fund vaccine purchases by the state;

7                    c. Identify the frequency of board meetings; and

8                    d. Provide for any additional matters necessary for the implementation and  
9                    administration of the fund.

10                  3. Administrative costs associated with establishing and operating the fund must be paid  
11                  out of the fund.

12                  **Power and liability of the board.**

13                  1. The board may:

14                  a. Enter contracts necessary or proper to carry out this chapter;

15                  b. Determine the method and frequency of assessment and assess insurers and  
16                  third-party administrators in accordance with rules adopted by the board;

17                  c. Require insurers and third-party administrators to provide to the board all  
18                  statements and reports the board considers necessary to fulfill the board's duties  
19                  under this chapter; and

20                  d. Establish policies and procedures as necessary or proper for the implementation  
21                  of this chapter and the collection and use of the assessments authorized by this  
22                  chapter.

23                  2. Neither the board nor any member of the board is liable for any obligations of the  
24                  vaccine assessments. A member or employee of the board is not liable, and a cause  
25                  of action of any nature may not arise against the member or employee of the board,  
26                  for any act or omission related to the performance of the member's or employee of the  
27                  board's powers and duties under this chapter, unless the act or omission constitutes  
28                  willful or wanton misconduct. Participation by an insurer or third-party administrator in  
29                  the assessments authorized by this chapter or on the board under this chapter is not  
30                  grounds for any legal action, criminal or civil liability, or penalty against the fund or any

1           of its insurers, third-party administrators, or board members, either jointly or  
2           separately.

3           3. The board is exempt from the requirements of chapter 28-32 if the board provides  
4           notice and the opportunity to comment to any health insurer or third-party  
5           administrator, subject to an assessment under this chapter, except that an insurer or  
6           third-party administrator may appeal any assessment or rule of the board as provided  
7           under section 28-32-47.

8           **Assessments.**

- 9           1. Annually, the department shall report to the board the total number of program-eligible  
10           children in the North Dakota immunization information system who received vaccines,  
11           the doses administered, and the total cost of vaccines purchased through the North  
12           Dakota vaccine fund for the previous state fiscal year.
- 13           2. Each insurer's or third-party administrator's proportion of the assessment and the  
14           dates upon which the insurer or third-party administrator must pay the assessment into  
15           the fund must be determined by the board based on annual statements and other  
16           reports considered necessary by the board. In making the assessment determination,  
17           the board also shall consider such factors as the number of vaccine doses  
18           administered in the pertinent time period and the number of program-eligible children  
19           in the pertinent time period, as well as any necessary costs and expenses to  
20           administer the fund and discharge the duties of the board.
- 21           3. Each insurer or third-party administrator shall pay the insurer's or third-party  
22           administrator's annual assessment in at a minimum of quarterly installments on the  
23           date specified by the board.
- 24           4. An insurer or third-party administrator shall pay an assessment made by the board  
25           within sixty days of the notice of assessment being sent to the insurer or third-party  
26           administrator.
- 27           5. For late or nonpayment of assessments by an insurer or third-party administrator, the  
28           board shall impose interest at the rate of one percent of the unpaid assessment due  
29           for each month or fraction of a month during which the assessment remains unpaid,  
30           computed from the due date of the assessment to the date paid, excepting the month  
31           in which the assessment was required to be paid or the assessment became due. If an

1 insurer's or third-party administrator's assessment remains partly or fully unpaid for  
2 more than ninety days from the due date, the board may impose a penalty of up to two  
3 times the amount of the unpaid assessment. In addition, the board may refer the  
4 insurer or third-party administrator to the insurance commissioner who may use any  
5 sanctions available to penalize for nonpayment of the assessment.

6 6. For good cause, an insurer or third-party administrator may seek from the board a  
7 deferment from all or part of an assessment imposed by the board. The board may  
8 defer all or part of the assessment if the board determines that the payment of the  
9 assessment would place the insurer or third-party administrator in a financially  
10 impaired condition, as provided in title 26.1. If all or part of an assessment against an  
11 insurer or third-party administrator is deferred, the amount deferred must be assessed  
12 against the other insurers and third-party administrators in a manner consistent with  
13 the basis for assessment provided under this section. The insurer or third-party  
14 administrator receiving the deferment remains liable to the fund for the amount  
15 deferred and may be referred to the insurance commissioner who may use any  
16 sanctions available.

17 7. The initial assessments as determined by the board must be paid to the fund before  
18 October 1, 2011.

19 8. The moneys raised by the assessment authorized in this section must be used solely  
20 for the purposes expressly authorized by this chapter.

21 9. Notwithstanding any other provision of this section, if the market share of an insurer or  
22 third-party administrator changes by more than ten percent because of merger,  
23 withdrawal, or any other reason or the assessments are insufficient to pay for the  
24 costs for that year, the board may adjust the assessments of all insurers and  
25 third-party administrators for that year.

26 **North Dakota vaccine fund.**

27 There is created in the state treasury the North Dakota vaccine fund. Moneys in the fund  
28 must be appropriated by the legislative assembly solely for purposes established by this  
29 chapter. Any entity subject to this assessment is not entitled to a credit against tax due under  
30 section 26.1-03-17.

1       **SECTION 2. AMENDMENT.** Section 23-01-05.3 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **23-01-05.3. Immunization data.**

- 4       1. The state department of health may establish an immunization information system and  
5 may require the childhood immunizations specified in subsection 1 of section  
6 23-07-17.1 and other information be reported to the department. The state department  
7 of health may only require the reporting of childhood immunizations and other data  
8 upon completion of the immunization information reporting system. A health care  
9 provider who administers a childhood immunization shall report the patient's  
10 identifying information, the immunization that is administered, and other required  
11 information to the department. The report must be submitted using electronic media,  
12 and must contain the data content and use the format and codes specified by the  
13 department.
- 14       2. A health care provider that fails to submit an immunization report required by this  
15 section may not order or receive any vaccines from the North Dakota immunization  
16 program until the provider submits all reports required by this section.
- 17       3. Notwithstanding any other provision of law, a health care provider, elementary or  
18 secondary school, early childhood facility, public or private postsecondary educational  
19 institution, city or county board of health, district health unit, and the state health officer  
20 may exchange immunization data in any manner with one another. Immunization data  
21 that may be exchanged under this section is limited to the date and type of  
22 immunization administered to a patient and may be exchanged regardless of the date  
23 of the immunization.

24       **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.