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H.B. 1391

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OPPOSITION

Senate Industry and Business Committee

Sen. Jeff Barta, Chairman  
Sen. Keith Boehm, Vice Chairman

Testimony of Zachary Greenberg

Interim Commissioner of Labor  
N.D. Department of Labor and Human Rights

March 18, 2025

## **Chairman Barta & Members of the Committee,**

Thank you for the opportunity to provide testimony on HB 1391. My name is Zachary Greenberg, and I serve as the Interim Commissioner of the Department of Labor and Human Rights. While I fully support efforts to ensure fair treatment for all North Dakotans, I have serious concerns about the administrative and procedural burdens this bill would impose on the Department.

### **Increased Case Filings and Administrative Challenges**

As drafted, HB 1391 would add “health status” as a protected category under the state’s anti-discrimination laws. This expansion would significantly increase the number and complexity of discrimination claims filed with our Department. Unlike established protected categories such as race, sex, age, or disability—where legal frameworks and precedents provide clarity—this new category introduces substantial ambiguity. It would require extensive regulatory interpretation, staff training, and adjudication, straining our existing resources.

A key concern is that this provision would create a legal entitlement to reasonable accommodations for individuals who do not qualify as having a disability under the Americans with Disabilities Act (ADA). For example, under current law, an individual who refuses a vaccine for personal reasons—but lacks a disability or religious objection—is not entitled to a workplace accommodation. However, if “health status” were a protected category, an employee could claim discrimination if an employer denies them accommodations—such as remote work or modified duties—based solely on their decision to forgo a vaccine or other medical treatment. This would place a significant burden on employers, who would be forced to assess and implement accommodations beyond existing legal requirements.

### **Legal Uncertainty and Workplace Safety Concerns**

Beyond vaccine-related concerns, the broad definition of “health status” could create additional legal uncertainties. Unlike traditional discrimination claims, cases involving “health status” would require the Department to evaluate medical histories, personal treatment decisions, and employer health and safety policies—areas that lack federal precedent. Navigating this uncharted legal territory would likely lead to prolonged investigations and costly litigation.

Additionally, the broad scope of “health status” could have unintended consequences for workplace policies. For example, if an employer requires a drug test as a condition of employment and an individual refuses on the basis of “health status,” the employer’s

decision to terminate them could result in a discrimination claim. This could severely limit an employer's ability to enforce workplace safety policies and maintain a drug-free work environment.

### **Resource Strain and Recommendation**

To manage the anticipated surge in cases, the Department would require additional staffing and resources. Our fiscal note reflects the need for five additional full-time employees: four Compliance Investigators and one Administrative Assistant. Without these resources, case backlogs would grow exponentially, delaying resolutions for all claimants—including those filing under well-established protections.

For these reasons, I respectfully urge the committee to issue a DO NOT PASS recommendation on HB 1391 due to the strain it would place on the Department's ability to enforce North Dakota's anti-discrimination laws effectively.

Thank you for your time. I am happy to answer any questions.