



2025 HB 1391
Senate Industry and Business Committee
Senator Jeff Barta, Chairman
March 18, 2025

Chairman Barta and members of the Senate Industry and Business Committee, I am Melissa Hauer, General Counsel/VP, of the North Dakota Hospital Association. I am here to testify in opposition to House Bill 1391 and ask that you give the bill a **Do Not Pass** recommendation.

The North Dakota Hospital Association (NDHA) represents 46 hospitals in the state. These members include large hospitals, critical access hospitals, and specialty hospitals. The bill would create a new class of prohibited discrimination on the basis of "health status." Like discrimination based on age, gender, religion or any of the currently protected classes, this bill would provide that an employer could not discriminate against an employee based on the employee's health status. Health status is defined to mean an individual's medical records or preferences relating to the right to refuse a medical procedure, treatment, injection, device, vaccine, or prophylactic. It would be a discriminatory practice for an employer to fail or refuse to make a reasonable accommodation because of an employee's health status.

While we agree that hiring, firing, promoting, demoting, and job assignments should be fair and free from discrimination based on protections in current federal and state laws, we are concerned about the potential far reaching and unintended consequences of adding "health status" as an additional protected class. The bill creates a legal entitlement to reasonable accommodation because of an employee's health status. This new category would add ambiguity to the current state of discrimination law. The engrossed bill adds some flexibilities for health care employers but we continue to have serious concerns about the bill. The amendments provide that a health care facility does not unlawfully discriminate if it asks an employee to volunteer specific health status information for the purpose of determining whether the facility should implement reasonable accommodation measures to protect the safety and health of employees, patients, visitors, and other individuals from communicable diseases; and the facility offers reasonable accommodation

measures to protect the health and safety of individuals from communicable diseases. It provides that a health care facility may consider an employee who declines to provide health status information to be at risk for a communicable disease for purposes of determining whether reasonable accommodation measures must be implemented.

The amendments to the bill specific to health care facilities in Section 13 appear to have considered communicable diseases to be the only situation which a health care facility would encounter where an employee may refuse to “volunteer specific health status information.” For example, it appears that a health care facility could not require an employee to undergo drug testing if it suspected the employee of being impaired while at work. The employee could merely refuse to “volunteer” information about the suspected drug or alcohol use and could refuse to undergo drug testing. The only recourse the bill would give the employer would be to provide a “reasonable accommodation” to the employee. However, a drug or alcohol impairment is obviously not a communicable disease and not a condition that a health care facility can reasonably accommodate while keeping patients safe.

If this bill is really only intended to address vaccine status, as worded, it does not accomplish its intent and is dangerously overbroad. It unnecessarily and dangerously restricts employers' rights and duty to protect their employees, patients, and visitors from communicable diseases that can be prevented by immunizations and other health conditions that could put patient care at risk. Health care facilities are already required to provide religious and medical exemptions to employees who have a legitimate need or belief to avoid vaccinations. Barring one of those reasons, hospitals must be able to enforce vaccine requirements and other patient safety requirements quickly and adequately. To do otherwise puts not only employees, visitors, and vulnerable patients at risk, it also risks hospitals' ability to participate in the Medicare and Medicaid programs both of which have infection control requirements that necessitate employee vaccinations to prevent the spread of communicable diseases.

Thank you for your consideration. We ask that you give the bill a **Do Not Pass** recommendation. I would be happy to respond to any questions you may have.

Respectfully Submitted,

Melissa Hauer, General Counsel/VP
North Dakota Hospital Association