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Chairperson Barta and distinguished members of the Senate Industry and Business Committee, thank you for the opportunity to provide testimony today. My name is Sandra Tibke, and I am the Executive Director of the Foundation for a Healthy North Dakota. I will detail the economic, social, and operational concerns of House Bill 1391. While the bill purports to expand anti-discrimination protections by adding “health status” as a protected category, its unintended consequences burden the state, businesses, and public health infrastructure.

### **Economic Burden on the State and Businesses**

The fiscal analysis of HB1391 indicates that its implementation would necessitate additional staffing and administrative expenditures for the Department of Labor and Human Rights. Specifically, the bill is projected to require the addition of five full-time employees, costing an estimated \$788,533 for the current biennium and nearly \$836,554 for subsequent periods. These costs, charged entirely to the General Fund, risk diverting resources from other critical state programs and services. Moreover, the broadened definition of “health status” opens the door to costly litigation and increased legal uncertainty for businesses, further elevating compliance costs. Small and medium enterprises will struggle to absorb these unforeseen expenses, potentially leading to reduced hiring or operational scaling that could negatively affect the state’s economic climate.

### **Public Health Risks**

One of the primary concerns with HB1391 lies in its impact on public health, a priority that extends beyond individual liberties. The bill interferes with essential public health protocols by mandating entities such as schools, childcare facilities, and healthcare providers accept individuals regardless of their health status. For instance, current public health laws allow the exclusion of unimmunized children during epidemics to mitigate the spread of vaccine-preventable diseases. The insistence on protecting “health status” means that vital measures to safeguard vulnerable populations—infants, immunocompromised individuals, and the elderly—could be severely compromised. Under HB1391, institutions would be forced to accept individuals with potentially infectious diseases, increasing the risk of outbreaks and undermining decades of successful immunization efforts.

## **Operational Challenges for Employers and Institutions**

Employers across multiple industries will face unforeseen operational challenges due to the restrictions imposed by HB1391. The bill would prevent businesses from enforcing robust health and safety protocols, such as excluding employees or visitors who exhibit signs of infectious disease. This inability to implement necessary health measures threatens both workplace safety and productivity. In sectors such as healthcare, food service, and education, the risk of communicable disease outbreaks could directly compromise employee well-being, customer safety, and the overall operational effectiveness of these organizations. Moreover, ambiguity surrounding “reasonable accommodations” for individuals who refuse to disclose their health status will likely lead to administrative inefficiencies and increased liability, further exacerbating operational challenges.

## **Dilution of Anti-Discrimination Protections**

Expanding the definition of protected classes to include “health status” introduces a profound shift in the purpose of anti-discrimination legislation. Traditionally, these laws have focused on inherent, immutable characteristics such as race, gender, and disability; by extending protections to health status—a category encompassing personal health choices such as refusing medical procedures or vaccines—the bill risks diluting the strong legal and social precedent underpinning these protections. This dilution undermines the intention of providing robust and targeted protections against discrimination and sows confusion over what constitutes a protected characteristic, eroding public trust in anti-discrimination protections.

## **Legal Precedent and Uncertainty**

A significant concern is the lack of federal precedent supporting “health status” as a protected class. The absence of such guidance is a recipe for legal ambiguity. With no clear precedent, employers and institutions are left to navigate a murky regulatory landscape that could lead to inconsistent law applications and a proliferation of lawsuits. This uncertainty increases the financial risks for businesses and hampers the state’s ability to enforce a coherent, fair standard across industries. The resulting legal disputes would impose additional burdens on the judiciary and state resources, ultimately detracting from the bill’s intended benefits.

## **Unintended Consequences and Practical Implications**

Beyond economic and legal concerns, HB1391 portends several unintended practical consequences. For example, public institutions might be coerced into allowing scenarios where children who have not met essential health requirements—such as completing routine sports physicals—can participate in school athletics out of fear of discrimination

claims. Similarly, the bill could hinder employers' ability to respond swiftly to emerging public health threats, further eroding the practical effectiveness of established safety protocols. Such scenarios illustrate a fundamental misalignment between the bill's intentions and the needs of both public and private sectors in maintaining safe, healthy environments.

## Conclusion

In summary, despite its stated aim to expand anti-discrimination protections, HB1391 presents an economically burdensome, legally uncertain framework and is operationally impractical. The financial strain imposed on the state, compounded by potential litigation and administrative challenges, could adversely affect North Dakota's economic stability. Moreover, the public health risks inherent in requiring the removal of established safety protocols represent a critical vulnerability, particularly for the state's most at-risk populations. I respectfully urge this committee to vote against HB 1391 for these reasons.

Thank you for your time and consideration.