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H.B. 1391

OPPOSITION

House Human Services Committee

Rep. Matt Ruby, Chairman
Rep. Kathy Frelich, Vice Chairman

Testimony of Zachary Greenberg

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

February 4, 2025

Chairman Ruby, & Members of the Committee,

Thank you for the opportunity to provide testimony regarding 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 must express concerns regarding the administrative and procedural burdens this bill would impose on the department.

As drafted, this bill would add "health status" as a protected category under the state's anti-discrimination laws. This expansion would significantly increase the number of discrimination claims filed with our department, as it creates a new and complex basis for alleged workplace discrimination. Unlike existing protected categories such as race, sex, age, or disability—where legal frameworks are well-established—this new category introduces ambiguity that will require extensive regulatory interpretation, staff training, and adjudication.

One of the primary concerns is that this provision would create a legal entitlement to reasonable accommodations for individuals who do not meet the criteria under the North Dakota Human Rights Act (NDHRA), the federal Americans with Disabilities Act (ADA), or Title VII of the Civil Rights Act of 1964. For example, under current state or federal law, an individual who declines for personal reasons a vaccine which is required by their employer but does not have a disability or religious objection is not entitled to a reasonable accommodation. However, if "health status" were a protected class only under the NDHRA, an employee filing a state complaint could claim discrimination if an employer denies them an accommodation—such as remote work or modified duties—solely based on their personal decision to refuse a vaccine or other medical treatment. This could place an undue burden on employers, who would be required to assess and implement reasonable accommodations beyond the existing legal requirements.

A reasonable accommodation is a modification or adjustment to a job or work environment that enables an individual to perform essential job functions while addressing a legitimate need, typically related to a disability or religious belief. Under current law, accommodations might include modifications such as wheelchair-accessible workspaces, flexible scheduling for medical treatments, or exemptions from certain tasks due to sincerely held religious beliefs. These accommodations are carefully evaluated to balance the rights of employees with the operational needs of employers. Expanding the obligation to accommodate personal health decisions—rather than medical conditions or religious beliefs—could significantly alter workplace dynamics, as employers would face an influx of accommodation requests based on individual preferences rather than legally

recognized needs. This shift could lead to inconsistent enforcement, an administrative burden on businesses, and potential workplace disruptions.

Moreover, this expansion would not only increase the number of case filings, but also the complexity of investigations. Unlike traditional discrimination claims, cases involving "health status" would require the Department to evaluate medical histories, personal decisions, and employer policies on health and safety in ways that go beyond our Compliance Investigators' administrative capacity. The lack of federal precedent on this issue means that the Department would be navigating uncharted legal territory, increasing the likelihood of prolonged investigations, and costly litigation.

To handle these increased filings, the Department would require additional staffing and resources to ensure timely case processing. Without such resources, existing case backlogs would grow, and claimants—including those filing under long-established protections—could experience significant delays in obtaining resolutions.

For these reasons, I respectfully urge the committee to recommend a DO NOT PASS on HB 1391 due to the uncertain impact it would have on the Department's enforcement of North Dakota's anti-discrimination laws.

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