

69th Legislative Assembly
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H.B. 1291

OPPOSITION

House Industry Business & Labor Committee

Rep. Jonathan Warrey, Chairman
Rep. Mitch Ostlie, Vice Chairman
Rep. Jorin Johnson, Vice Chairman

Testimony of Zachary Greenberg

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

January 29, 2023

Chairman Warrey and Members of the Committee,

Thank you for the opportunity to testify today regarding House Bill 1291. My name is Zachary Greenberg, and I am the interim Commissioner of the North Dakota Department of Labor and Human Rights. While I appreciate the bill's intent to address the problem of hiring unauthorized workers, I have significant concerns about its impact on the Department of Labor and Human Rights and its potential conflicts with federal law. For the reasons discussed below, I respectfully recommend a do not pass on House Bill 1291.

1. Federal Preemption Concerns

House Bill 1291 assigns the Department of Labor and Human Rights the responsibility to investigate allegations related to the hiring of unauthorized workers. As you probably know already, immigration enforcement falls under federal jurisdiction and is primarily regulated by the U.S. Department of Homeland Security (DHS) and the Department of Justice (DOJ).

- **Federal Preemption:** Under the Supremacy Clause of the U.S. Constitution, federal immigration laws supersede state laws in this area. The Immigration Reform and Control Act (IRCA) of 1986 explicitly preempts state enforcement of unauthorized employment except in limited cases.
- **Department's Role:** The North Dakota Department of Labor does not currently investigate immigration-related matters, nor does it have the resources, expertise, or legal authority to do so. Assigning this responsibility to the Department could lead to conflicts with federal agencies and expose the state to potential legal challenges.

2. Conflict of Interests

The Department of Labor and Human Rights is statutorily obligated to protect workers from discrimination in hiring and employment practices. However, enforcing this bill could create a conflict of interest for the Department and open the door to claims that the Department is facilitating or encouraging employment discrimination based on race, color, national origin or perceived immigration status.

- **Employers' Dilemma:** This bill may place private employers in a difficult position, where they feel pressured to avoid hiring or prematurely terminate employees based on assumptions about their immigration status—potentially leading to claims of unlawful employment discrimination under federal and state law.
- **Department's Liability:** Investigating alleged violations under this bill could place the Department in direct conflict with the anti-discrimination protections we are obligated to uphold, especially under Title VII of the Civil Rights Act and the North Dakota Human Rights Act.

3. Practical Challenges in Enforcement

- **Resource Constraints:** The department does not have the investigatory capacity to handle these allegations and shifting resources away our current goal of reducing our backlog—would hinder our ability to serve workers and employers in the state.

Conclusion

For these reasons, I urge the committee to recommend a DO NOT PASS for House Bill 1291. Assigning immigration-related investigations to the Department of Labor and Human Rights raises constitutional, legal, and practical concerns that could lead to federal preemption challenges, increased discrimination claims, and administrative burdens.

Thank you for your time, and I will stand for any questions.