

HOUSE BILL NO. 1262

Introduced by

Representatives Boschee, Buffalo, Dobervich, Ista, Mock, Schneider

Senators Bakke, Oban

1 A BILL for an Act to amend and reenact sections 34-01-20 and 34-11.1-04 of the North Dakota
2 Century Code, relating to whistleblowers and public health and safety; and to provide a penalty.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 34-01-20 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **34-01-20. Employer retaliation prohibited - Civil action for relief - Penalty.**

- 7 1. An employer may not discharge, discipline, threaten discrimination, or penalize an
8 employee regarding the employee's compensation, conditions, location, or privileges
9 of employment because:
- 10 a. The employee, or a person acting on behalf of an employee, in good faith,
11 reports a violation or suspected violation of federal, state, or local law, ordinance,
12 regulation, or rule to an employer, a governmental body, or a law enforcement
13 official.
- 14 b. The employee is requested by a public body or official to participate in an
15 investigation, a hearing, or an inquiry.
- 16 c. The employee refuses an employer's order to perform an action that the
17 employee believes violates local, state, or federal law, ordinance, rule, or
18 regulation. The employee must have an objective basis in fact for that belief and
19 shall inform the employer that the order is being refused for that reason.
- 20 d. The employee reports to an employer, a governmental body, or a law
21 enforcement official a reasonable concern about a workplace violation of a
22 government health or safety policy or rule or about an otherwise significant
23 workplace threat to health or safety related to a public health emergency.

e. The employee voluntarily wears the employee's own personal protective equipment, if the personal protective equipment provides a higher level of protection than the equipment provided by the employer, is recommended by a federal, state, or local public health agency, and does not render the employee incapable of performing the employee's job or prevent the employee from fulfilling the duties of the employee's position.

2. An employer ~~who~~that willfully violates this section is guilty of an infraction.

3. An employee asserting a violation of this section may bring a civil action for injunctive relief or actual damages, or both, within one hundred eighty days after the alleged violation, completion of proceedings under subsection 4, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later. If the court determines that a violation has or is occurring under this section, the court may order, as the court deems appropriate, reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. In any action under this section, the court may award reasonable attorney's fees to the prevailing party as part of the costs of litigation. An employee whose collective bargaining agreement, employment contract, or public employee rights provides a process through which recourse for conduct prohibited by subsection 1 is available must exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.

4. The department of labor and human rights shall receive complaints of violations of this section and may attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. In order to receive assistance from the department of labor and human rights, a person claiming to be aggrieved by a violation of this section shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. An employee is not prohibited from filing, or

required to file, a complaint with the department of labor and human rights under this subsection before proceeding under other provisions of this section.

SECTION 2. AMENDMENT. Section 34-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

34-11.1-04. Violations for ~~misuse reported~~report by employee - Reprisals prohibited - Furnishing false information - Department of labor and human rights.

1. An employee may, without fear of reprisal, report in writing to the employee's respective agency head, a state's attorney, the attorney general, or an employee organization the existence of:
 - a. A job-related violation of local, state, or federal law, rule, regulation, or ordinance.
 - b. The job-related misuse of public resources.
 - c. A reasonable concern about a workplace violation of a government health or safety policy or rule or about an otherwise significant workplace threat to health or safety related to a public health emergency.
2. For having made a report under subsection 1, no employee will:
 - a. Be dismissed from employment.
 - b. Have salary increases or employment-related benefits withheld.
 - c. Be transferred or reassigned.
 - d. Be denied a promotion that the employee otherwise would have received.
 - e. Be demoted.
 - f. Be discriminated against in any term or condition of employment.
3. An employee who intentionally furnishes false information is subject to disciplinary action, including suspension or dismissal as determined by the employee's appointing authority or designee. An employee claiming reprisal under this section may appeal first to the human resource management services division and then to the district court in the manner prescribed by chapter 28-32, or to other appropriate offices and then to district court if the employee is not under the jurisdiction of the human resource management services division.
4. The department of labor and human rights shall receive complaints of violations of this section and may attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. To receive assistance from the department

- 1 of labor and human rights, a person claiming to be aggrieved by a violation of this
2 section shall file a complaint with the department within three hundred days after the
3 alleged act of wrongdoing. An employee is not prohibited from filing, or required to file,
4 a complaint with the department of labor and human rights under this subsection
5 before proceeding under other provisions of this section.
- 6 5. An employee of the state may appeal a claim of reprisal under this section in the
7 manner prescribed for a classified employee under chapter 54-44.3. This subsection
8 does not apply to an employee under the jurisdiction of the state board of higher
9 education or the judicial branch of government.