

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1468
(Representatives Mahoney, Murphy)

AN ACT to amend and reenact section 34-01-20 of the North Dakota Century Code, relating to prohibiting employer retaliation against employees for certain conduct.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-01-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-01-20. ~~Prohibited action—Report of complaint to commissioner of labor~~ Employer retaliation prohibited - Civil action for relief - Penalty.

1. An employer may not discharge, discipline, threaten discrimination, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because:
 - a. The employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of federal or state law or rule to an employer or to a governmental body or law enforcement official.
 - b. The employee is requested by a public body or official to participate in an investigation, hearing, or inquiry.
 - c. The employee refuses an employer's order to perform an action that the employee believes violates state or federal law or rule or regulation. The employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.
2. ~~The employee may seek the assistance of the commissioner of labor, who may use the authority of chapters 34-06 and 34-14 to investigate, hold hearings, and otherwise assure compliance with this section.~~
3. An employer who 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 ninety 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, back pay 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 back pay otherwise allowable. In any action under this section, the court may award reasonable attorneys' 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 may receive complaints of violations of this section and attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. An employee is not prohibited from filing, or required to file, a complaint with the department of labor under this subsection before proceeding under other provisions of this section.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1468.

House Vote: Yeas 92 Nays 0 Absent 5

Senate Vote: Yeas 46 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,
at _____ o'clock _____ M.

Secretary of State