

FIRST ENGROSSMENT
with House Amendments

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2226

Introduced by

Senators Watne, Mutch

Representative N. Johnson

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 prohibited employer retaliation for employee reporting of violations of
3 laws, ordinances, or regulations.

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

5 **SECTION 1. AMENDMENT.** Section 34-01-20 of the 1999 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **34-01-20. Employer retaliation prohibited - Civil action for relief - Penalty.**

8 1. An employer may not discharge, discipline, threaten discrimination, or penalize an
9 employee regarding the employee's compensation, conditions, location, or
10 privileges of employment because:

11 a. The employee, or a person acting on behalf of an employee, in good faith,
12 reports a violation or suspected violation of federal ~~or~~₁ state₁ or local law₁
13 ordinance, regulation, or rule to an employer ~~or to~~₁ a governmental body₁ or a
14 law enforcement official.

15 b. The employee is requested by a public body or official to participate in an
16 investigation, a hearing, or an inquiry.

17 c. The employee refuses an employer's order to perform an action that the
18 employee believes violates local, state₁ or federal law ~~or~~₁ ordinance, rule₁ or
19 regulation. The employee must have an objective basis in fact for that belief
20 and shall inform the employer that the order is being refused for that reason.

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

22 3. An employee asserting a violation of this section may bring a civil action for
23 injunctive relief or actual damages, or both, within ~~ninety~~ one hundred eighty days
24 after the alleged violation, completion of proceedings under subsection 4, or

1 completion of any grievance procedure available to the employee under the
2 employee's collective bargaining agreement, employment contract, or any public
3 employee statute, rule, or policy, whichever is later. If the court determines that a
4 violation has or is occurring under this section, the court may order, as the court
5 deems appropriate, reinstatement of the employee, backpay for no more than two
6 years after the violation, reinstatement of fringe benefits, temporary or permanent
7 injunctive relief, or any combination of these remedies. Interim earnings or
8 amounts earnable with reasonable diligence by the employee, from the same
9 employer, must reduce backpay otherwise allowable. In any action under this
10 section, the court may award reasonable attorneys' fees to the prevailing party as
11 part of the costs of litigation. An employee whose collective bargaining agreement,
12 employment contract, or public employee rights provides a process through which
13 recourse for conduct prohibited by subsection 1 is available must exercise that
14 process to completion before commencing an action under this subsection, and if
15 that process provides for judicial review by statutory appeal, then recourse under
16 this subsection is not available.

17 4. The department of labor ~~may~~ shall receive complaints of violations of this section
18 and may attempt to obtain voluntary compliance with this section through informal
19 advice, negotiation, or conciliation. In order to receive assistance from the
20 department of labor, a person claiming to be aggrieved by a violation of this
21 section ~~must~~ shall file a complaint with the department within three hundred days
22 after the alleged act of wrongdoing. An employee is not prohibited from filing, or
23 required to file, a complaint with the department of labor under this subsection
24 before proceeding under other provisions of this section.

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

27 **34-11.1-04. Violations for misuse reported by employee - Reprisals prohibited -**
28 **Furnishing false information.**

29 1. An employee may, without fear of reprisal, report in writing to their respective
30 agency head, a state's attorney, the attorney general, or an employee organization
31 the existence of:

- 1 a. A job related violation of local, state, or federal law, rule, regulation, or
2 ordinance.
- 3 ~~b. A job related violation of state or federal agency rules.~~
- 4 ~~e. The job related misuse of public resources.~~
- 5 2. For having made a report under subsection 1 no employee will:
- 6 a. Be dismissed from employment.
- 7 b. Have salary increases or employment-related benefits withheld.
- 8 c. Be transferred or reassigned.
- 9 d. Be denied a promotion ~~which~~ that the employee otherwise would have
10 received.
- 11 e. Be demoted.
- 12 f. Be discriminated against in any term or condition of employment.
- 13 3. An employee who intentionally furnishes false information is subject to disciplinary
14 action, including suspension or dismissal as determined by the employee's
15 appointing authority or designee. An employee dismissed under this subsection
16 may appeal first to the state personnel board and then to the district court in the
17 manner prescribed by chapter 28-32, or to other appropriate offices and then to
18 district court if the employee is not under the jurisdiction of the state personnel
19 board.