

HOUSE BILL NO. 1234

Introduced by

Representative Glassheim

1 A BILL for an Act to amend and reenact section 34-11.1-04 of the North Dakota Century Code,
2 relating to whistleblower protection for public employees.

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

4 **SECTION 1. AMENDMENT.** Section 34-11.1-04 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **34-11.1-04. Violations for misuse reported by employee -- ReprisalsEmployer**
7 **retaliation prohibited - Furnishing false information - Reporting and investigating of state**
8 **wrongdoing - Labor department investigation - Civil action for relief.**

9 1. ~~An employee may, without fear of reprisal, report in writing to the employee's~~
10 ~~respective agency head, a state's attorney, the attorney general, or an employee-~~
11 ~~organization the existence of:~~

12 a. ~~A job-related violation of local, state, or federal law, rule, regulation, or ordinance.~~
13 b. ~~The job-related misuse of public resources.~~

14 2. ~~For having made a report under subsection 1, no employee will:~~

15 a. ~~Be dismissed from employment.~~
16 b. ~~Have salary increases or employment-related benefits withheld.~~
17 c. ~~Be transferred or reassigned.~~
18 d. ~~Be denied a promotion that the employee otherwise would have received.~~
19 e. ~~Be demoted.~~
20 f. ~~Be discriminated against in any term or condition of employment.~~

21 3. An employer may not discharge, discipline, intimidate, penalize, discriminate against,
22 threaten any of these prohibited actions against, or otherwise retaliate against an
23 employee regarding the employee's compensation or benefits, conditions, location,
24 terms, duties, or privileges of employment because:

a. The employee, or a person acting on behalf of an employee, reports to the employer, employee organization, the attorney general, the state auditor, the labor commissioner, or a law enforcement official:

(1) A violation or suspected violation of federal, state, or local law, ordinance, regulation, or rule; or

(2) A job-related misuse of public resources.

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

c. The employee refuses an employer's order to perform an action the employee believes violates local, state, or federal law, ordinance, rule, or regulation. The employee must have an objective basis in fact for this belief and shall inform the employer that the order is being refused for that reason.

2. 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.

3. An employee claiming reprisal under ~~this section~~ subsection 1 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 labor department 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 labor department, 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 labor department under this subsection before proceeding under other provisions of this section.~~

5. An employee of the state may appeal a claim of reprisal under this section in the manner prescribed for a classified employee under chapter 54-44.3. This subsection

1 does not apply to an employee under the jurisdiction of the state board of higher
2 education or the judicial branch of government.

3 5. An employee asserting a violation of subsection 1 may bring a civil action for injunctive
4 relief or actual damages, or both, within one hundred eighty days after the alleged
5 violation, completion of proceedings under subsection 6, or completion of any
6 grievance procedure available to the employee under the employee's collective
7 bargaining agreement, employment contract, or any public employee statute, rule, or
8 policy, whichever is later.

9 a. If the court determines that a violation has or is occurring under subsection 1, the
10 court may order reinstatement of the employee, backpay for no more than two
11 years after the violation, reinstatement of fringe benefits, temporary or permanent
12 injunctive relief, or any combination of these remedies. Interim earnings or
13 amounts earnable with reasonable diligence by the employee from the same
14 employer must reduce backpay otherwise allowable. In any action under this
15 section, the court may award reasonable attorney's fees to the prevailing party as
16 part of the costs of litigation.

17 b. An employee whose collective bargaining agreement, employment contract, or
18 public employee rights provide a process through which recourse for conduct
19 prohibited by subsection 1 is available shall exercise that process to completion
20 before commencing an action under this subsection, and if that process provides
21 for judicial review by statutory appeal, then recourse under this subsection is not
22 available.

23 6. The department of labor shall receive complaints of violations of subsection 1. In order
24 to receive assistance from the department of labor under this subsection, an employee
25 claiming to be aggrieved by a violation of subsection 1 shall file a complaint with the
26 department within three hundred days after the alleged act of wrongdoing. Except as
27 provided under this section, an employee is not prohibited from filing, nor is required to
28 file, a complaint with the department of labor under this subsection before proceeding
29 with any other legal remedy available.

- 1 a. An executive branch state employee whose collective bargaining agreement,
2 employment contract, or public employee rights provide a process through which
3 recourse for conduct prohibited by subsection 1 is available:
- 4 (1) May file a complaint with the department of labor for assistance in obtaining
5 voluntary assistance under subdivision c; and
- 6 (2) May not file a complaint under this subsection seeking an administrative
7 decision.
- 8 b. Except as provided under subdivision a, if an executive branch state employee
9 files a complaint of violation of subsection 1 with the department of labor upon
10 receipt of the complaint the department of labor shall establish whether the
11 employee seeks assistance in obtaining voluntary assistance or whether the
12 employee seeks an administrative decision.
- 13 (1) If the employee seeks voluntary assistance, the department of labor shall
14 review the complaint to determine whether the complaint may be
15 substantiated. If the department determines the complaint may be
16 substantiated, the department shall attempt to obtain voluntary compliance
17 with this section through informal advice, negotiation, or conciliation. A
18 department of labor determination under this paragraph is not an
19 appealable order.
- 20 (2) If the employee seeks an administrative decision, the department of labor
21 shall review the complaint and shall issue an administrative decision. The
22 department's decision may order reinstatement of the employee, backpay
23 for no more than two years after the violation, reinstatement of fringe
24 benefits, temporary or permanent injunctive relief, or any combination of
25 these remedies. Interim earnings or amounts earnable with reasonable
26 diligence by the employee from the same employer must reduce backpay
27 otherwise allowable. Additionally, the decision may award reasonable
28 attorney's fees to the prevailing party. A party may appeal the decision in the
29 manner prescribed by chapter 28-32. If an employee seeks an
30 administrative decision under this paragraph, the employee may not bring a
31 separate civil action for injunctive relief or actual damages.

1 c. If an employee not covered under subdivision b files a complaint of violation of
2 subsection 1 with the department of labor, the department shall review the
3 complaint to determine whether the complaint may be substantiated. If the
4 department determines the complaint may be substantiated, the department shall
5 attempt to obtain voluntary compliance with this section through informal advice,
6 negotiation, or conciliation. The department's determination under this
7 subdivision is not an appealable order.

8 7. If an executive branch state employee, or a person acting on behalf of that employee,
9 makes a report under subdivision a of subsection 1 to the attorney general, the labor
10 commissioner, or a law enforcement official, and if the recipient of the report is not the
11 employer, the recipient of the report shall forward the report to the state auditor. If the
12 employee is employed by the state auditor, for purposes of this subsection the
13 attorney general shall fulfill the investigation and reporting duties under this
14 subsection.

15 a. Upon the state auditor's receipt of a report under this subsection, the state
16 auditor shall investigate the alleged violation or suspected violation of federal,
17 state, or local law, ordinance, regulation, or rule or the alleged job-related misuse
18 of public resources. The state auditor may not disclose the employee's name to
19 the public until this investigation is complete.

20 b. Following an investigation under this subsection, the state auditor shall provide
21 the state auditor's finding to the reporting employee and to the state employer.
22 The state auditor's report must include:

23 (1) A determination of whether the alleged violation of federal, state, or local
24 law, ordinance, regulation, or rule or the alleged job-related misuse of public
25 resources occurred;

26 (2) Whether the employer is required to take any actions to remedy the alleged
27 violation or misuse of public funds; and

28 (3) The process through which the state auditor will track whether the employer
29 is implementing actions that may be required under paragraph 2.

30 c. A state auditor report issued under this subsection is an appealable order under
31 chapter 28-32.

