

Introduced by

Representatives Mahoney, Murphy

1 A BILL for an Act to amend and reenact section 34-01-20 of the North Dakota Century Code,
2 relating to prohibiting employer retaliation against employees for certain conduct.

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

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

6 **34-01-20. ~~Prohibited action—Report of complaint to commissioner of labor~~**
7 **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 state law or rule to an
13 employer or to a governmental body or law enforcement official.

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

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

20 2. ~~The employee may seek the assistance of the commissioner of labor, who may~~
21 ~~use the authority of chapters 34-06 and 34-14 to investigate, hold hearings, and~~
22 ~~otherwise assure compliance with this section.~~

23 3. An employer who willfully violates this section is guilty of an infraction.

- 1 3. An employee asserting a violation of this section may bring a civil action for
2 injunctive relief or actual damages, or both, within ninety days after the alleged
3 violation, completion of proceedings under subsection 4, or completion of any
4 grievance procedure available to the employee under the employee's collective
5 bargaining agreement, employment contract, or any public employee statute, rule,
6 or policy, whichever is later. If the court determines that a violation has or is
7 occurring under this section, the court may order, as the court deems appropriate,
8 reinstatement of the employee, back pay for no more than two years after the
9 violation, reinstatement of fringe benefits, temporary or permanent injunctive relief,
10 or any combination of these remedies. Interim earnings or amounts earnable with
11 reasonable diligence by the employee, from the same employer, must reduce back
12 pay otherwise allowable. In any action under this section, the court may award
13 reasonable attorneys' fees to the prevailing party as part of the costs of litigation.
14 An employee whose collective bargaining agreement, employment contract, or
15 public employee rights provides a process through which recourse for conduct
16 prohibited by subsection 1 is available must exercise that process to completion
17 before commencing an action under this subsection, and if that process provides
18 for judicial review by statutory appeal, then recourse under this subsection is not
19 available.
- 20 4. The department of labor may receive complaints of violations of this section and
21 attempt to obtain voluntary compliance with this section through informal advice,
22 negotiation, or conciliation. An employee is not prohibited from filing, or required to
23 file, a complaint with the department of labor under this subsection before
24 proceeding under other provisions of this section.