

HOUSE BILL NO. 1057

Introduced by

Representative Wald

Senator Wardner

1 A BILL for an Act to provide for remedies against workplace harassment and violence; and to
2 provide a penalty.

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

4 **SECTION 1. Definitions.** For the purposes of this Act:

- 5 1. "Employer" means a person who acts, directly or indirectly, on behalf of or in the
6 interest of an employer and with the consent of the employer.
7 2. "Harassment" means a single threat or act of physical harm or damage or a series
8 of acts over any period of time which would cause a reasonable individual to be
9 seriously alarmed or annoyed.

10 **SECTION 2. Temporary restraining order and injunction against workplace**
11 **harassment.**

- 12 1. An employer or an authorized agent of an employer may file a written verified
13 petition with a district court judge for a temporary restraining order and injunction
14 prohibiting workplace harassment.
15 2. The court may not grant a temporary restraining order and injunction against
16 workplace harassment against either:
17 a. An individual who is under eighteen years of age unless the injunction is
18 granted by the juvenile court; or
19 b. More than one defendant in the same proceeding.
20 3. The petition must state the following:
21 a. The name of the employer;
22 b. The name and address, if known, of the defendant; and

- 1 c. A specific statement of the events and dates of the acts that constitute
2 harassment toward the employer or any individual who enters the employer's
3 property or who is performing official work duties.
- 4 4. The filing fee for a petition that is filed pursuant to this section is established
5 pursuant to subdivision a of subsection 1 of section 27-05.2-03.
- 6 5. The court shall review the petition and any evidence offered by the employer to
7 determine whether to issue the temporary restraining order and injunction without
8 further hearing. If the court finds reasonable evidence of workplace harassment by
9 the defendant or that good cause exists to believe that great or irreparable harm
10 would result to the employer or other individual who enters the employer's property
11 or who is performing official work duties, or if the temporary restraining order and
12 injunction is not granted before the defendant or the defendant's attorney can be
13 heard in opposition and the court finds specific facts that attest to the employer's
14 efforts to give notice to the defendant or reasons supporting the employer's claim
15 that notice should not be given, the court shall issue a temporary restraining order
16 and injunction pursuant to subsection 6. If the court denies the requested relief,
17 the court may schedule a further hearing within ten days with reasonable notice to
18 the defendant.
- 19 6. If the court grants a temporary restraining order and injunction against workplace
20 harassment, the court may:
- 21 a. Restrain the defendant from coming near the employer's property or place of
22 business and restrain the defendant from contacting the employer, or other
23 individual while that individual is on or at the employer's property or place of
24 business or is performing official work duties; or
- 25 b. Grant any other relief necessary for the protection of the employer, the
26 workplace, the employer's employees or any other individual who is on or at
27 the employer's property or place of business or who is performing official work
28 duties.
- 29 7. If the court issues an ex parte temporary restraining order and injunction pursuant
30 to this section, the order must state on its face that the defendant is entitled to a
31 hearing on written request and must include the name and address of the judicial

1 office in which the request may be filed. At any time during the period that the
2 temporary restraining order and injunction is in effect, the defendant may request a
3 hearing. The court shall hold the hearing within ten days after the date of the
4 written request unless the court finds compelling reasons to continue the hearing.
5 The hearing must be held at the earliest possible time. After the hearing, the court
6 may modify, quash, or continue the temporary restraining order and injunction.

7 8. A temporary restraining order and injunction against workplace harassment that is
8 issued pursuant to this section must include the following statement:

9 Warning

10 This is an official court order. If you disobey this order, you may
11 be arrested and prosecuted for the crime of interfering with
12 judicial proceedings and any other crime you may have
13 committed in disobeying this order.

14 9. A copy of the petition and the temporary restraining order and injunction must be
15 served on the defendant within one year from the date the temporary restraining
16 order and injunction is signed. A temporary restraining order and injunction that is
17 not served on the defendant within one year expires. The temporary restraining
18 order and injunction is effective on the defendant on service of a copy of the
19 temporary restraining order and injunction and the petition, and expires one year
20 after service on the defendant. A modified temporary restraining order and
21 injunction is effective on service and expires one year after service of the modified
22 temporary restraining order and injunction and petition.

23 10. Each affidavit and acceptance or return of service must be filed promptly with the
24 clerk of district court of the issuing court. The filing may be completed in person,
25 made by facsimile transmission, or postmarked, if sent by mail, no later than the
26 end of the seventh court business day after the date of service. If the filing is made
27 by facsimile transmission, the original affidavit and acceptance or return of service
28 must be filed promptly with the court. Within twenty-four hours after the affidavit
29 and acceptance or return of service has been filed, excluding weekends and
30 holidays, the court that issued the temporary restraining order and injunction shall
31 register a copy of the temporary restraining order and injunction and a copy of the

1 affidavit of service of process or acceptance of service with the sheriff's office of
2 the county in which the employer is located. A copy of a restraining order and
3 injunction is presumed to be a valid existing order of the court for one year after the
4 date on which the defendant was served. Any changes or modifications to the
5 temporary restraining order and injunction are effective on entry by the court and
6 must be registered with the sheriff within twenty-four hours after the entry,
7 excluding weekends and holidays.

- 8 11. This section does not:
- 9 a. Expand, diminish, alter, or modify the duty of an employer to provide a safe
10 workplace for its employees and other persons.
 - 11 b. Permit a court to issue a temporary restraining order or injunction that
12 prohibits speech or other activities that are constitutionally protected or
13 otherwise protected by law.
 - 14 c. Preclude either party from being represented by private counsel or appearing
15 on the party's own behalf.
- 16 12. When the employer has knowledge that a specific individual is the target of
17 harassment as defined by this section, the employer shall make a good-faith effort
18 to provide notice to the individual that the employer intends to petition the court for
19 a restraining order and injunction against workplace harassment.
- 20 13. Whether a violation occurs in the presence of a peace officer, a peace officer, with
21 or without a warrant, may arrest an individual if the peace officer has probable
22 cause to believe that the individual has violated a temporary restraining order and
23 injunction that was issued pursuant to this section. An individual who is arrested
24 pursuant to this subsection may be released from custody pursuant to the North
25 Dakota Rules of Criminal Procedure or any applicable statute. The court shall
26 include in an order for release any pretrial release conditions that the court deems
27 appropriate.
- 28 14. The remedies under this section for the enforcement of protection orders are in
29 addition to any other civil and criminal remedies that are available. On notice to
30 the affected party and after a hearing, the court may enter an order that requires

- 1 any party to pay the costs of the action, including reasonable attorney's fees. A
2 party may appeal an order entered pursuant to this subsection.
- 3 15. A peace officer who makes an arrest pursuant to this section is immune from civil
4 or criminal liability if the officer acts with probable cause.
- 5 16. An employer is immune from civil liability for seeking or failing to seek a temporary
6 restraining order and injunction under this section unless the employer is seeking a
7 temporary restraining order and injunction primarily to accomplish a purpose for
8 which this section was not designed. Any action or statement by an employer
9 under this section may not be deemed an admission by the employer of any fact.
10 An action or statement by an employer under this section may be used for
11 impeachment purposes.
- 12 17. In addition to the individuals who are authorized to serve process pursuant to North
13 Dakota Rules of Civil Procedure, a peace officer may serve a temporary restraining
14 order and injunction against workplace harassment pursuant to this section.