

Introduced by

Senator Holmberg

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 whistleblower protection for employees; and to provide a penalty.

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

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

6 **34-01-20. Employer retaliation prohibited - Department of labor assistance - Civil**
7 **action for relief - Penalty.**

8 1. An employer may not discharge, discipline, ~~threaten discrimination~~ intimidate, or
9 penalize, discriminate against, threaten any of these prohibited actions against, or
10 otherwise retaliate against an employee regarding the employee's compensation
11 or benefits, conditions, location, terms, duties, or privileges of employment
12 because:

- 13 a. The employee, or a person acting on behalf of an employee, in good faith,
14 reports a violation or suspected violation of federal, state, or local law,
15 ordinance, regulation, or rule to an employer, a governmental body, or a law
16 enforcement official.
- 17 b. The employee is requested by a public body or official to participate in an
18 investigation, a hearing, or an inquiry.
- 19 c. The employee refuses an employer's order to perform an action that the
20 employee believes violates local, state, or federal law, ordinance, rule, or
21 regulation. The employee must have an objective basis in fact for that belief
22 and shall inform the employer that the order is being refused for that reason.

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

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

1 **34-11.1-04. ~~Violations for misuse reported by employee—Reprisals Employer~~**
2 **retaliation prohibited - Furnishing false information - Department of labor assistance -**
3 **Civil action for relief.**

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

7 a. ~~A job-related violation of local, state, or federal law, rule, regulation, or~~
8 ~~ordinance.~~

9 b. ~~The job-related misuse of public resources.~~

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

11 a. ~~Be dismissed from employment.~~

12 b. ~~Have salary increases or employment-related benefits withheld.~~

13 c. ~~Be transferred or reassigned.~~

14 d. ~~Be denied a promotion that the employee otherwise would have received.~~

15 e. ~~Be demoted.~~

16 f. ~~Be discriminated against in any term or condition of employment.~~

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

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

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

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

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

29 c. The employee refuses an employer's order to perform an action the employee
30 believes violates local, state, or federal law, ordinance, rule, or regulation.

1 The employee must have an objective basis in fact for this belief and shall
2 inform the employer that the order is being refused for that reason.

3 2. An employee who intentionally furnishes false information is subject to disciplinary
4 action, including suspension or dismissal as determined by the employee's
5 appointing authority or designee. An employee dismissed under this subsection
6 may appeal first to the ~~state personnel board~~ human resource management
7 services division and then to the district court in the manner prescribed by chapter
8 28-32, or to other appropriate offices and then to district court if the employee is
9 not under the jurisdiction of the ~~state personnel board~~ human resource
10 management services division.

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

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

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

- 1 4. The department of labor shall receive complaints of violations of subsection 1. In
2 order to receive assistance from the department of labor under this subsection, an
3 employee claiming to be aggrieved by a violation of subsection 1 shall file a
4 complaint with the department within three hundred days after the alleged act of
5 wrongdoing. Except as provided under this section, an employee is not prohibited
6 from filing, or is not required to file, a complaint with the department of labor under
7 this subsection before proceeding with any other legal remedy available.
- 8 a. An executive branch state employee whose collective bargaining agreement,
9 employment contract, or public employee rights provides a process through
10 which recourse for conduct prohibited by subsection 1 is available:
- 11 (1) May file a complaint with the department of labor for assistance in
12 obtaining voluntary assistance under subdivision c; and
- 13 (2) May not file a complaint under this subsection seeking an
14 administrative decision.
- 15 b. Except as provided under subdivision a, if an executive branch state
16 employee files a complaint of violation of subsection 1 with the department of
17 labor, upon receipt of the complaint, the department of labor shall establish
18 whether the employee seeks assistance in obtaining voluntary assistance or
19 whether the employee seeks an administrative decision.
- 20 (1) If the employee seeks voluntary assistance, the department of labor
21 shall review the complaint to determine whether the complaint may be
22 substantiated. If the department determines the complaint may be
23 substantiated, the department shall attempt to obtain voluntary
24 compliance with this section through informal advice, negotiation, or
25 conciliation. A department of labor determination under this paragraph
26 is not an appealable order.
- 27 (2) If the employee seeks an administrative decision, the department of
28 labor shall review the complaint and shall issue an administrative
29 decision. The department of labor decision may order reinstatement of
30 the employee, backpay for no more than two years after the violation,
31 reinstatement of fringe benefits, temporary or permanent injunctive

1 relief, or any combination of these remedies. Interim earnings or
2 amounts earnable with reasonable diligence by the employee, from the
3 same employer, must reduce backpay otherwise allowable.
4 Additionally, the decision may award reasonable attorney's fees to the
5 prevailing party. A party may appeal the decision in the manner
6 prescribed by chapter 28-32. If an employee seeks an administrative
7 decision under this paragraph, the employee may not bring a separate
8 civil action for injunctive relief or actual damages.

9 c. If an employee not covered under subdivision b files a complaint of violation
10 of subsection 1 with the department of labor, the department shall review the
11 complaint to determine whether the complaint may be substantiated. If the
12 department determines the complaint may be substantiated, the department
13 shall attempt to obtain voluntary compliance with this section through informal
14 advice, negotiation, or conciliation. A department of labor determination
15 under this subdivision is not an appealable order.