

**2021 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1262**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1262  
1/18/2021

### **Whistleblowers & public health & safety.**

(2:00) Vice Chairman Keiser: Opened the hearing on HB 1262.

<b>Representatives</b>	<b>Roll call</b>
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	A
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

### **Discussion Topics:**

- State's existing "whistleblower" statute.
- Whistleblower protections.

Rep Boschee~District introduced HB 1262. Attachment #1238 which includes the amendment voted on later in the hearing.

Landis Larson~President-AFL-CIO: Attachment #999.

Erica Thunder~Commissioner-ND Dept of Labor: Attachment # 1034.

Matt Gardner~Director of Government Affairs-Greater ND Chamber testified in opposition.

Rep P Anderson moved to delete the word "reasonable" verbally.

Vice Chairman Keiser second.

Voice vote-Motion carried.

Rep D Ruby moved to accept amendment 21.0339.01001. See attachment # 1238 submitted by Rep Boschee earlier in testimony.

Rep Hagert second.

Voice vote-Motion carried.

Rep D Ruby moved a Do Not Pass.

Rep Thomas second.

<b>Representatives</b>	<b>Vote</b>
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	A
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	Y
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	N
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	N
Rep P Anderson	N

Vote roll call taken Motion carried 10-3-1 & Rep Ostlie is the carrier.

**Additional written testimony:** Attachments 1023 & 1112.

(2:26) End Time

*Ellen LeTang, Committee Clerk*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1262

Page 2, line 6, after the underscored period insert "This subdivision does not authorize a peace officer or firefighter to use personal safety equipment instead of employer-issued safety equipment."

Renumber accordingly

January 18, 2021

JS  
1/18/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1262

Page 1, line 21, remove "reasonable"

Page 2, line 6, after the underscored period insert "This subdivision does not authorize a peace officer or firefighter to use personal safety equipment instead of employer-issued safety equipment."

Page 3, line 12, remove "reasonable"

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1262: Industry, Business and Labor Committee (Rep. Lefor, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1262 was placed on the Sixth order on the calendar.

Page 1, line 21, remove "reasonable"

Page 2, line 6, after the underscored period insert "This subdivision does not authorize a peace officer or firefighter to use personal safety equipment instead of employer-issued safety equipment."

Page 3, line 12, remove "reasonable"

Renumber accordingly



## North Dakota House of Representatives

State Capitol  
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Representative  
Josh Boschée  
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Minority Leader

# 1238

January 18, 2020

### HB 1262 Testimony House Industry, Business and Labor Committee

Good afternoon Chair Lefor and members of the House IBL Committee.

House Bill 1262 adds the reporting of workplace safety concerns related to a declared public health emergency to the state's existing "whistleblower" statute. The purpose of which is to provide North Dakota's workforce assurances that if their employer is not adhering to or enforcing public health safety protocols, the employee(s) cannot be retaliated against for filing a report to the appropriate entity.

Throughout the ongoing COVID-19 public health emergency, we have seen the vast majority of our employers and employees work together to ensure safe worksites, while continuing to meet the employer's mission. There are lessons being learned as we balance keeping our economy open with keeping workers and our communities safe and healthy. By providing workers whistleblower protection, we can help keep workers safe, healthy and reduce the financial burden to taxpayers and insurance premium payers. There may be employers who choose not to do what is asked of them to protect workers' health and the health of our communities. In those rare events, we need to hear from employees who know firsthand the risks being taken.

Section two of the HB 1262 on page three holds employees accountable if they intentionally provide a false report of a public health safety concern.

HB 1262 adds a strong balance to the conversation the 67<sup>th</sup> Legislative Assembly will have regarding employer liability related to public health emergencies. If we decide to reduce liability for employers, then we should ensure the protection of employees who can be helpful in identifying employers who are not doing what they can to minimize risk to workers and our communities.

Mr. Chairman, I am handing out an amendment for page 2, line 6 of the bill that I am asking the committee to adopt related to the protective gear issued to first responders. A fire and police chief within the state requested the additional assurances.

I appreciate the committee's consideration of this legislation and hope that you can assist in developing a solution.

I will try my best to answer any questions committee members may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1262

Page 2, line 6, after the underscored period insert "This subdivision does not authorize a peace officer or firefighter to use personal safety equipment instead of employer-issued safety equipment."

Renumber accordingly





**North Dakota AFL-CIO**

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**Testimony of Landis Larson, ND AFL-CIO President  
In Support of HB 1262  
January 18, 2021**

Chairman Lefor and members of the House Industry, Business and Labor:

My name is Landis Larson, President of the North Dakota AFL-CIO. The North Dakota AFL-CIO is the federation of labor unions in North Dakota, representing the interests of all working people in our state.

I am testifying on behalf of the North Dakota AFL-CIO in support of House Bill 1262.

Previous to the pandemic, our unions were some of the most ardent supporters of whistleblower protections for working people in North Dakota, and our current public health crisis during the pandemic has only further demonstrated the need for strong, reliable whistleblower protections.

These protections are vital to ensuring that workers are not only safeguarded from retaliation from unscrupulous employers that would punish workers for standing up for workplace safety, but also benefits everyone in the workplace, including employers by ensuring a collaborative approach to safety. Everyone wins when everyone feels comfortable to speak up when something is unsafe in the workplace.

Unfortunately, we have heard of many stories throughout the pandemic from workers across a variety of our industries in North Dakota that have been threatened with retaliation or fear retaliation from their employers for speaking up about unsafe workplace practices, especially regarding infectious diseases. This puts the good employers that are playing by the rules at a competitive disadvantage to the bad actors that will cut corners and put working people's health and even lives at risk to make a profit. HB 1262 would clearly send a message to working people that they have a right to speak up when an unsafe workplace situation arises, and a message to employers that they must play by the rules when it comes to safety.

I recommend a "Do Pass" on House Bill 1262.

Respectfully Submitted,  
Landis Larson  
North Dakota AFL-CIO President

**In Re: House Bill 1262**

Industry, Business and Labor

Erica Thunder, Commissioner, North Dakota Department of Labor and Human Rights

Neutral Testimony

01/18/2021

Chairman Lefor and members of the Industry, Business, and Labor Committee,

My name is Erica Thunder, and I serve as the Commissioner for the North Dakota Department of Labor and Human Rights. I am here today to listen into the discussion as HB 1262 impacts NDCC 34-01-20 and 34-11.1-04, relating to whistleblowers, by amending and reenacting sections of these laws. These sections of Century Code speak specifically to the work of the North Dakota Department of Labor and Human Rights.

I am here to testify neutrally, if so needed, and will be happy to answer any questions should the Committee ask. If I am unable to answer a question specifically for today's purposes, I will promptly work to provide an answer to the Committee.

Thank you,

*Erica Thunder*

Erica Thunder  
Commissioner  
North Dakota Department of Labor and Human Rights



## NORTH DAKOTA STATE BUILDING AND CONSTRUCTION TRADES COUNCIL

2901 Twin City Dr. Suite 201  
Mandan, North Dakota 58554  
(701) 663-8821

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January 18, 2021

To the Honorable Mike Lefor and Member Representatives of the House Industry,  
Business and Labor Committee

RE: House Bill 1262; Whistleblower Protection Related to a Public Health Emergency

The North Dakota State Building and Construction Trades Council is in support of HB 1262. It is paramount that all workers are free from retaliation when reporting concerns about workplace health or safety related to a public health emergency.

To develop the most productive, efficient, and effective workforce, the core element of a healthy and safe work environment must be promulgated. Effectively diminishing all threats to health or safety requires continued aim of employer and employee alike. During extraordinary public health emergencies protecting oneself to the fullest abilities is a considerable challenge.

Safe worksites do not “just happen.” Ideally, a cooperatively enjoined commitment by both employer and employee would produce the best achievement to mitigate threats to health or safety. If an employee is not committed to this goal, the typical consequence is dismissal. However, when an employer is not committed to this goal, the means to a constructive solution for the employee are limited. Calling attention to unsafe working conditions or practices should be a call to action to make sure all parties are striving to address shortcomings in health or safety free from reprisals or retaliation.

We find it prudent to include this language when protecting employees in their workplaces as the depth and breadth of this virus continues to be part of our everyday lives for the foreseeable future.

With Kindest Regards, I am

Jason Ehlert  
President  
Lobbyist No. 347  
[Jason@ndbtu.org](mailto:Jason@ndbtu.org)



**North Dakota Association for Justice**

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**DO PASS - HB 1262**

Chairman Lefor and members of the House Industry, Business and Labor Committee, my name is Jaclyn Hall and I am the Executive Director of the North Dakota Association for Justice. NDAJ fully supports HB 1262.

HB 1262 highlights the unfortunate fact that some businesses are retaliating against workers for speaking up about bad business practices during the COVID 19 pandemic. These practices include, but are not limited to failing to provide proper PPE, poor sanitation practices or failure to comply with state and local health recommendations.

HB 1262 provides a layer of support employees deserve when they feel compelled to speak up about violations and not fear retaliation by business owners. Immunizing businesses for failing to protect workers while allowing them to silence workers through retaliation casts a dark shadow over North Dakota Businesses.

Without coverage from workers compensation for COVID related injuries, HB 1262 provides a pathway for employees to share their concerns and allows the legal system to determine validity of those claims.

We ask to you support employees all over North Dakota and vote DO PAS on HB 1262. We believe in supporting in our community members as they work through these uncertain times and we ask you too as well.

Thank you for the opportunity to provide testimony.

Sincerely,  
Jaclyn Hall  
NDAJ