

Introduced by

Representatives Wald, Byerly, Kempenich, Skarphol

Senators Bowman, Tollefson

1 A BILL for an Act to provide a self-critical environmental analysis privilege.

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

3 **SECTION 1. Voluntary disclosure arising from self-evaluation - Presumption**  
4 **against imposition of administrative or civil penalties.**

5 1. For purposes of this section, the disclosure of information by a person to the state  
6 department of health regarding any information relating to an environmental law is  
7 voluntary if all of the following are true:

8 a. The disclosure is made promptly after knowledge of the information disclosed  
9 is obtained by the person.

10 b. The disclosure arises out of a voluntary self-evaluation.

11 c. The person making the disclosure initiates the appropriate effort to achieve  
12 compliance, pursues compliance with due diligence, and corrects the  
13 noncompliance within two years after the completion of a voluntary  
14 self-evaluation. If the evidence shows the noncompliance is the failure to  
15 obtain a permit, appropriate efforts to correct the noncompliance may be  
16 demonstrated by the submittal of a complete permit application within a  
17 reasonable time.

18 d. The person making the disclosure cooperates with the state department of  
19 health concerning investigation of the issues identified in the disclosure.

20 2. For purposes of subdivision c of subsection 1, upon application to and at the  
21 discretion of the state department of health, the time period within which the  
22 noncompliance is required to be corrected may be extended if it is not practicable  
23 to correct the noncompliance within the two-year period. A request for a de novo

- 1 review of the decision of the state department of health may be made to the  
2 appropriate district court or administrative law judge.
- 3 3. If a person is required to make a disclosure to the state department of health under  
4 a specific permit condition or under an order issued by the department, then the  
5 disclosure is not voluntary with respect to the department.
- 6 4. If a person makes a voluntary disclosure of an environmental violation to the state  
7 department of health, there is a disputable presumption that the disclosure is  
8 voluntary and therefore the person is immune from any administrative or civil  
9 penalty associated with the issues disclosed and is immune from any criminal  
10 penalty for negligent acts associated with the issues disclosed. The person must  
11 provide information supporting the claim that the disclosure is voluntary at the time  
12 the disclosure is made to the department.
- 13 5. The elimination of administrative, civil, or criminal penalties under this section does  
14 not apply if a person has been found by a court or administrative law judge to have  
15 committed serious violations that constitute a pattern of continuous or repeated  
16 violations of environmental laws, rules, permit conditions, settlement agreements,  
17 or orders on consent and which were due to separate and distinct events giving  
18 rise to the violations, within the three-year period before the date of the disclosure.  
19 A pattern of continuous or repeated violations may also be demonstrated by  
20 multiple settlement agreements related to substantially the same alleged violations  
21 concerning serious instances of noncompliance with environmental laws which  
22 occur within the three-year period immediately before the date of the voluntary  
23 disclosure.
- 24 6. Except as specifically provided in this section, this section does not affect the  
25 authority of the state department of health to require any action associated with the  
26 information disclosed in any voluntary disclosure of an environmental violation.
- 27 7. This section applies to voluntary disclosures that are made in voluntary  
28 self-evaluations that are performed after July 31, 2001.