

PROPOSED AMENDMENTS TO SENATE BILL NO. 2267

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 34-01-20 and 34-11.1-04 of the North Dakota Century Code, relating to whistleblower protection for private and public employees; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. This section applies to an employee not covered under section 34-11.1-04. An employer may not discharge, discipline, ~~threaten discrimination~~ intimidate, or penalize, discriminate against, threaten any of these prohibited actions against, or otherwise retaliate against an employee regarding the employee's compensation or benefits, conditions, location, terms, duties, or privileges of employment because:
 - a. The employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of federal, state, or local law, ordinance, regulation, or rule to an employer, a governmental body, or a law enforcement official.
 - b. The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry.
 - c. The employee refuses an employer's order to perform an action that the employee believes violates local, state, or federal law, ordinance, rule, or regulation. The employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.
2. An employer who willfully violates this section is guilty of an infraction.
3. If a governmental body or law enforcement official receives a report under subdivision a of subsection 1, the name of the employee is private data and the governmental body or law enforcement official may not disclose the employee's name to the public.
4. An employee asserting a violation of this section may bring a civil action for injunctive relief or actual damages, or both, within one hundred eighty days after the alleged violation, completion of proceedings under subsection ~~4~~ 5, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later.
 - a. If the court determines that a violation has or is occurring under this section, the court may order, ~~as the court deems appropriate,~~ reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies.

Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. In any action under this section, the court may award reasonable attorney's fees to the prevailing party as part of the costs of litigation.

- b. An employee whose collective bargaining agreement, employment contract, or public employee rights provides a process through which recourse for conduct prohibited by subsection 1 is available must exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.
4. 5. The department of labor shall receive complaints of violations of this section and may attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. In order to receive assistance from the department of labor, a person claiming to be aggrieved by a violation of this section shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. An employee is not prohibited from filing, or required to file, a complaint with the department of labor under this subsection before proceeding under other provisions of this section.

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

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

- 1. ~~An employee may, without fear of reprisal, report in writing to the employee's respective agency head, a state's attorney, the attorney general, or an employee organization the existence of:~~
 - a. ~~A job-related violation of local, state, or federal law, rule, regulation, or ordinance.~~
 - b. ~~The job-related misuse of public resources.~~
- 2. ~~For having made a report under subsection 1, no employee will:~~
 - a. ~~Be dismissed from employment.~~
 - b. ~~Have salary increases or employment-related benefits withheld.~~
 - c. ~~Be transferred or reassigned.~~
 - d. ~~Be denied a promotion that the employee otherwise would have received.~~
 - e. ~~Be demoted.~~
 - f. ~~Be discriminated against in any term or condition of employment.~~
- 3. ~~An employer may not discharge, discipline, intimidate, penalize, discriminate against, threaten any of these prohibited actions against, or otherwise retaliate against an employee regarding the employee's compensation or benefits, conditions, location, terms, duties, or privileges of employment because:~~

- a. The employee, or a person acting on behalf of an employee, reports to the employer, employee organization, the attorney general, the state auditor, the labor commissioner, or a law enforcement official:
 - (1) A violation or suspected violation of federal, state, or local law, ordinance, regulation, or rule; or
 - (2) A job-related misuse of public resources.
 - b. The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry.
 - c. The employee refuses an employer's order to perform an action the employee believes violates local, state, or federal law, ordinance, rule, or regulation. The employee must have an objective basis in fact for this belief and shall inform the employer that the order is being refused for that reason.
2. An employee who intentionally furnishes false information is subject to disciplinary action, including suspension or dismissal as determined by the employee's appointing authority or designee. An employee dismissed under this subsection may appeal first to the state personnel board and then to the district court in the manner prescribed by chapter 28-32, or to other appropriate offices and then to district court if the employee is not under the jurisdiction of the state personnel board.
 3. If an employer, the attorney general, the state auditor, or the labor commissioner receives a report under subdivision a of subsection 1, the name of the employee is private data and the employer, state auditor, or labor commissioner may not disclose the employee's name to the public.
 4. An employee asserting a violation of subsection 1 may bring a civil action for injunctive relief or actual damages, or both, within one hundred eighty days after the alleged violation, completion of proceedings under subsection 5, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later.
 - a. If the court determines that a violation has or is occurring under subsection 1, the court may order reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. In any action under this section, the court may award reasonable attorney's fees to the prevailing party as part of the costs of litigation.
 - b. An employee whose collective bargaining agreement, employment contract, or public employee rights provide a process through which recourse for conduct prohibited by subsection 1 is available shall exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.
 5. The department of labor shall receive complaints of violations of subsection 1. In order to receive assistance from the department of labor under this subsection, an employee claiming to be aggrieved by a violation

of subsection 1 shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. Except as provided under this section, an employee is not prohibited from filing, or is not required to file, a complaint with the department of labor under this subsection before proceeding with any other legal remedy available.

- a. An executive branch state employee whose collective bargaining agreement, employment contract, or public employee rights provides a process through which recourse for conduct prohibited by subsection 1 is available:
 - (1) May file a complaint with the department of labor for assistance in obtaining voluntary assistance under subdivision c; and
 - (2) May not file a complaint under this subsection seeking an administrative decision.

- b. Except as provided under subdivision a, if an executive branch state employee files a complaint of violation of subsection 1 with the department of labor, upon receipt of the complaint, the department of labor shall establish whether the employee seeks assistance in obtaining voluntary assistance or whether the employee seeks an administrative decision.
 - (1) If the employee seeks voluntary assistance, the department of labor shall review the complaint to determine whether the complaint may be substantiated. If the department determines the complaint may be substantiated, the department shall attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. A department of labor determination under this paragraph is not an appealable order.
 - (2) If the employee seeks an administrative decision, the department of labor shall review the complaint and shall issue an administrative decision. The department of labor decision may order reinstatement of the employee, backpay for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. Additionally, the decision may award reasonable attorney's fees to the prevailing party. A party may appeal the decision in the manner prescribed by chapter 28-32. If an employee seeks an administrative decision under this paragraph, the employee may not bring a separate civil action for injunctive relief or actual damages.

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

Renumber accordingly