

HOUSE BILL NO. 1294

Introduced by

Representatives Oversen, Haak, Mooney, Muscha, Schneider, Wallman

Senators Heckaman, Nelson, Oban

1 A BILL for an Act to amend and reenact section 34-01-20 of the North Dakota Century Code,
2 relating to prohibited employer retaliation; 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 - Civil action for relief - Penalty.**

7 1. An employer may not discharge, discipline, threaten discrimination, or penalize an
8 employee regarding the employee's compensation, conditions, location, or privileges
9 of employment because:

10 a. The employee, or a person acting on behalf of an employee, in good faith,
11 reports a violation or suspected violation of federal, state, or local law, ordinance,
12 regulation, or rule to an employer, a governmental body, or a law enforcement
13 official.

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

16 c. The employee refuses an employer's order to perform an action that the
17 employee believes violates local, state, or federal law, ordinance, rule, or
18 regulation. The employee must have an objective basis in fact for that belief and
19 shall inform the employer that the order is being refused for that reason.

20 d. The employee discussed employee compensation with another person.

21 2. An employer who willfully violates this section is guilty of an infraction.

22 3. An employee asserting a violation of this section may bring a civil action for injunctive
23 relief or actual damages, or both, within one hundred eighty days after the alleged
24 violation, completion of proceedings under subsection 4, or completion of any

1 grievance procedure available to the employee under the employee's collective
2 bargaining agreement, employment contract, or any public employee statute, rule, or
3 policy, whichever is later. If the court determines that a violation has or is occurring
4 under this section, the court may order, as the court deems appropriate, reinstatement
5 of the employee, backpay for no more than two years after the violation, reinstatement
6 of fringe benefits, temporary or permanent injunctive relief, or any combination of
7 these remedies. Interim earnings or amounts earnable with reasonable diligence by
8 the employee, from the same employer, must reduce backpay otherwise allowable. In
9 any action under this section, the court may award reasonable attorney's fees to the
10 prevailing party as part of the costs of litigation. An employee whose collective
11 bargaining agreement, employment contract, or public employee rights provides a
12 process through which recourse for conduct prohibited by subsection 1 is available
13 must exercise that process to completion before commencing an action under this
14 subsection, and if that process provides for judicial review by statutory appeal, then
15 recourse under this subsection is not available.

- 16 4. The department of labor and human rights shall receive complaints of violations of this
17 section and may attempt to obtain voluntary compliance with this section through
18 informal advice, negotiation, or conciliation. In order to receive assistance from the
19 department of labor and human rights, a person claiming to be aggrieved by a
20 violation of this section shall file a complaint with the department within three hundred
21 days after the alleged act of wrongdoing. An employee is not prohibited from filing, or
22 required to file, a complaint with the department of labor and human rights under this
23 subsection before proceeding under other provisions of this section.