

Fifty-seventh  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2226

Introduced by

Senators Watne, Mutch

Representative N. Johnson

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 prohibited employer retaliation for employee reporting of violations of  
3 laws, ordinances, or regulations.

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

5 **SECTION 1. AMENDMENT.** Section 34-01-20 of the 1999 Supplement to the North  
6 Dakota Century Code is amended and reenacted as follows:

7 **34-01-20. Employer retaliation prohibited - Civil action for relief - Penalty.**

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

11 a. The employee, or a person acting on behalf of an employee, in good faith,  
12 reports a violation or suspected violation of federal ~~or~~<sub>1</sub> state, or local law,  
13 ordinance, regulation, or rule to an employer ~~or to~~<sub>1</sub> a governmental body<sub>1</sub> or a  
14 law enforcement official.

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

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

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  
23 injunctive relief or actual damages, or both, within ~~ninety~~ three hundred days after  
24 the alleged violation, completion of proceedings under subsection 4, or completion

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

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

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

27 **34-11.1-04. Violations for misuse reported by employee - Reprisals prohibited -**  
28 **Furnishing false information.**

29 1. An employee may, without fear of reprisal, report in writing to their respective  
30 agency head, a state's attorney, the attorney general, or an employee organization  
31 the existence of:

- 1           a. A job related violation of local, state, or federal law, rule, regulation, or  
2           ordinance.
- 3           b. ~~A job related violation of state or federal agency rules.~~
- 4           e. The job related misuse of public resources.
- 5        2. For having made a report under subsection 1 no employee will:
- 6           a. Be dismissed from employment.
- 7           b. Have salary increases or employment-related benefits withheld.
- 8           c. Be transferred or reassigned.
- 9           d. Be denied a promotion ~~which~~ that the employee otherwise would have  
10          received.
- 11          e. Be demoted.
- 12          f. Be discriminated against in any term or condition of employment.
- 13        3. An employee who intentionally furnishes false information is subject to disciplinary  
14          action, including suspension or dismissal as determined by the employee's  
15          appointing authority or designee. An employee dismissed under this subsection  
16          may appeal first to the state personnel board and then to the district court in the  
17          manner prescribed by chapter 28-32, or to other appropriate offices and then to  
18          district court if the employee is not under the jurisdiction of the state personnel  
19          board.