

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1234

Introduced by

Representative Glassheim

1 A BILL for an Act to create and enact sections 34-11.1-04.3, 34-11.1-04.4, 34-11.1-04.5, and
2 34-11.1-04.6 of the North Dakota Century Code, relating to whistleblower protection for public
3 employees; and to amend and reenact section 34-11.1-04 of the North Dakota Century Code,
4 relating to whistleblower protection for public employees.

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

6 **SECTION 1. AMENDMENT.** Section 34-11.1-04 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **34-11.1-04. Violations for misuse reported by employee -- Reprisals**
9 **Employer retaliation prohibited - Furnishing false information -- Labor department.**

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

1 employee regarding the employee's compensation or benefits, conditions, location,
2 terms, duties, or privileges of employment because:

3 a. The employee, or a person acting on behalf of an employee, in good faith reports
4 to the employer, employee organization, the attorney general, the state auditor,
5 the labor commissioner, a state's attorney, or a law enforcement official:

6 (1) A violation or suspected violation of federal, state, or local law, ordinance,
7 regulation, or rule; or

8 (2) A job-related misuse of public resources.

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

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

15 2. An employee who intentionally furnishes false information is subject to disciplinary
16 action, including suspension or dismissal as determined by the employee's appointing
17 authority or designee. An employee claiming reprisal under this section may appeal
18 first to the human resource management services division and then to the district court
19 in the manner prescribed by chapter 28-32, or to other appropriate offices and then to
20 district court if the employee is not under the jurisdiction of the human resource
21 management services division.

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

30 5. An employee of the state may appeal a claim of reprisal under this section in the
31 manner prescribed for a classified employee under chapter 54-44.3. This subsection

1 does not apply to an employee under the jurisdiction of the state board of higher-
2 education or the judicial branch of government.

3 **SECTION 2.** Section 34-11.1-04.3 of the North Dakota Century Code is created and
4 enacted as follows:

5 **34-11.1-04.3. Claims of employer retaliation - Recourse.**

6 As provided under this chapter, an employee claiming retaliation under section 34-11.1-04
7 may do one or more of the following:

- 8 1. File a complaint with the labor department for assistance in obtaining voluntary
9 compliance as provided under section 34-11.1-04.5;
- 10 2. Appeal to the human resource management services division or other appropriate
11 office at the state or local level as provided under subsection 1 or 2 of section
12 34-11.1-04.4; and
- 13 3. Bring a civil action as provided under subsection 3 of section 34-11.1-04.4.

14 **SECTION 3.** Section 34-11.1-04.4 of the North Dakota Century Code is created and
15 enacted as follows:

16 **34-11.1-04.4. Appeal to human resource management services division or other**
17 **appropriate office - Civil action.**

- 18 1. A state employee who is claiming retaliation under section 34-11.1-04 may appeal the
19 retaliation to the human resource management services division under chapter
20 54-44.3 and then to the district court in the manner prescribed under chapter 28-32.
21 This subsection does not apply to an employee under the jurisdiction of the state
22 board of higher education or the judicial branch of government.
- 23 2. An employee who is not covered under subsection 2 may appeal to the appropriate
24 office at the state or political subdivision level and then to the district court.
- 25 3. An employee who is not covered under subsection 1 or 2 may bring a civil action for
26 injunctive relief or actual damages or both in the same manner as provided under
27 subsection 3 of section 34-01-20.

28 **SECTION 4.** Section 34-11.1-04.5 of the North Dakota Century Code is created and
29 enacted as follows:

1 **34-11.1-04.5. Claims of employer retaliation - Labor department - Voluntary**
2 **compliance.**

- 3 1. The labor department shall receive complaints of retaliation under section
4 34-11.1-04.1. In order to receive assistance from the labor department under this
5 section, an employee claiming to be aggrieved shall file a complaint with the
6 department within three hundred days after the alleged act of retaliation. An employee
7 is not prohibited from filing nor is required to file a complaint with the labor department
8 under this section before proceeding with any other legal remedy available.
9 2. If an employee files a complaint of retaliation with the labor department, the
10 department shall review the complaint to determine whether the complaint may be
11 substantiated. If the department determines the complaint may be substantiated, the
12 department shall attempt to obtain voluntary compliance with this section through
13 informal advice, negotiation, or conciliation. The department's determination under this
14 subsection is not an appealable order.

15 **SECTION 5.** Section 34-11.1-04.6 of the North Dakota Century Code is created and
16 enacted as follows:

17 **34-11.1-04.6. Claims of employer retaliation - State auditor investigation.**

18 If an executive branch state employee, or a person acting on behalf of that employee,
19 makes a report under subdivision a of subsection 1 of section 34-11.1-04.1 to the attorney
20 general, the labor commissioner, a state's attorney, or a law enforcement official, and if the
21 recipient of the report is not the employer, the recipient of the report shall forward the report to
22 the state auditor. If the employee is employed by the state auditor, for purposes of this section
23 the attorney general shall fulfill the investigation and reporting duties under this section.

- 24 1. Upon the state auditor's receipt of a report under this section, the state auditor shall
25 investigate the alleged violation or suspected violation of federal, state, or local law,
26 ordinance, regulation, or rule or the alleged job-related misuse of public resources.
27 The state auditor may not disclose the employee's name to the public until this
28 investigation is complete.
29 2. Following an investigation under this section, the state auditor shall provide the state
30 auditor's finding to the employee and to the employer. The state auditor's report must
31 include:

- 1 a. A determination of whether a violation of federal, state, or local law, ordinance,
- 2 regulation, or rule or the alleged job-related misuse of public resources occurred;
- 3 b. Whether the employer is required to take any actions to remedy a violation or
- 4 misuse of public funds; and
- 5 c. The process through which the state auditor will track whether the employer is
- 6 implementing actions that may be required under subdivision b.
- 7 3. A state auditor report issued under this section is an appealable order under chapter
- 8 28-32.