

**Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019**

SENATE BILL NO. 2145
(Senators Klein, Hogue, Robinson)
(Representatives Keiser, Lefor, Roers Jones)

AN ACT to amend and reenact sections 34-14-05 and 34-14-09 of the North Dakota Century Code, relating to investigation of wage collection claims; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-14-05 of the North Dakota Century Code is amended and reenacted as follows:

34-14-05. Enforcement.

It is the duty of the

1. ~~The labor commissioner or the commissioner's deputy shall ensure compliance with the provisions of this chapter, to investigate as to any alleged violations of this chapter, and to institute or cause to be instituted actions for penalties and forfeitures provided hereunder related to violation of this chapter.~~
2. The commissioner or the commissioner's deputy may hold hearings on the merits of any claim and shall cooperate with any employee in the enforcement of a claim against the employee's employer in any case ~~whenever~~if, in the commissioner's opinion, the claim is valid.
3. In investigating a complaint under this chapter, the commissioner may require the attendance of a witness and the production of a book, record, document, data, or other object at any hearing or with reference to any matter the commissioner has the authority to investigate under this chapter.
 - a. If under this subsection a witness fails or refuses to appear or to produce, the commissioner may issue a subpoena to compel the witness to appear or a subpoena duces tecum to compel the witness to appear and produce a relevant book, record, document, data, or other object.
 - b. If a person refuses to obey a subpoena, the district court, upon application by the commissioner, may issue to the person an order requiring the person to appear and give evidence or otherwise produce documentary evidence requested by the commissioner regarding the matter under investigation.
 - c. A witness subpoenaed under this section who appears at a hearing or has a deposition taken is entitled to receive the same fees and mileage as a witness in a civil case in district court.
4. The commissioner may consider any offsets, deductions, or counterclaims asserted by an employer during the commissioner's investigation and determination of the validity, enforceability, and amount of any claim for wages. An employer ~~must~~shall disclose the basis for and the amount of any claimed offset, deduction, or counterclaim to the commissioner within the time the commissioner directs.
5. The commissioner and the commissioner's authorized representatives have the right to enter places of employment for the purpose of inspecting records and seeing that all provisions of this chapter are complied with.

SECTION 2. AMENDMENT. Section 34-14-09 of the North Dakota Century Code is amended and reenacted as follows:

34-14-09. Employees' remedies - Limitation on wages collectible. (~~Effective through June 30, 2019~~)

1. An employee may file with the department a claim for wages due under this chapter or under chapter 34-06 if the filing is made within two years from the date the wages are due and the amount of the wages claimed due is at least one hundred twenty-five dollars but not more than fifteen thousand dollars. For purposes of this section, wages are due at each regular payday immediately following the work period during which wages were earned. If the department denies the claim for wages due because the amount claimed is less than one hundred twenty-five dollars, the department shall inform the claimant of the opportunity for the claimant to pursue the claim in small claims court under chapter 27-08.1. If the department denies the claim for wages due because the amount claimed is more than fifteen thousand dollars, the department shall inform the claimant of the opportunity for the claimant to pursue the claim in district court under chapter 27-05.
2. If the labor commissioner determines wages have not been paid and that the unpaid wages constitute an enforceable claim, the commissioner, upon request of the employee, may take an assignment in trust for the wages or a claim for liquidated damages in amounts the commissioner deems valid and enforceable without being bound by the technical rules respecting the validity of any assignments and may bring any legal action necessary to collect the claim. With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.
3. The limitation of action under section 34-01-13 is tolled by the filing of a claim with the commissioner until the commissioner determines the claim is not enforceable or the commissioner reassigns the claim to the employee.

~~**Employees' remedies – Limitation on wages collectible. (Effective after June 30, 2019)** An employee may file a claim for wages due under this chapter or under chapter 34-06 with the department not later than two years from the date the wages are due. For purposes of this section, wages are due at each regular payday immediately following the work period during which wages were earned. Whenever the labor commissioner determines that wages have not been paid and that the unpaid wages constitute an enforceable claim, the commissioner, upon request of the employee, may take an assignment in trust for the wages or a claim for liquidated damages in amounts the commissioner deems valid and enforceable without being bound by any of the technical rules respecting the validity of any assignments and may bring any legal action necessary to collect the claim. The limitation of action under section 34-01-13 is tolled by the filing of a claim with the commissioner until the commissioner determines the claim is not enforceable or the commissioner reassigns the claim to the employee. With the consent of the assigning employee at the time of the assignment, the commissioner may settle and adjust the claim to the same extent as the assigning employee.~~

SECTION 3. EFFECTIVE DATE. This Act becomes effective July 1, 2019.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2145 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 46 Nays 1 Absent 0

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 80 Nays 12 Absent 2

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2019.

Approved at _____ M. on _____, 2019.

Governor

Filed in this office this _____ day of _____, 2019,

at _____ o'clock _____ M.

Secretary of State