

HOUSE BILL NO. 1434

Introduced by

Representatives Ista, Adams, P. Anderson, Buffalo, Dobervich, Hanson, Mitskog, Schneider
Senators Bakke, Heckaman, Hogan, Oban

1 A BILL for an Act to create and enact a new section to chapter 34-02 of the North Dakota
2 Century Code, relating to compensation history of prospective employees; to amend and
3 reenact section 34-02-18 of the North Dakota Century Code, relating to employment references;
4 and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Section 34-02-18 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **34-02-18. Immunity for providing employment reference.**

- 9 1. An employer, or an employer's agent, who truthfully discloses date of employment,
10 pay level, job description and duties, and wage history about a current or former
11 employee to a prospective employer of the employee is immune from civil liability for
12 the disclosure and the consequences of the disclosure of that information. An
13 employer or agent of an employer may not disclose to a prospective employer the
14 wage history of a current or former employee unless specifically requested by the
15 prospective employer.
- 16 2. An employer, or an employer's agent, who discloses information about a current or
17 former employee's job performance to a prospective employer of the employee is
18 presumed to be acting in good faith. Unless lack of good faith is shown, the employer
19 or employer's agent is immune from civil liability for the disclosure and the
20 consequences of providing that information. The presumption of good faith may be
21 rebutted by a preponderance of the evidence that the information disclosed was:
- 22 a. Knowingly false;
23 b. Disclosed with reckless disregard for the truth;
24 c. Deliberately misleading; or

1 d. Rendered with malicious purpose.

2 3. The immunity provided by subsection 2 does not apply if the information provided is in
3 violation of a nondisclosure agreement or was otherwise confidential according to
4 applicable law.

5 **SECTION 2.** A new section to chapter 34-02 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Employment references - Compensation history - Civil remedy.**

8 1. As used in this section:

9 a. "Applicant" means a prospective employee applying for employment.

10 b. "Compensation" includes monetary wages as well as benefits and other forms of
11 compensation for employment.

12 2. An employer or agent of an employer may not:

13 a. Seek the compensation history of an applicant from the applicant or a current or
14 former employer of the applicant;

15 b. Require an applicant's compensation history to satisfy minimum or maximum
16 criteria; or

17 c. Request or require an applicant to disclose compensation history as a condition
18 of employment.

19 3. This section does not apply if:

20 a. An applicant voluntarily and without prompting discloses compensation history;

21 b. Disclosure or verification of an applicant's compensation history specifically is
22 authorized under state or federal law; or

23 c. The applicant is a current employee and is applying for a position with the same
24 current employer.

25 4. This section does not prohibit:

26 a. An employer or an agent of an employer from providing an applicant or any other
27 person information about compensation offered in relation to a position;

28 b. An applicant from voluntarily and without prompting disclosing compensation
29 history to an employer or an agent of an employer;

30 c. An employer or agent of an employer from verifying an applicant's compensation
31 history upon the applicant's voluntary disclosure under subdivision b.

- 1 d. An employer, or an agent of an employer, and an applicant from discussing and
2 negotiating compensation expectations if the employer or agent does not request
3 or require the applicant's compensation history.
- 4 5. If an agent of an employer violates this section, that employer is not liable for the
5 actions of the agent if the employer demonstrates the agent was informed of the
6 prohibitions of this section and instructed to comply.
- 7 6. An applicant asserting a violation of this section may bring a civil action in district
8 court. An employer or agent of an employer who violates this section is civilly liable to
9 the applicant for the greater of actual damages or:
- 10 a. Not less than one thousand dollars and not more than five thousand dollars for
11 the first or second offense; and
- 12 b. Not less than five thousand dollars or more than ten thousand dollars for each
13 subsequent violation.
- 14 7. A violation of this section which pertains to interviewing and hiring for a single position
15 constitutes a single violation of this section.