

A bill for an act

relating to employment; protecting certain employee statements from employer retaliation; establishing complaint procedures; establishing investigative jurisdiction for the commissioner of labor and industry; creating civil penalties; amending Minnesota Statutes 2006, sections 177.27, subdivisions 4, 5, by adding a subdivision; 181.932, subdivision 1; 181.935; proposing coding for new law in Minnesota Statutes, chapters 177; 181.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 177.27, subdivision 4, is amended to read:

Subd. 4. **Compliance orders.** The commissioner may issue an order requiring an employer to comply with sections 177.21 to 177.35, 181.02, 181.03, 181.031, 181.032, 181.101, 181.11, 181.12, 181.13, 181.14, 181.145, 181.15, ~~and~~ 181.79, 181.932, and 181.9325, or with any rule promulgated under section 177.28. The department shall serve the order upon the employer or the employer's authorized representative in person or by certified mail at the employer's place of business. An employer who wishes to contest the order must file written notice of objection to the order with the commissioner within 15 calendar days after being served with the order. A contested case proceeding must then be held in accordance with sections 14.57 to 14.69. If, within 15 calendar days after being served with the order, the employer fails to file a written notice of objection with the commissioner, the order becomes a final order of the commissioner.

Sec. 2. Minnesota Statutes 2006, section 177.27, subdivision 5, is amended to read:

Subd. 5. **Civil actions.** (a) The commissioner may bring an action in the district court where an employer resides or where the commissioner maintains an office to enforce or require compliance with orders issued under subdivision 4.

(b) If the district court determines that a violation of section 181.932 or 181.9325 occurred, the court may order any appropriate relief, including but not limited to reinstatement, back pay, restoration of lost service credit, if appropriate, compensatory damages, and the expungement of any adverse records of state employee or applicant for state employment who was the subject of the alleged acts of misconduct, and any appropriate relief as described in section 181.936.

Sec. 3. Minnesota Statutes 2006, section 177.27, is amended by adding a subdivision to read:

Subd. 11. **Investigation of certain complaints.** (a) The commissioner shall conduct an investigation of any matter that alleges improper activity through a violation of sections 181.932 and 181.9325. The identity of the person providing the information that initiated the investigation shall be classified as private data, pursuant to section 13.02, subdivision 12, except that the identity may be disclosed to a law enforcement agency that is conducting a criminal investigation of the matter.

(b) For each investigation completed, if the commissioner determines that there is reasonable cause to believe that an employer has engaged in any improper activity, the commissioner shall report the nature and details of the activity to the head of the employing agency or the appropriate appointing authority. If appropriate, the commissioner shall report this information to the attorney general, the policy committees of the house of representatives and senate having jurisdiction over the subject involved, and to any other authority that the commissioner deems appropriate. In any case in which the commissioner submits a report of alleged improper activity to the head of the employing agency or appropriate appointing authority, that individual shall report to the commissioner with respect to any action taken by the individual regarding the activity, the first report being transmitted no later than 30 days after the date of the auditor's report, and monthly thereafter until final action has been taken.

(c) This subdivision shall not limit any authority conferred upon the attorney general or other department or agency of government to investigate and prosecute any matter.

(d) The commissioner shall have all the powers and authority described in this section to conduct investigations pursuant to this subdivision.

Sec. 4. [177.275] INVESTIGATION PROCEDURE.

(a) The commissioner shall initiate an investigation of a written complaint of reprisal or retaliation as prohibited by section 181.932 or 181.9325 within ten working days of its submission. The commissioner shall complete findings of the investigation within 60

working days thereafter, and shall provide a copy of the findings to the complaining employee or applicant for employment and to the appropriate supervisor, manager, employee, or appointing authority. When the allegations contained in a complaint of reprisal or retaliation are the same as, or similar to, those contained in another appeal, the commissioner may consolidate the appeals into the most appropriate format. In these cases, the time limits described in this subdivision shall not apply.

(b) If the commissioner finds that the supervisor, manager, employee, or appointing power retaliated against the complainant for engaging in protected whistle-blower activities, the commissioner may issue a compliance order under section 177.27, subdivision 4.

(c) In order for the governor and the legislature to determine the need to continue or modify state personnel procedures as they relate to the investigations of reprisals or retaliation for the disclosure of information by public employees, the commissioner, by June 30 of each year, shall submit a report to the governor and the legislature regarding complaints filed, hearings held, and legal actions taken under this section.

Sec. 5. Minnesota Statutes 2006, section 181.932, subdivision 1, is amended to read:

Subdivision 1. **Prohibited action.** An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:

(a) the employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official;

(b) the employee is requested by a public body or office to participate in an investigation, hearing, inquiry;

(c) the employee refuses an employer's order to perform an action that the employee has an objective basis in fact to believe violates any state or federal law or rule or regulation adopted pursuant to law, and the employee informs the employer that the order is being refused for that reason; ~~or~~

(d) the employee, in good faith, reports a situation in which the quality of health care services provided by a health care facility, organization, or health care provider violates a standard established by federal or state law or a professionally recognized national clinical or ethical standard and potentially places the public at risk of harm;

(e) the employee refuses to alter, dilute, or suppress the objective representation or communication of scientific or technical data or findings, including but not limited to, findings of economic or environmental impact, public health and public safety; or

(f) the employee communicates the findings of a scientific or technical study that the employee, in good faith, believes to be truthful and accurate, including reports to a governmental body or law enforcement official.

Sec. 6. [181.9325] USE OF AUTHORITY TO INFLUENCE OR INTERFERE WITH DISCLOSURE OF INFORMATION.

(a) An employer may not directly or indirectly use or attempt to use the employer's official authority or influence for the purpose of intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce any person for the purpose of interfering with the rights described in section 181.932, or for the purpose of persuading the person to waive or disclaim any other legal rights related to the person's employment.

(b) For purposes of this section, "use of official authority or influence" includes: promising to confer, or conferring, any benefit; effecting, or threatening to effect, any reprisal; or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including but not limited to appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

Sec. 7. Minnesota Statutes 2006, section 181.935, is amended to read:

181.935 INDIVIDUAL REMEDIES; PENALTY.

(a) In addition to any remedies otherwise provided by law, an employee injured by a violation of section 181.932 or 181.9325 may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief as determined by the court.

(b) An employer who failed to notify, as required under section 181.933 or 181.934, an employee injured by a violation of section 181.932 is subject to a civil penalty of \$25 per day per injured employee not to exceed \$750 per injured employee.

Sec. 8. [181.936] REPRISALS FOR DISCLOSURE OF IMPROPER GOVERNMENTAL ACTIVITIES; COMPLAINT PROCEDURE; PENALTIES.

(a) A state employee or applicant for state employment who files a written complaint with the employee's or applicant's supervisor, manager, or the appointing power alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by section 181.9325, may also file a copy of the written complaint with the commissioner of labor and industry, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of

perjury. The complaint filed with the commissioner shall be filed within 12 months of the most recent act of reprisal complained about.

(b) Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having made a protected disclosure under section 181.932, is subject to a fine not to exceed \$10,000 and imprisonment in the county jail for a period not to exceed one year.

(c) In addition to all other penalties provided by law, any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a state employee or applicant for state employment for having made a protected disclosure shall be liable in an action for damages brought against the person by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. Where liability has been established, the injured party shall also be entitled to reasonable attorney fees as provided by law. However, any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the commissioner of labor and industry under paragraph (a), and the department has issued, or failed to issue, findings under section 177.275.

(d) This section is not intended to prevent an appointing power, manager, or supervisor from taking, directing others to take, recommending, or approving any personnel action or from taking or failing to take a personnel action with respect to any state employee or applicant for state employment if the appointing power, manager, or supervisor reasonably believes any action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure under section 181.932.

(e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this section and sections 1 to 7 was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, manager, or appointing power to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, manager, or appointing power fails to meet this burden of proof in an adverse action against the employee in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the adverse action.

H.F. No. 1609, 1st Engrossment - 85th Legislative Session (2007-2008)

6.1 (f) Nothing in this section and sections 1 to 7 shall be deemed to diminish the rights,
6.2 privileges, or remedies of any employee under any other federal or state law or under any
6.3 employment contract or collective bargaining agreement.