

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 643

Short Title: Retaliatory Discharge Changes.

(Public)

Sponsors: Senator Cooper.

Referred to: Judiciary II.

March 31, 1993

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO THE
RETALIATORY EMPLOYMENT DISCRIMINATION LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-241 reads as rewritten:

"§ 95-241. Discrimination prohibited.

(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

(1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:

- a. Chapter 97 of the General Statutes.
- b. Article 2A or Article 16 of this Chapter.
- c. Article 2A of Chapter 74 of the General Statutes.
- d. G.S. 95-28.1.

(2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.

(3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes.

(b) It shall not be a violation of this Article for a person to discharge or take any other unfavorable action with respect to an employee who has engaged in protected activity as set forth under this Article if the person proves by the greater weight of the

1 evidence that it would have taken the same unfavorable action in the absence of the
2 protected activity of the employee."

3 Sec. 2. G.S. 95-242 reads as rewritten:

4 **"§ 95-242. Complaint; investigation; conciliation.**

5 (a) An employee allegedly aggrieved by a violation of G.S. 95-241 may file a
6 written complaint with the Commissioner of Labor alleging the violation. The complaint
7 shall be filed within 180 days of the alleged violation. Within 20 days following receipt
8 of the complaint, the Commissioner shall forward a copy of the complaint to the person
9 alleged to have committed the violation and shall initiate an investigation. If the
10 Commissioner determines after the investigation that there is not reasonable cause to
11 believe that the allegation is true, the Commissioner shall dismiss the complaint,
12 promptly notify the employee and the respondent, and issue a right-to-sue letter to the
13 employee that will enable the employee to bring a civil action pursuant to G.S. 95-243.
14 If the Commissioner determines after investigation that there is reasonable cause to
15 believe that the allegation is true, the Commissioner shall attempt to eliminate the
16 alleged violation by informal methods of conference, conciliation, and persuasion. The
17 Commissioner shall make a determination as soon as possible and, in any event, not
18 later than 90 days after the filing of the complaint.

19 (b) If the Commissioner is unable to resolve the alleged violation through the
20 informal procedures, the Commissioner shall notify the parties in writing that
21 conciliation efforts have failed. The Commissioner shall then either file a civil action on
22 behalf of the employee pursuant to G.S. 95-243 or issue a right-to-sue letter to the
23 employee enabling the employee to bring a civil action pursuant to G.S. 95-243.

24 (c) An employee may make a written request to the Commissioner for a right-to-
25 sue letter after 180 days following the filing of a complaint if the Commissioner has not
26 issued a notice of conciliation failure and has not commenced an action pursuant to G.S.
27 95-242.

28 (d) Nothing said or done during the course of ~~these informal procedures~~ the
29 Commissioner's conciliation efforts may be made public by the Commissioner or used
30 as evidence in a subsequent proceeding under this Article without the written consent of
31 the persons concerned.

32 (e) Files and other records relating to investigations and enforcement
33 proceedings pursuant to this Article shall not be subject to inspection and examination
34 as authorized by G.S. 132-6 while such investigations and proceedings are open or
35 pending in the trial court division.

36 (f) In making inspections and investigations under this Article, the
37 Commissioner or his duly authorized agents may, in addition to exercising the authority
38 granted in G.S. 95-4, issue subpoenas to require the attendance and testimony of
39 witnesses and the production of evidence under oath. Witnesses shall be reimbursed for
40 all travel and other necessary expenses which shall be claimed and paid in accordance
41 with the prevailing travel reimbursement requirements of the State. In the case of
42 failure or refusal of any person to obey a subpoena under this Article, the district court
43 judge or superior court judge of the county in which the inspection or investigation is

1 conducted shall, upon the application of the Commissioner, have jurisdiction to issue an
2 order requiring compliance."

3 Sec. 3. Chapter 95 of the General Statutes is amended by adding the
4 following new section to read:

5 "**§ 95-245. Rules.**

6 The Commissioner may adopt rules needed to implement this Article."

7 Sec. 4. This act is effective upon ratification and applies to complaints filed
8 under G.S. 95-242 on or after that date.