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H.836

Introduced by Representatives Zagar of Barnard, Conquest of Newbury, and  
Pearson of Burlington

Referred to Committee on

Date:

Subject: Labor; employment practices; whistleblower protections

Statement of purpose of bill as introduced: This bill proposes to provide  
whistleblower protection to Vermont employees.

An act relating to whistleblower protections for employees

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 21 V.S.A. chapter 5, subchapter 13 is added to read:

Subchapter 13. Whistleblower Protection

§ 571. DEFINITIONS

As used in this subchapter:

(1) “Commissioner” means the Commissioner of Labor.

(2) “Employee” means any person who performs services for wages or  
other remuneration under the control and direction of an employer. The term  
“employee” does not include a State employee as that term is defined in  
3 V.S.A. § 972(5).

1           (3) “Employer” means any individual, organization, or governmental  
2           body including any partnership, association, trustee, estate, corporation, joint  
3           stock company, insurance company, or legal representative, whether domestic  
4           or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof,  
5           and any common carrier by mail, motor, water, air or express company doing  
6           business in or operating within this State, and any agent of such employer,  
7           which has one or more individuals performing services for it within this State.  
8           The term employer does not include the State of Vermont.

9           (4) “Law” means any law, rule or regulation duly enacted or adopted by  
10           this State, a political subdivision of this State, or the United States.

11           (5) “Public body” means:

12           (A) the U.S. Congress, any state legislature, or any popularly elected  
13           local government body, or any member or employee thereof;

14           (B) any federal, State, or local judiciary, or any member or employee  
15           thereof, or any jury;

16           (C) any federal, State, or local regulatory, administrative, or public  
17           agency or authority, or instrumentality thereof;

18           (D) any federal, State, or local law enforcement agency, prosecutorial  
19           office, or police or peace officer; or

1           (E) any division, board, bureau, office, committee, or commission of  
2           any of the public bodies described in this subdivision (5).

3           (6) “Retaliatory action” means discharge, threat, suspension, demotion,  
4           denial of promotion, discrimination, or other adverse employment action  
5           regarding an employee’s compensation, terms, conditions, location, or  
6           privileges of employment.

7           (7) “Supervisor” means any person who has the authority to direct and  
8           control the work performance of an employee.

9           § 572. WHISTLEBLOWER PROTECTION; PROHIBITIONS;

10           NOTICE

11           (a) No employer shall engage in retaliatory action against an employee  
12           because the employee does any of the following:

13           (1) reports in good faith, directly or indirectly, verbally or in writing,  
14           what the employee has reasonable cause to believe is a violation of any law;

15           (2) participates in good faith in an investigation, hearing, or inquiry  
16           conducted by any public body that involves allegations that the employer has  
17           violated any law; or

18           (3) refuses to execute a directive or order that violates any law.

19           (b) Subdivision (a)(1) of this section shall not apply unless the employee  
20           reported the alleged violation to the employer or a supervisor of the employee  
21           and the employer had a reasonable opportunity to correct the violation. An

1 employee shall not be required to report a violation if the employee reasonably  
2 believes that doing so would be futile because it would not result in prompt  
3 action to address the violation.

4 (c) Every employer shall post notice on a form prescribed by the  
5 Commissioner informing employees about the rights and protections provided  
6 by this subchapter.

7 (d) This section shall not be construed to diminish or impair the rights of  
8 any employee under any collective bargaining agreement or common law.

9 § 573. ENFORCEMENT

10 (a) Any employee aggrieved by a violation of section 572 of this  
11 subchapter may bring an action in Superior Court seeking compensatory and  
12 punitive damages or equitable relief, including restraint of prohibited acts,  
13 restitution of wages or other benefits, reinstatement, costs, reasonable  
14 attorney's fees, and other appropriate relief.

15 (b) The employee shall have the burden of proving that the employee's  
16 whistleblowing contributed to any retaliatory action taken by the employer  
17 and, if applicable, that the employee made a reasonable effort to maintain or  
18 restore any loss of the employment rights through a grievance procedure or  
19 similar process available to the employee.

1 Sec. 2. 21 V.S.A. chapter 5, subchapter 10 is redesignated to read:

2 Subchapter 10. Whistleblower Protection for Health Care Employees

3 Sec. 3. EFFECTIVE DATE

4 This act shall take effect on July 1, 2016.