

1 S.139

2 Introduced by Senator Clarkson

3 Referred to Committee on

4 Date:

5 Subject: Labor; employment practices; private attorneys general

6 Statement of purpose of bill as introduced: This bill proposes to create the
7 Vermont Private Attorneys General Act to permit employees, representative
8 organizations, and whistleblowers to bring civil actions on behalf of the
9 Commissioner of Labor to enforce certain provision of Title 21.

10 An act relating to creating the Vermont Private Attorneys General Act

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

12 Sec. 1. 21 V.S.A. chapter 2 is added to read:

13 Chapter 2. Vermont Private Attorneys General Act

14 § 51. DEFINITIONS

15 As used in this chapter:

16 (1) “Aggrieved employee” means an employee or former employee
17 against whom one or more violations of the provisions of this title was
18 committed. The term “aggrieved employee” includes an individual who is
19 asserting a claim that he or she is or was misclassified as an independent
20 contractor in violation of the provisions of this title.

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

2 (3) “Employee” means any person who may be permitted, required, or
3 directed by an employer, in consideration of direct or indirect gain or profit, to
4 perform services.

5 (4) “Employer” means an individual, organization, governmental body,
6 partnership, association, corporation, legal representative, trustee, receiver,
7 trustee in bankruptcy, and any common carrier by rail, motor, water, air or
8 express company doing business in or operating within this State.

9 (5) “Public enforcement action” means a civil action brought by a
10 relator pursuant to the provisions of this chapter to enforce provisions of
11 chapters 3, 5, 9, 12, 16A, and 17 of this title that are enforceable by the
12 Commissioner.

13 (6) “Relator” means an aggrieved employee, representative
14 organization, or whistleblower who brings a public enforcement action
15 pursuant to section 52 of this chapter.

16 (7) “Representative organization” means a mutual benefit corporation or
17 public benefit corporation, as those terms are defined pursuant to 11B V.S.A.
18 § 1.40, that regularly advocates on behalf of employees or assists employees in
19 the enforcement of the provisions of this title, which has been selected by an
20 aggrieved employee or whistleblower to bring a public enforcement action on

1 the aggrieved employee's or whistleblower's behalf pursuant to section 52 of
2 this chapter.

3 (8) "Whistleblower" means a current or former employee, contractor,
4 subcontractor, or employee of a contractor or subcontractor with knowledge of
5 facts that the individual reasonably believes constitute a violation of the
6 provisions of this title.

7 § 52. PUBLIC ENFORCEMENT ACTIONS

8 (a)(1) A relator may bring a public enforcement action on behalf of and
9 in the name of the Commissioner pursuant to the procedures set forth in
10 section 53 of this chapter. A relator may seek the same penalties and
11 injunctive or declaratory relief that the Commissioner would be entitled to seek
12 if it brought the action.

13 (2) A public enforcement action shall be brought in the Civil Division of
14 the Superior Court in Washington County or in the county in which the alleged
15 violation occurred.

16 (3)(A) A public enforcement action may be brought on behalf of one or
17 more individuals in relation to one or more violations of the provisions of this
18 title by the same employer.

19 (B) A public enforcement action shall not be subject to the
20 requirements of Rule 23(a) of the Vermont Rules of Civil Procedure.

1 (b)(1) In a public enforcement action brought pursuant to this chapter, the
2 court shall be permitted to assess the same penalties for violations of this title
3 as if the action was brought by the Commissioner.

4 (2) Any civil penalties assessed pursuant to a public enforcement action
5 shall be distributed as follows:

6 (A) If the Commissioner does not intervene in the action, 30 percent
7 of the proceeds recovered and collected in the action or in settlement of the
8 claim shall be awarded to the relator and the remaining 70 percent shall be
9 awarded to the Department of Labor.

10 (B) If the Commissioner intervenes in the action, 20 percent of the
11 proceeds recovered and collected in the action or in settlement of the claim
12 shall be awarded to the relator and the remaining 80 percent shall be awarded
13 to the Department of Labor.

14 (3) If the relator brought the public enforcement action on behalf of one
15 or more aggrieved employees, the relator shall equitably distribute the amount
16 awarded to it between itself and the aggrieved employees. In determining an
17 equitable distribution, the relator may take into account the risks and burdens
18 that it incurred in bringing the action. The relator shall provide to the
19 Commissioner a summary of the amounts distributed.

20 (4) Of the proceeds awarded to the Department of Labor pursuant to this
21 section, 25 percent shall be deposited in the Community Outreach and

1 Workforce Education Special Fund established pursuant to section 56 of this
2 chapter.

3 (c) A relator who prevails in a public enforcement action shall also receive
4 an amount for necessary expenses plus reasonable attorney's fees and costs, as
5 determined by the court. The defendant shall pay the expenses, fees, and costs
6 awarded directly to the relator.

7 (d)(1) Nothing in this section shall be construed to limit an employee's
8 right to pursue other remedies that are available to him or her under law.

9 (2) Nothing in this section shall be construed to limit the
10 Commissioner's ability to seek restitution or damages on behalf of an
11 aggrieved employee in a public enforcement action in which it has intervened
12 when such a remedy is available under the applicable law.

13 (e) Any provision of an agreement or contract that restricts an aggrieved
14 employee's, representative party's, or whistleblower's right to bring a private
15 enforcement action shall be void and unenforceable.

16 (f)(1) A public enforcement action shall be commenced within the time
17 provided pursuant to the applicable statute of limitations or two years after the
18 cause of action accrues, whichever period is longer.

19 (2) The time for bringing a public enforcement action shall be tolled
20 from the date that the relator files a notice with the Commissioner pursuant to
21 section 53 of this chapter or the date on which the Commissioner commences

1 an investigation of the facts underlying the cause of action, whichever is
2 earlier, until the Commissioner notifies the relator that no citation will be
3 issued or the Commissioner fails to notify the relator of whether he or she will
4 issue a citation as required pursuant to subsection 53(b) of this chapter.

5 (g)(1) A relator shall not bring a public enforcement action if the
6 Commissioner, based on the same facts alleged by the relator, issues a citation
7 to an employer for the same violation of this title as alleged by the relator or
8 has notified the relator that it intends to issue a citation.

9 (2) A public enforcement action shall not be permitted in relation to an
10 alleged violation of requirements related to posting or providing notice of the
11 provisions of this title, or an employer's failure to submit timely reports
12 pursuant to the provisions of this title.

13 § 53. PROCEDURE FOR BRINGING A PUBLIC ENFORCEMENT

14 ACTION

15 (a)(1)(A) A relator shall submit to the Commissioner notice of a claim
16 together with a filing fee of \$75.00.

17 (B) The filing fee may be waived by the entity pursuant to rules
18 adopted by the Commissioner.

19 (C) A notice may be submitted electronically or by U.S. Mail.

20 (2) Each notice shall include:

1 (A) the name, address, and contact information of the employer that
2 is alleged to have violated a provision of this title;

3 (B) the name, address, and contact information of the aggrieved
4 employee;

5 (C) the name, address, and contact information of the relator, if the
6 relator is not the aggrieved employee;

7 (D) if the aggrieved employee has retained legal counsel, the name,
8 address, and contact information of the aggrieved employee's legal counsel;

9 (E) if the relator has retained legal counsel, the name, address, and
10 contact information of the relator's legal counsel; and

11 (F) a short and plain statement of the alleged violation and the facts
12 supporting the claim.

13 (b)(1) Upon receiving notice of a claim, the Commissioner shall:

14 (A) promptly provide notice to the relator of the date on which the
15 relator's notice was received;

16 (B) determine whether it will investigate the claim; and

17 (C) provide notice to the relator of its decision regarding whether to
18 investigate the claim no later than 60 days after the claim was received.

19 (2) If the Commissioner decides not to investigate the claim or fails to
20 notify the relator within 60 days, the relator may commence a public
21 enforcement action in relation to the claim.

1 (3) If the notice provided by the relator is deficient, the Commissioner
2 shall notify the relator of the deficiencies in the original notice. Upon
3 receiving notice of any deficiencies, the relator shall have 30 days to amend its
4 original notice and resubmit it to the Commissioner.

5 (c)(1)(A) If the Commissioner determines that it will investigate the claim,
6 it shall have 120 days to perform its investigation from the date that it notifies
7 the relator of its decision to investigate the claim.

8 (B) If additional time is necessary to complete the investigation, the
9 Commissioner may extend the time in which to conduct the investigation by
10 not more than 60 days. The Commissioner shall promptly provide notice to
11 the relator of a decision to extend the deadline.

12 (2) At the conclusion of the investigation, the Commissioner shall notify
13 the relator of whether he or she intends to issue a citation in relation to the
14 alleged violation.

15 (3) If the Commissioner notifies the relator that he or she does not
16 intend to issue a citation, or fails to provide the relator with notice of
17 the outcome of the investigation within the time provided pursuant to
18 subdivision (1) of this subsection, the relator may commence a public
19 enforcement action in relation to the claim.

20 (d)(1) The Commissioner may intervene in any public enforcement action:

21 (A) by right within 30 days after the action is filed; or

1 (B) more than 30 days after the action is filed in the Superior Court
2 for good cause shown, as determined by the court.

3 (2)(A) If the Commissioner intervenes in a public enforcement action,
4 he or she shall have primary responsibility for prosecuting the action and shall
5 not be bound by the actions of the relator in bringing the action.

6 (B) A relator shall remain a party to any action that the
7 Commissioner elects to intervene in.

8 (C)(i) If, after intervening, the Commissioner wishes to dismiss or
9 settle an action, he or she shall ensure that the relator is given notice of the
10 motion to dismiss or the proposed settlement.

11 (ii) The court shall not grant the Commissioner's motion to
12 dismiss or approve a proposed settlement until the relator has been afforded an
13 opportunity to be heard on the motion or proposed settlement, and the court
14 has determined that either:

15 (I) granting the motion would be fair and in the public interest;

16 or

17 (II) that the proposed settlement is fair, adequate, reasonable,
18 and in the public interest.

19 (3) If the Commissioner does not intervene in the public enforcement
20 action, the relator shall be permitted to conduct the action subject to the
21 following limitations:

1 (A)(i) The relator shall provide a copy of any proposed settlement to
2 the Commissioner and to the court.

3 (ii) The court shall review any proposed settlement of a public
4 enforcement action and shall only approve a settlement if the court determines
5 that it is fair, adequate, reasonable, and in the public interest.

6 (B) Upon request, the Commissioner shall be served with copies of
7 any pleadings filed in a public enforcement action and provided with copies of
8 any deposition transcripts. The Commissioner shall bear any costs related to
9 the service and copying of the requested pleadings and deposition transcripts.

10 § 54. RETALIATION PROHIBITED

11 (a) An employer shall not discharge or in any other manner retaliate against
12 an employee because:

13 (1) the employee has brought a public enforcement action;

14 (2) the employee has submitted notice of a claim to the Commissioner
15 pursuant to section 53 of this chapter;

16 (3) the employee has cooperated with a relator in relation to a public
17 enforcement action; or

18 (4) the employer believes that the employee may bring a public
19 enforcement action, submit notice of a claim to the Commissioner, or
20 cooperate with a relator in relation to a public enforcement action.

1 (b) Any person aggrieved by a violation of this section may bring an action
2 in the Civil Division of the Superior Court seeking compensatory and punitive
3 damages or equitable relief, including restraint of prohibited acts, restitution of
4 wages or benefits, reinstatement, costs, reasonable attorney's fees, and other
5 appropriate relief.

6 § 55. PUBLIC DATABASE

7 (a) The Commissioner shall maintain a publicly accessible database of all
8 public enforcement actions brought pursuant to this chapter.

9 (b)(1) The database shall be searchable by the names of the parties, the
10 disposition of the action, and the statute that the action was brought in relation
11 to.

12 (2) The database shall include information regarding the outcome of the
13 Commissioner's investigation, whether the Commissioner elected to intervene
14 in the action, and any other appropriate information as established in rules
15 adopted by the Commissioner.

16 § 56. COMMUNITY OUTREACH AND WORKFORCE EDUCATION

17 SPECIAL FUND

18 (a) There is established the Community Outreach and Workforce Education
19 Special Fund, which shall be managed in accordance with 32 V.S.A. chapter 7,
20 subchapter 5. The fund shall consist of 25 percent of the proceeds that are
21 awarded to the Department of Labor from the amounts recovered and collected

1 in public enforcement actions or in the settlement of claims brought pursuant
2 this chapter. The Commissioner of Labor may seek and accept gifts,
3 donations, and grants from any source, public or private, to be dedicated for
4 deposit into the Fund.

5 (b) The Fund shall be available to the Commissioner to provide grants to
6 labor or nonprofit organizations for activities to assist workers in enforcing
7 their employment rights, including outreach, community-based education, the
8 creation and distribution of training materials, technical assistance, counseling,
9 and legal research and referral services.

10 (c) All interest earned on Fund balances shall be credited to the Fund.

11 Sec. 2. EFFECTIVE DATE

12 This act shall take effect on passage.