Subject: Labor; employment practices; private attorneys general

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

An act relating to creating the Vermont Private Attorneys General Act

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

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

Chapter 2. Vermont Private Attorneys General Act

§ 51. DEFINITIONS

As used in this chapter:

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

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

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

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

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

(7) “Representative organization” means a mutual benefit corporation or public benefit corporation, as those terms are defined pursuant to 11B V.S.A. § 1.40, that regularly advocates on behalf of employees or assists employees in the enforcement of the provisions of this title, which has been selected by an aggrieved employee or whistleblower to bring a public enforcement action on
the aggrieved employee’s or whistleblower’s behalf pursuant to section 52 of
this chapter.

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

§ 52. PUBLIC ENFORCEMENT ACTIONS

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

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

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

(B) A public enforcement action shall not be subject to the
requirements of Rule 23(a) of the Vermont Rules of Civil Procedure.
(b)(1) In a public enforcement action brought pursuant to this chapter, the
court shall be permitted to assess the same penalties for violations of this title
as if the action was brought by the Commissioner.

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

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

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

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

(4) Of the proceeds awarded to the Department of Labor pursuant to this
section, 25 percent shall be deposited in the Community Outreach and
Workforce Education Special Fund established pursuant to section 56 of this chapter.

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

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

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

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

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

(2) The time for bringing a public enforcement action shall be tolled from the date that the relator files a notice with the Commissioner pursuant to section 53 of this chapter or the date on which the Commissioner commences
an investigation of the facts underlying the cause of action, whichever is
earlier, until the Commissioner notifies the relator that no citation will be
issued or the Commissioner fails to notify the relator of whether he or she will
issue a citation as required pursuant to subsection 53(b) of this chapter.

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

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

§ 53. PROCEDURE FOR BRINGING A PUBLIC ENFORCEMENT

ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) If the Commissioner decides not to investigate the claim or fails to
notify the relator within 60 days, the relator may commence a public
enforcement action in relation to the claim.
(3) If the notice provided by the relator is deficient, the Commissioner shall notify the relator of the deficiencies in the original notice. Upon receiving notice of any deficiencies, the relator shall have 30 days to amend its original notice and resubmit it to the Commissioner.

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

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

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

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

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

(A) by right within 30 days after the action is filed; or
(B) more than 30 days after the action is filed in the Superior Court for good cause shown, as determined by the court.

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

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

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

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

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

or

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

(3) If the Commissioner does not intervene in the public enforcement action, the relator shall be permitted to conduct the action subject to the following limitations:
(A)(i) The relator shall provide a copy of any proposed settlement to the Commissioner and to the court.

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

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

§ 54. RETALIATION PROHIBITED

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

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

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

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

(4) the employer believes that the employee may bring a public enforcement action, submit notice of a claim to the Commissioner, or cooperate with a relator in relation to a public enforcement action.
(b) Any person aggrieved by a violation of this section may bring an action in the Civil Division of the Superior Court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or benefits, reinstatement, costs, reasonable attorney’s fees, and other appropriate relief.

§ 55. PUBLIC DATABASE

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

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

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

§ 56. COMMUNITY OUTREACH AND WORKFORCE EDUCATION SPECIAL FUND

(a) There is established the Community Outreach and Workforce Education Special Fund, which shall be managed in accordance with 32 V.S.A. chapter 7, subchapter 5. The fund shall consist of 25 percent of the proceeds that are awarded to the Department of Labor from the amounts recovered and collected.
in public enforcement actions or in the settlement of claims brought pursuant
this chapter. The Commissioner of Labor may seek and accept gifts,
donations, and grants from any source, public or private, to be dedicated for
deposit into the Fund.

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

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

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.