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H.40

Introduced by Representative Donahue of Northfield

Referred to Committee on

Date:

Subject: Employment practices; whistleblower protections; law enforcement

Statement of purpose of bill as introduced: This bill proposes to provide  
whistleblower protections for law enforcement officers.

An act relating to whistleblower protections for law enforcement officers

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

Sec. 1. 21 V.S.A. chapter 5, subchapter 10 is amended to read

Subchapter 10. Whistleblower Protection

§ 507. ~~WHISTLEBLOWER PROTECTION; HEALTH CARE~~

~~EMPLOYEES; PROHIBITIONS; HEARING; NOTICE~~

DEFINITIONS

~~(a) For the purposes of As used in this subchapter:~~

(1) The “American Nurses Credentialing Center (ANCC)” means the  
national organization that developed the Magnet Recognition Program. The  
Magnet Recognition Program recognizes excellence in nursing services and is  
based on quality indicators and standards of nursing practice as defined in the  
American Nurses Association’s Scope and Standards for Nurse Administrators.

1 The ANCC has the authority to designate “Magnet” status to hospitals that  
2 have demonstrated their current and ongoing commitment to excellence in  
3 nursing practice.

4 (2) “Employee” means any person who performs services for wages or  
5 other remuneration under the control and direction of any public or private  
6 employer.

7 (3) “Employer” means:

8 (A) a hospital as defined in 18 V.S.A. § 1902(1); ~~or~~

9 (B) a nursing home as defined in 33 V.S.A. § 7102(7); or

10 (C) a law enforcement agency as defined in 20 V.S.A. § 2351a.

11 (4) “Improper quality of patient care” means any practice, procedure,  
12 action, or failure to act of an employee or employer that violates any  
13 provisions of the Nurse Practice Act, codes of ethics, hospital policies, or any  
14 other established standards of care related to public or patient health or safety.

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

17 (6) “Public body” means:

18 (A) the ~~United States~~ U.S. Congress, any State legislature, or any  
19 popularly elected local government body, or any member or employee thereof;

20 (B) any federal, State, or local judiciary, or any member or employee  
21 thereof, or any jury;

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

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

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

7 (7) "Retaliatory action" means discharge, threat, suspension, demotion,  
8 denial of promotion, discrimination, or other adverse employment action  
9 regarding the employee's compensation, terms, conditions, location, or  
10 privileges of employment.

11 (8) "Supervisor" means any person who has the authority to direct and  
12 control the work performance of an employee.

13 ~~(b) No employer shall take retaliatory action against any employee because~~  
14 ~~the employee does any of the following:~~

15 ~~(1) Discloses or threatens to disclose to any person or entity any activity,~~  
16 ~~policy, practice, procedure, action, or failure to act of the employer or agent of~~  
17 ~~the employer that the employee reasonably believes is a violation of any law or~~  
18 ~~that the employee reasonably believes constitutes improper quality of patient~~  
19 ~~care.~~

20 ~~(2) Provides information to, or testifies before, any public body~~  
21 ~~conducting an investigation, a hearing, or an inquiry that involves allegations~~

1 ~~that the employer has violated any law or has engaged in behavior constituting~~  
2 ~~improper quality of patient care.~~

3 ~~(3) Objects to or refuses to participate in any activity, policy, or practice~~  
4 ~~of the employer or agent that the employee reasonably believes is in violation~~  
5 ~~of a law or constitutes improper quality of patient care.~~

6 ~~(c) Subdivisions (b)(1) and (3) of this section shall not apply unless an~~  
7 ~~employee first reports the alleged violation of law or improper quality of~~  
8 ~~patient care to the employer, supervisor, or other person designated by the~~  
9 ~~employer to address reports by employees of improper quality of patient care,~~  
10 ~~and the employer has had a reasonable opportunity to address the violation.~~  
11 ~~The employer shall address the violation under its compliance plan, if one~~  
12 ~~exists. The employee shall not be required to make a report under this~~  
13 ~~subsection if the employee reasonably believes that doing so would be futile~~  
14 ~~because making the report would not result in appropriate action to address the~~  
15 ~~violation.~~

16 ~~(d) Nothing in this subchapter shall be deemed to diminish the rights,~~  
17 ~~privileges, or remedies of any employee under any law or under any collective~~  
18 ~~bargaining agreement or employment contract.~~

19 § 508. ENFORCEMENT

20 (a) An employee aggrieved by a violation of this subdivision may:

1           (1) utilize any available internal process, grievance procedure, or similar  
2 process available to the employee to maintain or restore any loss of  
3 employment rights with the employer; or

4           (2) bring an action in the Superior Court of the county in which the  
5 violation is alleged to have occurred.

6           (b) The initiation or completion of an internal process, grievance  
7 procedure, or similar process under subdivision (a)(1) of this section shall not  
8 be a condition precedent to bringing an action in Superior Court under  
9 subdivision (a)(2) of this section.

10          (c) ~~Not~~ Not later than July 1, 2005, all hospitals as defined in 18 V.S.A.  
11 § 1902(1) shall revise their internal processes referred to in subdivision (a)(1)  
12 to include and be consistent with ANCC Magnet Recognition Program  
13 standards that support the improvement of quality patient care and professional  
14 nursing practice.

15          (d) If the court finds that the employer has violated subsection ~~507(b)~~  
16 510(a) or (b) of this title, the court shall order, as appropriate:

17           (1) reinstatement of the employee, including employment benefits,  
18 seniority, and same or equivalent position, shift schedule, or hours worked as  
19 the employee had before the retaliatory action;

20           (2) payment of back pay, lost wages, benefits, and other remuneration;

21           (3) any appropriate injunctive relief;

- 1 (4) compensatory damages;
- 2 (5) punitive damages;
- 3 (6) attorney's fees; or
- 4 (7) any other appropriate relief.

5 § 509. NOTICE

6 (a) ~~Not~~ Not later than December 1, 2004, the Commissioner of Labor shall  
7 develop and distribute to each employer a standard notice as provided in this  
8 section. Each notice shall be in clear and understandable language and shall  
9 include:

- 10 (1) a summary of this subchapter;
- 11 (2) that an employee, in order to receive the protections of this  
12 subchapter, must report, pursuant to subsection ~~507(e)~~ 510(b)(2) of this title, to  
13 the employer, to the supervisor, or to the person designated to receive  
14 notifications; and
- 15 (3) a space for the name, title, and contact information of the person to  
16 whom the employee must make a report under subsection ~~507(e)~~ 510(b)(2) of  
17 this title.

18 (b) ~~Not~~ Not later than January 1, 2005, each employer shall post the notice  
19 in the employer's place of business to inform the employees of their  
20 protections and obligations under this subchapter. The employer shall post the  
21 notice in a prominent and accessible location in the workplace. The employer

1 shall indicate on the notice the name or title of the individual the employer has  
2 designated to receive notifications pursuant to ~~subsection 507(e)~~ subdivision  
3 510(b)(2) of this title.

4 (c) An employer who violates this section by not posting the notice as  
5 required is liable for a civil fine of \$100.00 for each day of willful violation.

6 § 510. WHISTLEBLOWER PROTECTION; HEALTH CARE

7 EMPLOYEES; LAW ENFORCEMENT OFFICERS;

8 PROHIBITIONS; HEARING; NOTICE

9 (a) Whistleblower protections; generally. No employer shall take  
10 retaliatory action against any employee because the employee does any of the  
11 following:

12 (1) discloses or threatens to disclose to any person or entity any activity,  
13 policy, practice, procedure, action, or failure to act of the employer or agent of  
14 the employer that the employee reasonably believes is a violation of any law;

15 (2) provides information to, or testifies before, any public body  
16 conducting an investigation, a hearing, or an inquiry that involves allegations  
17 that the employer has violated any law; or

18 (3) objects to or refuses to participate in any activity, policy, or practice  
19 of the employer or agent that the employee reasonably believes is in violation  
20 of a law.

21 (b) Specific protections for health care workers.

1           (1) No employer shall take retaliatory action against any employee  
2           because the employee does any of the following:

3                   (A) discloses or threatens to disclose to any person or entity any  
4                   activity, policy, practice, procedure, action, or failure to act of the employer or  
5                   agent of the employer that the employee reasonably believes constitutes  
6                   improper quality of patient care;

7                   (B) provides information to, or testifies before, any public body  
8                   conducting an investigation, a hearing, or an inquiry that involves allegations  
9                   that the employer has engaged in behavior constituting improper quality of  
10                  patient care; or

11                  (C) objects to or refuses to participate in any activity, policy, or  
12                  practice of the employer or agent that the employee reasonably believes  
13                  constitutes improper quality of patient care.

14                  (2) Subdivisions (1)(A) and (C) of this subsection shall not apply unless  
15                  an employee first reports the alleged violation of law or improper quality of  
16                  patient care to the employer, supervisor, or other person designated by the  
17                  employer to address reports by employees of improper quality of patient care,  
18                  and the employer has had a reasonable opportunity to address the violation.  
19                  The employer shall address the violation under its compliance plan, if one  
20                  exists. The employee shall not be required to make a report under this  
21                  subsection if the employee reasonably believes that doing so would be futile



1 because making the report would not result in appropriate action to address the  
2 violation.

3 (c) Nothing in this subchapter shall be deemed to diminish the rights,  
4 privileges, or remedies of any employee under any law or under any collective  
5 bargaining agreement or employment contract.

6 Sec. 2. EFFECTIVE DATE

7 This act shall take effect on July 1, 2021.