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

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

(3) “Employer” means:

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

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

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

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

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

(6) “Public body” means:

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

(B) any federal, State, or local judiciary, or any member or employee thereof, or any jury;
(C) any federal, State, or local regulatory, administrative, or public
agency or authority, or instrumentality thereof;

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

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

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

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

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

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

(2) Provides information to, or testifies before, any public body
conducting an investigation, a hearing, or an inquiry that involves allegations
that the employer has violated any law or has engaged in behavior constituting
improper quality of patient care.

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

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

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

§ 508. ENFORCEMENT

(a) An employee aggrieved by a violation of this subdivision may:
(1) utilize any available internal process, grievance procedure, or similar process available to the employee to maintain or restore any loss of employment rights with the employer; or

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

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

(c) No later than July 1, 2005, all hospitals as defined in 18 V.S.A. § 1902(1) shall revise their internal processes referred to in subdivision (a)(1) to include and be consistent with ANCC Magnet Recognition Program standards that support the improvement of quality patient care and professional nursing practice.

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

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

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

(3) any appropriate injunctive relief;
(4) compensatory damages;

(5) punitive damages;

(6) attorney’s fees; or

(7) any other appropriate relief.

§ 509. NOTICE

(a) No later than December 1, 2004, the Commissioner of Labor shall develop and distribute to each employer a standard notice as provided in this section. Each notice shall be in clear and understandable language and shall include:

(1) a summary of this subchapter;

(2) that an employee, in order to receive the protections of this subchapter, must report, pursuant to subsection 507(e) 510(b)(2) of this title, to the employer, to the supervisor, or to the person designated to receive notifications; and

(3) a space for the name, title, and contact information of the person to whom the employee must make a report under subsection 507(e) 510(b)(2) of this title.

(b) No later than January 1, 2005, each employer shall post the notice in the employer’s place of business to inform the employees of their protections and obligations under this subchapter. The employer shall post the notice in a prominent and accessible location in the workplace. The employer
shall indicate on the notice the name or title of the individual the employer has
designated to receive notifications pursuant to subsection 507(c) subdivision
510(b)(2) of this title.

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

§ 510. WHISTLEBLOWER PROTECTION; HEALTH CARE
EMPLOYEES; LAW ENFORCEMENT OFFICERS;
PROHIBITIONS; HEARING; NOTICE

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

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

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

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

(b) Specific protections for health care workers.
(1) No employer shall take retaliatory action against any employee
because the employee does any of the following:

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

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

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

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

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

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2021.