

1 H.336

2 Introduced by Representatives Logan of Burlington, Casey of Montpelier,  
3 Cina of Burlington, Cole of Hartford, Cordes of Bristol,  
4 Headrick of Burlington, Hooper of Randolph, McCann of  
5 Montpelier, McGill of Bridport, Priestley of Bradford, and  
6 Tomlinson of Winooski

7 Referred to Committee on

8 Date:

9 Subject: Labor; employment practices; enhance enforcement of employment  
10 laws

11 Statement of purpose of bill as introduced: This bill proposes to enhance  
12 enforcement of employment laws by permitting employees, representative  
13 organizations, and whistleblowers to bring civil actions on behalf of the  
14 Commissioner of Labor to enforce certain provisions of Title 21 of the  
15 Vermont Statutes Annotated.

16 An act relating to enhancing enforcement of employment laws

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

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

19 CHAPTER 2. ENFORCEMENT OF EMPLOYMENT LAWS

20 § 51. DEFINITIONS

1       As used in this chapter:

2           (1) “Aggrieved employee” means an employee or former employee  
3 against whom one or more violations of the provisions of this title was  
4 committed. The term “aggrieved employee” includes an individual who is  
5 asserting a claim that the individual was misclassified as an independent  
6 contractor in violation of the provisions of this title. The term “aggrieved  
7 employee” does not include an individual whose terms of employment and  
8 working conditions are covered by a collective bargaining agreement.

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

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

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

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

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

4           (7) “Representative organization” means a nonprofit corporation or  
5           union that regularly advocates on behalf of employees or assists employees in  
6           the enforcement of the provisions of this title, and that has been selected by an  
7           aggrieved employee or whistleblower to bring a public enforcement action on  
8           the aggrieved employee’s or whistleblower’s behalf pursuant to section 52 of  
9           this chapter.

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

14           § 52. PUBLIC ENFORCEMENT ACTIONS

15           (a)(1) A relator may bring a public enforcement action on behalf of and in  
16           the name of the Commissioner pursuant to the procedures set forth in section  
17           53 of this chapter. A relator may seek the same penalties and injunctive or  
18           declaratory relief that the Commissioner would be entitled to seek if the  
19           Commissioner brought the action.

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

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

7           (B) A public enforcement action shall be subject to the requirements  
8           of Rule 23(a) of the Vermont Rules of Civil Procedure.

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

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

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

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

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

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

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

15          (d)(1) Nothing in this section shall be construed to limit an employee's  
16          right to pursue other remedies that are available to the employee under law.

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

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

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

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

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

19       (2) A public enforcement action shall not be permitted in relation to an  
20       alleged violation of requirements related to posting or providing notice of the

1 provisions of this title, or an employer's failure to submit timely reports  
2 pursuant to the provisions of this title.

3 § 53. PROCEDURE FOR BRINGING A PUBLIC ENFORCEMENT

4 ACTION

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

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

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

10 (2) Each notice shall include:

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

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

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

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

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

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

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

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

6           (B) determine whether the Commissioner will investigate the claim;  
7 and

8           (C) provide notice to the relator of its decision regarding whether to  
9 investigate the claim not later than 60 days after the claim was received.

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

13           (3) If the notice provided by the relator is deficient, the Commissioner  
14 shall notify the relator of the deficiencies in the original notice. Upon  
15 receiving notice of any deficiencies, the relator shall have 30 days to amend  
16 the relator's original notice and resubmit it to the Commissioner.

17           (c)(1)(A) If the Commissioner decides to investigate the claim, the  
18 Commissioner will have 120 days to perform the investigation from the date  
19 that the Commissioner notifies the relator of the decision to investigate.

20           (B) If additional time is necessary to complete the investigation, the  
21 Commissioner may extend the time in which to conduct the investigation by



1 not more than 60 days. The Commissioner shall promptly provide notice to  
2 the relator of a decision to extend the deadline.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20                   (B) Upon request, the Commissioner shall be served with copies of  
21           any pleadings filed in a public enforcement action and provided with copies of

1 any deposition transcripts. The Commissioner shall bear any costs related to  
2 the service and copying of the requested pleadings and deposition transcripts.

3 § 54. RETALIATION PROHIBITED

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

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

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

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

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

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

19 § 55. PUBLIC DATABASE

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

1       (b)(1) The database shall be searchable by the names of the parties, the  
2       disposition of the action, and the statute pursuant to which the action was  
3       brought.

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

8       § 56. COMMUNITY OUTREACH AND WORKFORCE EDUCATION

9               SPECIAL FUND

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

18       (b) The Fund shall be available to the Commissioner to provide grants to  
19       labor or nonprofit organizations for activities to assist workers in enforcing  
20       their employment rights, including outreach, community-based education, the

- 1 creation and distribution of training materials, technical assistance, counseling
- 2 and legal research, and referral services.
- 3 Sec. 2. EFFECTIVE DATE
- 4 This act shall take effect on passage.