

STATEMENT IN SUPPORT OF GENERAL WHISTLEBLOWER LEGISLATION

The legislation seeks to bring Vermont in accord with federal whistleblower and *qui tam* laws that protect private citizens and government employees who discover and report illegal or fraudulent conduct that defrauds the government of its assets or revenues. Many states have enacted similar provisions.

The federal laws encompass many areas including environmental protection (toxic materials and safe drinking water, etc), occupational safety and health, private and governmental employee civil and retirement rights, military, banking, insurance and finance.

The most prominent federal provision is the False Claims Act under which private citizens with knowledge of past or present fraud committed against the federal government to bring suit on its behalf. The reporting individuals are usually employees who, if left unprotected, are fired for their efforts.

The act of filing such actions is informally called “whistleblowing.” If a prosecution is successful, the government recovers its losses plus penalties against the offender. It is a *qui tam* law, meaning that citizens are encouraged to file claims under the Act to protect the government and other private citizens. For their initiative and cooperation during the litigation, they receive a portion of any recovered damages, usually 15-25 percent of the recovery.

The Act provides a legal tool to counteract fraudulent billings submitted to the federal government. Usually, persons with inside information file claims of false billings to the government that typically involve health care, military and other government spending programs.

State governments have enacted similar provisions to protect “whistleblowers” reporting employer wrongdoing in similar areas of activity. In the Northeast, New Hampshire, New York, Massachusetts, Rhode Island and New Jersey have enacted various forms of whistleblower statutes.

The broad objective is to protect citizens who reveal fraudulent activity against state governments and violations of their civil rights.

Although Vermont has no *qui tam* statute, it has enacted whistleblower protections in several areas: employee rights to report safety and occupational dangers, workers’ compensation claimants, parental and family leave claimants, state government and health care employees and unlawful employment practices. For example, the health care whistleblower statute protects health care workers who discover and desire to report improper quality of patient care. The safety and occupational statute protects individuals who report unsafe working conditions.¹

Despite its title the Vermont “Fair Employment Practices Act” protects only individual employees who protest violations of their own civil rights. There is no Vermont statute protecting individual employees who discover and desire to report fraud or other illegal employer activities that implicate state government obligations.

¹ The statutes are contained in Chapters 5 and 9 of Title 21 Vermont Statutes Annotated.

The proposed legislation seeks to close the legal deficiency that has been vaguely defined through the course of judicial decisions. The Vermont Supreme Court recognized “public policy violations” that may protect against employer abuse of employees. ² The nebulous standard is “the community common sense and common conscience, extended and applied throughout the state to matters of public morals, public health, public safety, public welfare and similar concepts.”

Courts prefer a narrow interpretation of “public policy” and are reluctant to permit most suits because the definition is so ill-defined. Legislatures have created “whistleblower” statutes to protect reporting individuals and to provide a clear definition of the protection. It protects employees and employers from confused enforcement.

Typically, statutes protect employees who “report or inquire about conduct that the employee reasonably and in good faith believes violates a law or an established principle of a professional or occupational code of conduct protective of the public interest or safety.”

A few actual examples of currently-unprotected employee conduct (where employees were fired):

- Reporting coworker’s embezzlement from employer;
- Reporting financial account churning;
- Reporting illegal conduct without notifying employer;
- Complaining to management about aircraft-parts quality that the employee reasonably in good faith believed violated the law;
- Raising concerns about a possible conflict of interest created by a supervisor’s relationship with an outside vendor;
- Reporting questionable banking activities to banking board
- Attending an alcoholism rehabilitation program;
- Refusing to divorce his wife;
- Refusing to drop criminal charges against coworker;
- Refusing to sign non-compete agreement.

The proposed legislation seeks to close the legal deficiency that has been sporadically addressed through the course of judicial decisions.

² *Payne v. Rosendaal*, 147 Vt. 488 (19896) and *LoPresti v. Rutland Regional Health Services, Inc.*, 2004 VT 105, ¶19.