
OLR Bill Analysis

sHB 5245

AN ACT CONCERNING FORCED ARBITRATION AGREEMENTS AND ALLOWING CERTAIN COURT ACTIONS TO BE BROUGHT ON BEHALF OF THE STATE.

SUMMARY

This bill creates a method for a whistleblower or a representative organization (i.e., relator) to initiate a civil action in Superior Court on behalf of, and in the name of, the state to enforce certain employee protections (i.e., a public enforcement action). The action may allege one or more violations affecting different individuals aggrieved by the same defendant and may seek any injunctive and declaratory relief that the state would be entitled to seek. A “representative organization” is a nonprofit corporation or a labor organization that a whistleblower selected to initiate a public enforcement action on the whistleblower’s behalf.

For purposes of public enforcement actions brought under the bill, whenever the state is authorized to assess a civil penalty, the court can assess the same penalty. To the extent that the state is authorized to determine if an employer violated a provision of the bill, the court can determine that an employer has committed the same violation.

The bill details how any civil penalty awarded by the court would be divided between state agencies and the relator (see BACKGROUND). It also establishes the process a relator must follow, including a notice to the Attorney General’s Office (AG), and anti-retaliation provisions.

The bill states that its provisions must be read in light of its remedial purpose to expand the enforcement of state law protecting employees and that the right to bring a public enforcement action under the bill cannot be impaired by any private agreement.

Finally, the bill creates a community outreach and workplace account

as a separate, nonlapsing General Fund account and directs 25% of any civil penalties distributed under the bill to it. The labor commissioner can grant the funds to labor or nonprofit organizations to fund outreach, education, and technical assistance related to employee workplace rights.

EFFECTIVE DATE: October 1, 2022

REQUIRED PROCESS FOR A RELATOR TO SEEK A PUBLIC ENFORCEMENT ACTION

The bill creates a method for a whistleblower (i.e., a current or former employee, contractor, subcontractor, or contractor or subcontractor employee) or a representative organization to initiate a public enforcement action in Superior Court on behalf of, and in the name of, the state. The bill defines “public enforcement action” as a civil action brought to enforce employee protections regarding employment regulation (including prevailing wage and paid family and medical leave), wages (including minimum wage and overtime), and discriminatory employment practices.

Under the bill, a whistleblower can select a representative organization, which is either a nonprofit corporation or a labor organization, in writing on a form prescribed by the attorney general, to start a public enforcement action on the whistleblower’s behalf. (The bill does not specifically direct the attorney general to create the form.)

Notice of Action

Before filing a public enforcement action under the bill, a relator (i.e., a whistleblower or a representative organization) must submit written notice of the action to each “responsible state official” and the attorney general. The responsible state official is the state official authorized to (1) enforce the covered laws or (2) impose or seek penalties or other remedies for violations of these laws. It includes people delegated to act on the responsible state official’s behalf for these purposes or for receiving and disposing of notices under the bill. The responsible officials and covered laws include the labor commissioner for overtime law and the Commission on Human Rights and Opportunities for unfair

labor practices, such as racial or gender discrimination at the workplace.

The notice must be construed in the light most favorable to the relator. It must include a statement about the underlying claim and the name, address, and contact information of the:

1. alleged violator;
2. relator;
3. representative organization (if applicable), and a statement of its qualifications as a representative organization; and
4. relator's legal counsel, if there is one.

If the state intends to investigate the alleged violation contained in the public enforcement action, it must notify the relator of its decision no later than 60 days after receiving the required notice. (The bill does not indicate whether the AG or the responsible state official must notify the relator.)

Window to File a Public Enforcement Action

Regardless of any other state statute, a public enforcement action to recover penalties imposed under the bill must be started within the same period of time that the state may file a public enforcement action based on the same set of alleged violations. This means the window to file a public enforcement action depends upon the law for the violation being alleged. The statute of limitations for bringing a public enforcement action under the bill is tolled from the date a relator files a notice required by the bill or the date the state starts an investigation, whichever is earlier.

PROHIBITED PUBLIC ENFORCEMENTS

The bill bars a relator from bringing a public enforcement action under the following circumstances:

1. if the state, on the same facts and theories, cites a person within the period of time that the state may file a public enforcement action for a violation of the same authority under which the

relator is attempting to recover a civil penalty or other remedy,
or

2. for any violation of a posting, notice, agency reporting, or filing requirement, unless the filing or reporting requirement involves mandatory payroll or injury reporting.

STATE INTERVENTION

After the filing of a public enforcement action, the state may intervene as of right and proceed with any and all claims in the action. The state may assess penalties if it has intervened in a public enforcement action under the bill.

If the state intervenes, the bill specifies that it does not limit the state's right to seek restitution and damages, where available, for relators as part of a public enforcement action.

PENALTIES

Amount

For any provision of the bill where no civil penalty is specifically provided by law, the bill imposes a civil penalty of \$500. This penalty must be imposed for each party aggrieved by each violation during each two-week period that the violation occurs.

The court may impose a lesser amount of civil penalties than those specified if, based on the facts and circumstances of the particular case, to do otherwise would result in a penalty that is arbitrary and oppressive or confiscatory.

A relator that wins in an action under the bill, whether or not the state has intervened in the action, is entitled to an award by the court of reasonable attorney's fees and costs.

Award Distribution

Civil penalties recovered in a public enforcement action pursuant to the bill must be distributed as follows:

1. where the state has not intervened, (a) 30% to the relator, (b) 20%

to the AG, and (c) 50% to the office of the state official responsible for enforcing the action; and

2. where the state has intervened, (a) 20% to the relator, (b) 30% to the AG, and (C) 50% to the office of the state official responsible for the enforcement.

Furthermore, 25% of the amount that goes to the state office responsible for enforcing the action must be deposited in the community outreach and workplace account (see below).

The relator must equitably distribute all penalties due to the relator among the parties aggrieved by the practices cited in the public enforcement action. The relator must submit a written distribution summary to the state (presumably, to the attorney general's office) and the state may order a different distribution within 60 days after receiving it. The bill requires that the relator receive compensation that reflects the burdens and risks assumed by the relator in prosecuting the action, including any costs incurred by a representative organization that serves as a relator.

ANTI-RETALIATION

The bill bans any person from retaliating in any manner against a relator, potential relator, or person, or threatening to retaliate against a relator, potential relator, or person, because:

1. the relator or potential relator brought, or is perceived to have brought, a public enforcement action;
2. the relator or potential relator cooperated in a public enforcement action; or
3. the person believes that the relator or potential relator may bring a public enforcement action or cooperate with one.

Any person aggrieved by a violation of any of the above may bring an action in the Superior Court for compensatory, liquidated, and punitive damages or equitable relief, including restraint of prohibited

acts, restitution of wages or benefits, reinstatement of employment, costs, reasonable attorney's fees and other appropriate relief.

The bill also creates a rebuttable presumption that any adverse action taken against a relator within 90 days after the relator filed a public enforcement action is retaliatory.

COMMUNITY OUTREACH AND WORKPLACE ACCOUNT AND GRANT PROGRAM

The bill establishes an account to be known as the "community outreach and workplace account" as a separate, nonlapsing account within the General Fund.

The bill requires that 25% of the civil penalties distributed to the state official responsible for enforcing the complaint that was the subject of the public enforcement action be deposited into the new account. The labor department must use the account's funds to award grants to labor or nonprofit organizations to fund outreach, education, and technical assistance pertaining to employee rights in the workplace. Grants provided under the bill must be used for activities to assist workers in enforcing employment rights, including outreach, community-based education events, training materials, technical assistance, counseling, research, and referral services.

The bill requires the commissioner to give priority to projects that provide services to vulnerable workers, including low-wage, immigrant, refugee, and contingent workers; women; lesbian, gay, bisexual, or transgendered workers; workers with disabilities; and injured workers.

The bill authorizes the labor department to adopt implementing regulations related to the community outreach and workplace account and the related grants.

BACKGROUND

Relator

A relator is a private party that brings a court action on the government's behalf. The government, not the relator, is considered the

plaintiff. If the action succeeds in court, the relator receives a share of the award.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 9 Nay 4 (03/10/2022)