



# House of Representatives

General Assembly

**File No. 127**

February Session, 2022

Substitute House Bill No. 5245

*House of Representatives, March 28, 2022*

The Committee on Labor and Public Employees reported through REP. PORTER of the 94th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

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

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2022*) (a) As used in this section:

2 (1) "Public enforcement action" means a civil action brought pursuant  
3 to this section to enforce protections enforceable by the state pursuant  
4 to chapter 557 or 558 of the general statutes or section 46a-60 or 46a-81c  
5 of the general statutes;

6 (2) "Responsible state official" means a person authorized to enforce  
7 any provision of chapter 557 or 558 of the general statutes or section 46a-  
8 60 or 46a-81c of the general statutes or to impose or seek penalties or  
9 other remedies for violations of such chapter or section, including  
10 persons delegated to act on the responsible state official's behalf with  
11 respect to enforcing such chapter or section, imposing or seeking  
12 penalties or other remedies for violations of such chapter or section or

13 receiving and disposing of notices pursuant to this section;

14 (3) "Relator" means a whistle-blower or a representative organization  
15 that acts as a qui tam plaintiff in a public enforcement action under this  
16 section;

17 (4) "Representative organization" means a nonprofit corporation or a  
18 labor organization that assists in enforcement pursuant to this section  
19 and that has been selected by a whistle-blower, in writing, in a form  
20 prescribed by the Attorney General, to initiate a public enforcement  
21 action on the whistle-blower's behalf; and

22 (5) "Whistle-blower" means any current or former employee,  
23 contractor, subcontractor or employee of a contractor or subcontractor  
24 of a defendant.

25 (b) A relator may, on behalf of the state and in the name of the state,  
26 initiate a public enforcement action pursuant to the procedures specified  
27 in this section. Such action may be brought in the Superior Court and  
28 may allege one or more violations of chapter 557 or 558 of the general  
29 statutes or section 46a-60 or 46a-81c of the general statutes that have  
30 affected one or more individuals aggrieved by the same defendant and  
31 may seek any injunctive and declaratory relief that the state would be  
32 entitled to seek.

33 (c) For purposes of a public enforcement action brought pursuant to  
34 this section, whenever the state is authorized to assess a civil penalty,  
35 the court is authorized to assess such a civil penalty. To the extent that  
36 the state is authorized to determine whether an employer has violated a  
37 provision of this section, the court may determine whether an employer  
38 has committed such a violation.

39 (d) For any violation of a provision of this section where no civil  
40 penalty is provided, there shall be a civil penalty of five hundred dollars.  
41 Such civil penalty shall be awarded for each party aggrieved by each  
42 violation during each two-week period that such violation is found to  
43 have occurred.

44 (e) The court may award civil penalties in an amount that is less than  
45 the amount specified in subsection (d) if the court determines that to do  
46 otherwise would result in an award that is arbitrary and oppressive or  
47 confiscatory.

48 (f) The state may assess penalties if the state has intervened in a public  
49 enforcement action brought pursuant to this section.

50 (g) Nothing in this section shall limit the state's right to seek  
51 restitution and damages, where available, for relators as part of a public  
52 enforcement action in which it has intervened.

53 (h) A relator that prevails in a public enforcement action pursuant to  
54 this section shall be entitled to an award by the court of reasonable  
55 attorney's fees and costs, whether or not the state has intervened in such  
56 action.

57 (i) Any civil penalty awarded in a public enforcement action  
58 pursuant to this section shall be distributed as follows: (1) Where the  
59 state has not intervened, (A) thirty per cent to the relator, (B) twenty per  
60 cent to the Office of the Attorney General, and (C) fifty per cent to the  
61 office of the state official responsible for enforcement of such action,  
62 twenty-five per cent of which shall be deposited into the community  
63 outreach and workplace account in accordance with subsection (b) of  
64 section 2 of this act; and (2) where the state has intervened, (A) twenty  
65 per cent to the relator, (B) thirty per cent to the Office of the Attorney  
66 General, and (C) fifty per cent to the office of the state official responsible  
67 for enforcement of such action, twenty-five per cent of which shall be  
68 deposited into the community outreach and workplace account in  
69 accordance with subsection (b) of section 2 of this act.

70 (j) The relator shall equitably distribute all penalties due to the relator  
71 among the parties aggrieved by the practices complained of in the  
72 public enforcement action. The relator shall submit a written  
73 distribution summary to the state and the state may order a different  
74 distribution not later than sixty days after receipt of the summary,  
75 provided the relator shall receive compensation in an amount that

76 reflects the burdens and risks assumed by the relator in prosecuting the  
77 action, including any costs incurred by a representative organization  
78 that serves as a relator.

79 (k) The right to bring a public enforcement action under this section  
80 shall not be impaired by any private agreement.

81 (l) Notwithstanding any other provision of the general statutes, a  
82 public enforcement action to recover penalties imposed pursuant to this  
83 section shall be commenced within the same period of time that the state  
84 is authorized to file a public enforcement action based on the same set  
85 of alleged violations. The statute of limitations for bringing a public  
86 enforcement action pursuant to this section shall be tolled from the date  
87 a relator files a notice pursuant to subsection (q) of this section or the  
88 date the state commences an investigation, whichever is earlier.

89 (m) A relator may not bring a public enforcement action pursuant to  
90 this section: (1) If the state, on the same facts and theories, cites a person  
91 within the period of time that the state is authorized to file a public  
92 enforcement action for a violation of the same authority under which  
93 such relator is attempting to recover a civil penalty or other remedy; or  
94 (2) for any violation of a posting, notice, agency reporting or filing  
95 requirement, except where the filing or reporting requirement involves  
96 mandatory payroll or injury reporting.

97 (n) No person shall retaliate in any manner against any relator or  
98 potential relator or other person, or threaten to retaliate against any  
99 relator, potential relator or another person, because: (1) The relator or  
100 potential relator or other person has brought or is perceived to have  
101 brought a public enforcement action, (2) the relator or potential relator  
102 or other person has cooperated in a public enforcement action, or (3) the  
103 person believes that the relator or potential relator or other person may  
104 bring a public enforcement action or cooperate with one.

105 (o) Any person aggrieved by a violation of subsection (n) of this  
106 section may bring an action in the Superior Court for compensatory,  
107 liquidated and punitive damages or equitable relief, including restraint

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

111 (p) There is a rebuttable presumption that any adverse action taken  
112 against a relator not later than ninety days after the relator has filed an  
113 action pursuant to subsection (b) of this section is retaliatory.

114 (q) Before filing a public enforcement action pursuant to this section,  
115 a relator shall submit written notice of such action to each responsible  
116 state official and to the Attorney General. The notice shall be construed  
117 by the responsible state office and the Attorney General in the light most  
118 favorable to the relator and shall include: (1) The name, address and  
119 contact information of the alleged violator; (2) the name and contact  
120 information of the relator; (3) the name, address and contact information  
121 of the representative organization and, if the action is brought by a  
122 representative organization, a statement of the organization's  
123 qualifications as a representative organization; (4) the name, address  
124 and contact information of the relator's legal counsel, if such relator has  
125 legal counsel; and (5) a statement of the underlying claim.

126 (r) If the state intends to investigate the alleged violation contained in  
127 the public enforcement action, it shall notify the relator of its decision  
128 not later than sixty days after receiving notice pursuant to subsection (q)  
129 of this section.

130 (s) After the filing of a public enforcement action, the state may  
131 intervene as of right and proceed with any and all claims in the action.

132 (t) The provisions of this section shall be construed in light of its  
133 remedial purpose to expand the enforcement of state law protecting  
134 employees.

135 Sec. 2. (NEW) (*Effective October 1, 2022*) (a) There is established an  
136 account to be known as the "community outreach and workplace  
137 account" which shall be a separate, nonlapsing account within the  
138 General Fund. The account shall contain any moneys required by law to

139 be deposited in the account. Moneys in the account shall be expended  
140 by the Labor Department for the purpose of awarding grants as  
141 provided in subsection (c) of this section.

142 (b) Twenty-five per cent of any civil penalties distributed in  
143 accordance with subparagraph (C) of subdivision (1) of subsection (i) of  
144 section 1 of this act and subparagraph (C) of subdivision (2) of  
145 subsection (i) of section 1 of this act shall be deposited into the  
146 community outreach and workplace account.

147 (c) The Labor Commissioner shall, from time to time, distribute funds  
148 from the community outreach and workplace account to labor or  
149 nonprofit organizations to fund outreach, education and technical  
150 assistance pertaining to employee rights in the workplace. Grants  
151 provided under this section shall be used for activities to assist workers  
152 in enforcing employment rights, including, but not limited to, outreach,  
153 community-based education events, training materials, technical  
154 assistance, counseling, research and referral services. When considering  
155 applications for such grants, the commissioner shall give priority to  
156 projects that provide services to especially vulnerable workers,  
157 including low-wage, immigrant, refugee and contingent workers,  
158 women, lesbian, gay, bisexual or transgendered workers, workers with  
159 disabilities and injured workers.

160 (d) The Labor Department may adopt regulations in accordance with  
161 the provisions of chapter 54 of the general statutes to implement the  
162 provisions of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2022	New section
Sec. 2	October 1, 2022	New section

**Statement of Legislative Commissioners:**

In Section 1(j) the word "to" was added before "the relator" for clarity.

**LAB**      *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Labor Dept.	GF - Potential Cost	Up to 384,230	Up to 524,006
State Comptroller - Fringe Benefits <sup>1</sup>	GF - Potential Cost	Up to 154,475	Up to 210,474
Labor Dept.	GF- Community Outreach and Workplace Account - Potential Revenue Gain	See Below	See Below
Resources of the General Fund	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

**Municipal Impact:**

Municipalities	Effect	FY 23 \$	FY 24 \$
Various Municipalities	Potential Cost	See Below	See Below

**Explanation**

The bill, which creates a method for a whistleblower to initiate an action in Superior Court to enforce certain employee protections, results in: 1) a potential General Fund cost of up to \$538,705 in FY 23 and up to \$734,480 in FY 24, 2) a potential revenue gain to the extent there are

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 40.53% of payroll in FY 23.

violations and associated civil penalties are imposed by a court,<sup>2</sup> and 3) a potential cost to municipalities to the extent that it increases the number of lawsuits to which municipalities are party.<sup>3</sup>

The bill requires that 25% of any civil penalties distributed to the state office responsible for enforcing the complaint that was the subject of the public enforcement action be deposited in the community outreach and workplace account and used by the Department of Labor (DOL) to award grants to labor or nonprofit organizations to fund outreach, education, and technical assistance pertaining to employee rights in the workplace. To the extent any such penalties are deposited in the account this results in an annualized cost of up to \$734,480 to DOL associated with establishing a new unit to handle the grant program, including \$729,780 in salary and fringe benefit costs for up to 6 positions and \$4,700 in associated overhead costs (computers, office supplies, etc.). The unit would need to develop the policies, procedures, eligibility, contracts, method of payment and reporting, and provide ongoing monitoring for the grants.

The bill allows aggrieved parties to bring an action before Superior Court over alleged violations, which does not result in any cost impact to the Judicial Department. The court system disposes of over 400,000 cases annually and the number of cases is not anticipated to be great enough to require additional resources.

### ***The Out Years***

The annualized ongoing potential state cost impact identified above would continue into the future subject to inflation; the ongoing municipal cost and revenue impacts would continue into the future subject to the number of actions initiated and adjudicated.

---

<sup>2</sup> The bill specifies percentages of any penalties recovered to be distributed amongst the relator, the Attorney General, the office of the state official responsible for the enforcement action, and the community outreach and workplace account.

<sup>3</sup> Any cost depends on the results of a lawsuit brought against a municipal employer as a result of the bill.

---

**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)