

1 H.647

2 Introduced by Representatives Kitzmiller of Montpelier and Obuchowski of

3 Rockingham

4 Referred to Committee on

5 Date:

6 Subject: Labor; workers' compensation; unemployment compensation;

7 misclassification; enforcement; penalties

8 Statement of purpose: This bill proposes to decrease the frequency of

9 misclassification by employers of individuals as employees by increasing

10 penalties and improving enforcement.

11 An act relating to misclassification of employees to lower premiums for
12 workers' compensation and unemployment compensation

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

14 Sec. 1. 21 V.S.A. § 692 is amended to read:

15 § 692. PENALTIES

16 (a) If after hearing under section 688 of this title, the commissioner
17 determines that an employer has failed to comply with the provisions of
18 section 687 of this title, the employer shall be assessed an administrative
19 penalty of not more than \$100.00 or twice the amount of the premium that

1 should have been paid, whichever is greater, for each uninsured employee for
2 every day the employer neglected to secure liability.

3 (b) ~~Additionally, an employer who fails to comply with the provisions of~~
4 ~~section 687 of this title for a period of five days after notice from the~~
5 ~~commissioner shall be assessed an administrative penalty of not more than~~
6 ~~\$250.00 for every day after five days that the employer fails to secure workers'~~
7 ~~compensation coverage as required in section 687 of this title. The~~
8 ~~commissioner may, after giving notice and after the expiration of the five day~~
9 ~~period, post a notice at a conspicuous place on the premises of the employer~~
10 ~~informing the employees that their employer has failed to comply with the~~
11 ~~provisions of section 687 of this title and ordering the premises closed until~~
12 ~~workers' compensation insurance is secured. If, after investigation, the~~
13 ~~commissioner determines that an employer has failed to comply with the~~
14 ~~provisions of section 687 of this title, failed to properly classify an individual~~
15 ~~as an employee, or provided false, incomplete, or misleading information~~
16 ~~concerning the number of employees for the purpose of obtaining a lower~~
17 ~~workers' compensation premium, the commissioner shall issue a stop-work~~
18 ~~order requiring the immediate cessation of all operations of that employer at~~
19 ~~every site on which there is a violation and shall assess an administrative~~
20 ~~penalty of \$250.00 for each employee for each day of noncompliance. The~~
21 ~~order is effective on service on the employer and shall be posted upon receipt~~

1 at each affected work site. The stop-work order shall remain in effect until the
2 commissioner determines that the employer is no longer in violation; is in
3 compliance with the requirements of this chapter; and has paid the
4 administrative penalty assessed and issues an order to that effect.

5 (c) ~~If any employer fails to secure or retain workers' compensation~~
6 ~~insurance within two years after receiving an order to obtain insurance or a~~
7 ~~notice that the commissioner intends to order the premises closed as described~~
8 ~~in subsection (b) of this section, without further notice, the commissioner shall~~
9 ~~order the premises of that employer closed and that all business operations~~
10 ~~cease until the employer has secured workers' compensation insurance.~~

11 (d) An employer subject to a stop-work order may appeal the order to the
12 commissioner within ten days after service of the order. The commissioner
13 shall hold a hearing and render a decision within two days after the appeal is
14 filed.

15 (e) An employer against whom a valid stop-work order has been issued
16 shall not contract, directly or indirectly, with the state or any of its subdivisions
17 for three years following the date of the issuance of the valid stop-work order.

18 Sec. 2. 21 V.S.A. § 708 is amended to read:

19 § 708. PENALTY FOR FALSE REPRESENTATIONS

20 (a) Action by the commissioner of labor. A person who willfully makes a
21 false statement or representation, for the purpose of obtaining any benefit or

1 payment under the provisions of this chapter, either for ~~her or~~ himself or
2 herself or for any other person, after notice and opportunity for hearing, may
3 be assessed an administrative penalty of not more than \$5,000.00 total, and
4 shall forfeit all or a portion of any right to compensation under the provisions
5 of this chapter, as determined to be appropriate by the commissioner after a
6 determination by the commissioner that the person has willfully made a false
7 statement or representation of a material fact.

8 (b) When the department of labor has sufficient reason to believe that an
9 employer has made a false statement or representation for the purpose of
10 obtaining a lower workers' compensation premium, the department shall refer
11 the alleged violation to the commissioner of banking, insurance, securities, and
12 health care administration for the commissioner's consideration of
13 enforcement pursuant to 8 V.S.A. § 3661(c).

14 (c) Any penalty assessed or order issued under this chapter or 8 V.S.A.
15 § 3661 shall continue in effect against any successor employer that has one or
16 more of the same principals or corporate officers as the employer against
17 which the penalties were assessed or order issued and is engaged in the same
18 or similar business.

19 (d) Notwithstanding the assessment of an administrative penalty under this
20 section, a person may be prosecuted under 13 V.S.A. § 2024.

1 Sec. 3. 8 V.S.A. § 3661 is amended to read:

2 § 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND
3 PENALTIES

4 (a) When the commissioner believes that an insurer or an officer or agent
5 ~~thereof of the insurer~~, or any other person, has violated the law, an
6 administrative rule of the department, or an order of the commissioner relating
7 to insurance, or has not complied with its requirements, ~~he or she~~ the
8 commissioner may make take any or all of the following actions:

9 (1) ~~may issue an order~~ Order the person to cease and desist ~~such the~~
10 violation or activity. ~~Such an~~ The order shall be is subject to de novo judicial
11 review in the Washington superior court, but ~~such the~~ the review shall not stay ~~the~~
12 enforcement of the commissioner's order while under review, unless the court
13 shall so determine after a preliminary hearing that a stay of enforcement will
14 not unduly injure the interests of the people of the state, in which case a stay of
15 execution may be granted; .

16 (2) ~~may report~~ Report each violation with any related information ~~he or~~
17 ~~she has relating thereto~~ to the attorney general who ~~shall~~ may prosecute
18 ~~therefor if he or she deems it advisable~~. The offender shall be fined not more
19 than \$2,000.00 ~~as a result of any such prosecution by the attorney general; and~~
20 for a conviction.

1 (b) Each contract awarded under this section for any state project with a
2 construction cost exceeding \$100,000.00 and which is authorized or funded in
3 whole or in part by a capital construction act pursuant to section 701a of
4 Title 32, including such a project of the University of Vermont and State
5 Agricultural College and of the Vermont State Colleges, shall provide that all
6 construction employees working on the project shall be paid no less than the
7 mean prevailing wage published periodically by the department of labor in its
8 occupational employment and wage survey.

9 (c) In the construction of any state project, local capable labor shall be
10 utilized whenever practicable, but this section shall not be construed to compel
11 any person to discharge or lay off any regular employee.

12 (d) ~~This Subsections (a) through (c) of this~~ section shall not apply to
13 maintenance or construction projects carried out by the agency of
14 transportation and of the department of forests, parks and recreation.

15 (e) An employer who violates 13 V.S.A. § 2024, 21 V.S.A. § 708, or
16 8 V.S.A. § 3661 who fails to accurately classify one or more individuals as
17 employees or otherwise misclassifies or omits an employee for the purposes of
18 avoiding the requirements of chapter 5, 9, or 17 of Title 21 is prohibited from
19 contracting, directly or indirectly, with the state or any of its subdivisions for a
20 period of up to three years from the date of the violation. The duration of the

1 prohibition shall be determined based on the seriousness of the violation in
2 consideration of any or all of the following:

3 (1) The size of the employer's business.

4 (2) The length of time the contractor was not in compliance with chapter
5 5, 9, or 17 of Title 21.

6 (3) The number of individuals who were inaccurately classified.

7 (4) Whether the employer paid any penalty for failure to be in
8 compliance with chapter 5, 9, or 17 of Title 21.

9 (5) Whether the employer is in good standing with an agreed-upon
10 payment plan.

11 (f) An employer who has a second or subsequent violation of subsection (e)
12 of this section or has been issued a valid stop-work order pursuant to 21 V.S.A.
13 § 692 is prohibited from contracting with the state or any of its subdivisions for
14 three years from the date of the second or subsequent violation or the issuance
15 of the valid stop-work order.

16 (g) The agencies of administration and of transportation shall publish on
17 their websites the name of any employer that has been barred from being
18 awarded state contracts under subsection (e) or (f) of this section.

19 Sec. 5. 21 V.S.A. § 1314 is amended to read:

20 § 1314. -REPORTS AND RECORDS

21 * * *

1 (h) Any employing unit which fails to report employment and separation
2 information with respect to a claimant and wages paid to a claimant required
3 under subsection (b) of this section shall be subject to a penalty of ~~\$35.00~~
4 \$500.00 for each ~~such~~ report not received by the prescribed due date, which
5 penalty shall be collected in the manner provided for the collection of
6 contributions in section 1329 of this title and shall be paid into the contingent
7 fund provided in section 1365 of this title. If the employing unit demonstrates
8 that its failure was due to a reasonable cause, the commissioner may, in his or
9 her discretion, waive the penalty.

10 Sec. 6. 21 V.S.A. § 1314a is amended to read:

11 § 1314a. -QUARTERLY WAGE REPORTING REQUIRED

12 * * *

13 (f)(1) Any employing unit or employer which fails to file any report
14 required by this section shall be subject to a penalty of ~~\$35.00~~ \$500.00 for each
15 ~~such~~ report not received by the prescribed due dates, which shall be collected
16 in the manner provided for the collection of contributions in section 1329 of
17 this title and shall be paid into the contingent fund provided in section 1365 of
18 this title. If the employing unit demonstrates that its failure was due to a
19 reasonable cause, the commissioner may waive the penalty.

20 (2) Any employer or employing unit that fails to properly classify an
21 individual regarding the status of employment is subject to a penalty of

1 \$5,000.00 for each improperly classified employee which shall be collected in
2 the manner provided for the collection of contributions in section 1329 of this
3 title and shall be paid into the contingent fund provided in section 1365 of this
4 title. If the employing unit demonstrates that its failure was due to a
5 reasonable cause, the commissioner may waive the penalty.

6 * * *

7 (h) The commissioner may require that an employer or employing unit
8 provide the department of labor with the federal employer identification
9 number and name of an independent contractor on each quarterly employment
10 and wage report for the quarter that the contractor provided service.

11 Sec. 7. 21 V.S.A. § 1328 is amended to read:

12 § 1328. FILING REPORTS; FAILURE

13 The commissioner shall impose a penalty of ~~\$35.00~~ \$500.00 for each failure
14 by an employer to file any contribution report required under section 1322 of
15 this title on or before the date on which the report is due, which shall be
16 collected in the manner provided for the collection of contributions in section
17 1329 of this title and shall be paid into the contingent fund provided in section
18 1365 of this title. If the employer demonstrates that its failure was due to a
19 reasonable cause, the commissioner may waive the penalty.

1 Sec. 8. 21 V.S.A. § 1369 is amended to read:

2 § 1369. FALSE STATEMENTS TO AVOID CHAPTER

3 A person shall not wilfully ~~and intentionally make~~ make a false statement or
4 representation to avoid becoming or remaining subject to this chapter, or to
5 avoid or reduce a contribution or other payment required of an employer under
6 this chapter.

7 Sec. 9. 21 V.S.A. § 1373 is amended to read:

8 § 1373. GENERAL PENALTY

9 A person who violates a provision of this chapter or any lawful rule or
10 regulation of the board, for which no other penalty is provided, shall be fined
11 not more than ~~\$50.00~~ \$5,000.00 or be imprisoned not more than 30 days, or
12 both.

13 Sec. 10. EMPLOYEE MISCLASSIFICATION; INTERAGENCY
14 COOPERATION; REPORT

15 (a) The agency of administration shall ensure that all state agencies and
16 departments share information concerning any employer that appears to have
17 misclassified one or more employees as independent contractors.

18 (b) Upon determining that an employer misclassified one or more
19 employees as independent contractors, the commissioner of the department of
20 labor shall notify the division administering unemployment insurance services,
21 the division of workers' compensation, the department of taxes, and the

1 attorney general, each of which shall investigate the employer's compliance
2 with applicable state laws.

3 (c) The department of labor shall conduct a public education and outreach
4 program concerning employee misclassification.

5 (d) The department of banking, insurance, securities, and health care
6 administration and the department of labor shall make quarterly reports to the
7 house committee on commerce and economic development and the senate
8 committee on economic development, housing and general affairs regarding
9 their investigation and enforcement efforts as they relate to employee
10 misclassification and the enforcement of Vermont labor standards more
11 generally, including all the following:

12 (1) The number and outcome of departmental audits and investigations.

13 (2) An assessment of the efficacy of the new workers' compensation
14 fraud staff positions created in Sec. 106 of No. 54 of the Acts of 2009.

15 (3) The financial costs of misclassification and miscoding.

16 (4) The success of the employee misclassification public education and
17 outreach program.

18 Sec. 11. DEPARTMENT OF LABOR EMPLOYEE MISCLASSIFICATION
19 REPORTING SYSTEM

20 The department of labor shall create and maintain an online employee
21 misclassification reporting system. The system shall be designed to allow

1 citizens to report suspected cases of employee misclassification to the
2 department.

3 Sec. 12. INSURANCE FRAUD TASK FORCE

4 (a) There is created an insurance fraud task force to be composed of seven
5 members to include the following:

6 (1) The commissioner of banking, insurance, securities, and health care
7 administration or designee.

8 (2) The attorney general or designee.

9 (3) Two members of the house to be appointed by the speaker.

10 (4) Two members of the senate to be appointed by the committee on
11 committees.

12 (5) A member of the insurance industry appointed by the American
13 Insurance Association.

14 (b) The task force shall meet as needed.

15 (c) The task force shall:

16 (1) Solicit broad-based input from insurers and members of law
17 enforcement on the development of an insurance fraud bureau similar to the
18 Massachusetts model.

19 (2) Issue a final report on or before January 15, 2011. The final report
20 shall be provided to the house committee on commerce and economic
21 development and the senate committee on economic development, housing and

- 1 general affairs and shall outline the task force's findings and recommendations
- 2 regarding the development of an insurance fraud bureau as well as any other
- 3 relevant issues.