

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~~ 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 ~~(3) may, after After notice and opportunity for hearing, impose a civil~~  
2 administrative penalty of not more than \$1,000.00 for each violation, and not  
3 more than \$10,000.00 for each willful violation.

4 (b) The powers vested in the commissioner by this section shall be in  
5 addition to any other powers to enforce penalties, fines, or forfeitures  
6 authorized by law with respect to violations of the law relating to insurance,  
7 except that the commissioner shall not impose an administrative penalty under  
8 subdivision (a)(3) of this section if the commissioner may impose another  
9 administrative penalty authorized by law for the same violation.

10 (c) An employer who makes a false statement or representation that results  
11 in a lower workers' compensation premium, after notice and opportunity for  
12 hearing before the commissioner, may be assessed an administrative penalty of  
13 ~~not more than \$20,000.00~~ up to three times the amount of the benefit received  
14 as a result of the false statement or representation in addition to any other  
15 appropriate penalty.

16 \* \* \*

17 Sec. 4. 29 V.S.A. § 161 is amended to read:

18 § 161. REQUIREMENTS ON STATE CONSTRUCTION PROJECTS

19 (a) Bids; selection.

20 \* \* \*

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.~~  
4

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

~~§ 692. PENALTIES~~

~~(a) If after a hearing under section 688 of this title, the commissioner determines that an employer has failed to comply with the provisions of section 687 of this title, the employer shall be assessed an administrative penalty of not more than \$100.00 for every day for the first seven days the employer neglected to secure liability, and not more than \$150.00 for every day thereafter.~~

~~(b) Additionally, an employer who fails to comply with the provisions of section 687 of this title for a period of five days after notice from the commissioner shall be assessed an administrative penalty of not more than \$250.00 for every day after five days that the employer fails to secure workers' compensation coverage as required in section 687 of this title. The commissioner may, after giving notice and after the expiration of the five day period, post a notice at a conspicuous place on the premises of the employer informing the employees that their employer has failed to comply with the provisions of section 687 of this title and ordering the premises closed until workers' compensation insurance is secured. If, after investigation, the commissioner determines that an employer has failed to comply with the provisions of section 687 of this title, the commissioner shall issue a stop-work order requiring the immediate cessation of all operations of that employer at every site on which there is a violation. An employer that is issued an initial stop-work order shall be assessed an administrative penalty of \$250.00 for each employee for each day of noncompliance, beginning one business day after the order is issued. An employer that is issued a second or subsequent stop-work order shall be assessed an administrative penalty of \$250.00 for each employee for each day of noncompliance, beginning when the order is issued. Except as provided in subsection (e) of this section, the order is effective on service on the employer and shall be posted upon receipt at each affected work site. The stop-work order shall remain in effect until the commissioner determines that the employer is no longer in violation and is in compliance with the requirements of this chapter, and the commissioner issues~~

~~an order lifting the stop-work order. Upon making the determination, the commissioner shall issue the order without delay.~~

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

~~An employer subject to a stop-work order may appeal the order to the commissioner after securing workers' compensation insurance. The appeal must be made within ten days after service of the order. The commissioner shall hold a hearing and render a decision no later than five days after the appeal is filed. The stop-work order shall not be in effect during the pendency of the appeal. No administrative penalties shall be assessed from the time of the hearing until a decision is rendered. The stop-work order shall be lifted, and any administrative penalty assessed under subsection (b) of this section shall be rescinded if the commissioner finds that the employer was not in violation of section 687 of this title.~~

~~(d) Pursuant to 29 V.S.A. § 161, an employer against whom a valid stop-work order has been issued is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date of the issuance of the valid stop-work order.~~

~~(e) When there are multiple employers at a worksite, the stop-work order shall be in effect only against the employer that was issued the order, and shall take effect 24 hours after it is served.~~

~~(f) A stop-work order issued under this section may be served by an agent of the commissioner, who shall make return in the same manner as sheriffs, deputy sheriffs, or constables make after serving a summons.~~

~~(g) If the commissioner determines that issuing a stop-work order pursuant to subsection (b) of this section would immediately threaten the safety or health of the public, the commissioner may permit work to continue until the immediate threat to public safety or health is removed. The commissioner shall document the reasons for permitting work to continue and the document shall be available to the public.~~

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

§ 708. PENALTY FOR FALSE REPRESENTATIONS

~~(a) Action by the commissioner of labor. A person who willfully makes a false statement or representation, for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for her or himself or~~

~~herself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$5,000.00 \$20,000.00 total, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the commissioner after a determination by the commissioner that the person has willfully made a false statement or representation of a material fact.~~

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

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

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

~~Sec. 3. 21 V.S.A. § 710 is amended to read:~~

~~§ 710. UNLAWFUL DISCRIMINATION~~

~~\* \* \*~~

~~(c) At the request of an individual who has alleged that an employer has made a false statement or misclassified employees, the department shall not include the individual's name or contact information in any publication or public report, unless required by law.~~

~~(d) An employer shall not retaliate or take any other negative employment action against an individual because the employer knows or suspects that the individual has filed a complaint with the department or other authority, or reported a violation of this chapter, or cooperated in an investigation of misclassification, discrimination, or other violation of this chapter.~~

~~(e) The attorney general or a state's attorney may enforce the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurance, and conducting civil investigations in accordance with the procedures established in sections 2458-2461 of Title 9 as though discrimination under this section were an unfair act in commerce.~~

~~Sec. 4. 8 V.S.A. § 3661 is amended to read:~~

~~§ 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND PENALTIES~~

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

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

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

~~(3) ~~may, after~~ After notice and opportunity for hearing, impose a civil administrative penalty of not more than \$1,000.00 for each violation, and not more than \$10,000.00 for each willful violation.~~

~~(b) The powers vested in the commissioner by this section shall be in addition to any other powers to enforce penalties, fines, or forfeitures authorized by law with respect to violations of the law relating to insurance, except that the commissioner shall not impose an administrative penalty under subdivision (a)(3) of this section if the commissioner may impose another administrative penalty authorized by law for the same violation.~~

~~(c) An employer who makes a false statement or representation that results in a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner, may be assessed an administrative penalty of not more than \$20,000.00 in addition to any other appropriate penalty.~~

~~\*\*\*~~

~~Sec. 5. 29 V.S.A. § 161 is amended to read:~~

~~§ 161. REQUIREMENTS ON STATE CONSTRUCTION PROJECTS~~

~~(a) Bids; selection.~~

\* \* \*

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

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

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

*(e) An employer who violates 13 V.S.A. § 2024, 21 V.S.A. § 708, or 8 V.S.A. § 3661, who fails to classify accurately ~~to accurately classify~~ one or more individuals as employees or otherwise misclassifies or omits an employee for the purposes of avoiding the requirements of chapter 5, 9, or 17 of Title 21, or has been issued a valid stop-work order pursuant to 21 V.S.A. § 692, is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years from the date of the violation. The duration of the prohibition shall be determined based on the seriousness of the violation in consideration of any or all of the following:*

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

*~~(1)(2)~~ The length of time the contractor was not in compliance with chapter 5, 9, or 17 of Title 21.*

*~~(2)(3)~~ The number of individuals who were inaccurately classified.*

*~~(3)(4)~~ Whether the employer paid any penalty for failure to be in compliance with chapter 5, 9, or 17 of Title 21.*

*~~(4)(5)~~ Whether the employer is in good standing with an agreed-upon payment plan.*

*~~(5)(6)~~ The number of times the contractor was not in compliance with chapter 5, 9, or 17 of Title 21 or has been subject to stop-work orders.*

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

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

~~§ 1314. –REPORTS AND RECORDS~~

~~\* \* \*~~

~~(h) Any employing unit which fails to report employment and separation information with respect to a claimant and wages paid to a claimant required under subsection (b) of this section shall be subject to a penalty of ~~\$35.00~~ \$100.00 for each ~~such~~ report not received by the prescribed due date, which penalty shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may, in his or her discretion, waive the penalty.~~

~~Sec. 7. 21 V.S.A. § 1314a is amended to read:~~

~~§ 1314a. –QUARTERLY WAGE REPORTING REQUIRED~~

~~\* \* \*~~

~~(f)(1) Any employing unit or employer which fails to file any report required by this section shall be subject to a penalty of ~~\$35.00~~ \$100.00 for each ~~such~~ report not received by the prescribed due dates, which shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may wave or reduce the penalty.~~

~~(2) Any employing unit or employer that fails to classify properly to properly classify an individual regarding the status of employment is subject to a penalty of not more than \$5,000.00 for each improperly classified employee which shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may wave the penalty.~~

~~\* \* \*~~

~~Sec. 8. 21 V.S.A. § 1328 is amended to read:~~

~~§ 1328. FILING REPORTS; FAILURE~~

~~The commissioner shall impose a penalty of ~~\$35.00~~ \$250.00 for each failure by an employer to file any contribution report required under section 1322 of this title on or before the date on which the report is due, which shall be collected in the manner provided for the collection of contributions in section~~

~~1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employer demonstrates that its failure was due to a reasonable cause, the commissioner may waive or reduce the penalty.~~

~~Sec. 9. 21 V.S.A. § 1369 is amended to read:~~

~~§ 1369. FALSE STATEMENTS TO AVOID CHAPTER~~

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

~~Sec. 10. 21 V.S.A. § 1373 is amended to read:~~

~~§ 1373. GENERAL PENALTY~~

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

~~Sec. 11. EMPLOYEE MISCLASSIFICATION; INTERAGENCY COOPERATION; REPORT~~

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

~~(b) Upon determining that an employer misclassified one or more employees as independent contractors, the commissioner of the department of labor shall notify the division administering unemployment insurance services, the division of workers' compensation, the department of taxes, and the attorney general, each of which shall investigate the employer's compliance with applicable state laws.~~

~~(c) The commissioner of the department of labor, the commissioner of the department of taxes, and the attorney general shall develop memoranda of understanding regarding the employee misclassification provisions of this section. The memoranda shall describe procedures regarding the investigation of employee misclassification, information sharing, enforcement, and any other subject necessary to implement the provisions of this section.~~

~~(d) The department of labor shall conduct public education and outreach concerning employee misclassification.~~

~~(e) The department of banking, insurance, securities, and health care administration and the department of labor shall make an annual report on or before January 15th to the house committee on commerce and economic~~

~~development and the senate committee on economic development, housing and general affairs regarding their investigation and enforcement efforts as they relate to employee misclassification and the enforcement of Vermont labor standards more generally, including all the following:~~

- ~~(1) The number and outcome of departmental audits and investigations.~~
- ~~(2) An assessment of the efficacy of the new workers' compensation fraud staff positions created in Sec. 106 of No. 54 of the Acts of 2009.~~
- ~~(3) The financial costs of misclassification and miscoding.~~
- ~~(4) The success of employee misclassification public education and outreach.~~

~~Sec. 12. DEPARTMENT OF LABOR EMPLOYEE MISCLASSIFICATION REPORTING SYSTEM~~

~~The department of labor shall create and maintain an online employee misclassification reporting system. The system shall be designed to allow citizens to make reports of suspected cases of employee misclassification to the department. The department shall ensure that the name of a citizen making a report is kept confidential.~~

~~Sec. 13. INSURANCE COMPLIANCE AND FRAUD TASK FORCE~~

~~(a) There is created an insurance compliance and fraud task force to be composed of 11 members to include the following:~~

- ~~(1) The commissioner of banking, insurance, securities, and health care administration or designee.~~
- ~~(2) The commissioner of the department of labor or designee.~~
- ~~(3) The commissioner of the department of public safety or designee.~~
- ~~(4) The attorney general or designee.~~
- ~~(5) Two members of the house to be appointed by the speaker.~~
- ~~(6) Two members of the senate to be appointed by the committee on committees.~~
- ~~(7) A member of the insurance industry appointed by the American Insurance Association.~~
- ~~(8) Two members, one to represent the interests of large businesses and one to represent the interests of small businesses, appointed by the Vermont Chamber of Commerce.~~

~~(a) There is created an insurance compliance and fraud task force to be composed of nine members to include the following:~~

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

(2) The commissioner of the department of labor or designee.

(3) The commissioner of the department of public safety or designee.

(4) The attorney general or designee.

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

(6) Two members of the senate to be appointed by the committee on committees.

(7) A member of the insurance industry appointed by the American Insurance Association

(b) The speaker of the house of representatives and the president pro tempore of the senate, in consultation, shall select a chair of the task force from among its appointed members.

(c) The task force shall meet as needed. Legislative council and the joint fiscal office shall provide administrative support.

(d) The task force shall:

(1) Solicit broad-based input from insurers and members of law enforcement on the development of an insurance compliance and fraud bureau similar to the Massachusetts model and analyze the following issues and make recommendations regarding:

(A) The feasibility of creating an insurance compliance and fraud bureau in Vermont, including the costs to the state to implement, administer, and oversee the bureau.

(B) The likely impact of an insurance compliance and fraud bureau on the incidence of insurance fraud in the state.

(C) The structure of an insurance compliance and fraud bureau, including how it would be created, how it would operate, and its relationship to state agencies, law enforcement, and private insurers.

(D) The types of insurance fraud that the bureau would investigate.

(E) The costs and benefits of creating a tri-state insurance and compliance fraud bureau with New Hampshire and Maine.

(F) The timeline for the creation and implementation of an insurance compliance and fraud bureau.

(G) The fines and penalties for insurance fraud, including debarment, and whether they should be changed.

~~(H) Any other relevant issues regarding the creation and operation of an insurance compliance and fraud bureau.~~

~~(2) Issue a final report on or before January 15, 2011. The final report shall be provided to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs and shall outline the task force's findings and recommendations.~~

~~Sec. 14. EFFECTIVE DATES~~

~~This section and Secs. 11, 12, and 13 shall take effect July 1, 2010. The remaining sections shall take effect on January 1, 2011.~~

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~~Sec. 1. DEPARTMENT OF LABOR MISCLASSIFICATION;  
ENFORCEMENT PERSONNEL; FUNDING~~

~~(a) No later than August 1, 2010, the department of labor shall have a total of four limited service workers' compensation fraud investigator employees to investigate classifications and enforce the laws relating to worker, business, and job duty classifications.~~

~~(b) In addition to the percentage of premiums to be paid by employers into the workers' compensation administration fund pursuant to 21 V.S.A. § 711, employers shall pay an additional 0.055 percent to fund one of the investigator positions required pursuant to subsection (a) of this section.~~

~~Sec. 2. 13 V.S.A. § 2024 is amended to read:~~

~~§ 2024. WORKERS' COMPENSATION FRAUD; CRIMINAL PENALTIES~~

~~Any person, including an employee, employer, medical case manager, health care provider, vocational rehabilitation provider, or workers' compensation insurance carrier who, knowingly and with intent to defraud makes a false statement or representation for the purpose of obtaining, affecting, or denying any benefit or payment under the provisions of chapter 9 of Title 21 or the provisions of Part 3, relating to Insurance, of Title 8, either for ~~her~~ herself or himself or for any other person, shall forfeit all benefits or payments obtained as a result of the false statement or representation and all or a portion of any right to compensation under the provisions of chapter 9 of Title 21 as determined by the commissioner and:~~

~~(1) For fraud involving \$10,000.00 or more, be fined not more than \$100,000.00 or imprisoned not more than three years, or both.~~

~~(2) For fraud involving less than \$10,000.00, be fined not more than \$10,000.00 or imprisoned not more than two years, or both.~~

Sec. 3. 21 V.S.A. § 692 is amended to read:

§ 692. PENALTIES; FAILURE TO INSURE; STOP WORK ORDERS

~~(a) Failure to insure. If after hearing under section 688 of this title, the commissioner determines that an employer has failed to comply with the provisions of section 687 of this title, the employer shall be assessed an administrative penalty of not more than \$100.00 for every day the employer neglected to secure liability.~~

~~(b) Stop work orders. ~~Additionally,~~ If an employer ~~who~~ fails to comply with the provisions of section 687 of this title ~~for a period of five days after notice from investigation by the commissioner,~~ the commissioner shall issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. ~~If the commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the commissioner may permit work to continue until the immediate threat to public safety or health is removed. The commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than \$250.00 for every day after five days that the employer fails to secure workers' compensation coverage as required in section 687 of this title. The~~ When a stop work order is issued, the commissioner may, after giving notice and after the expiration of the five day period, shall post a notice at a conspicuous place on the premises worksite of the employer informing the employees that their employer has failed to comply with the provisions of section 687 of this title and ordering the premises closed that work at the worksite has been ordered to cease until workers' compensation insurance is secured. The stop-work order shall be rescinded as soon as the commissioner determines that the employer is in compliance with section 687 of this title.~~

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

~~Penalty for violation of stop work order. An employer who violates a stop work order described in subsection (b) of this section is subject to:~~

~~(1) A civil penalty of not more than \$5,000.00 for the first violation and a civil penalty of not more than \$10,000.00 for a second or subsequent violation; or~~

~~(2) A criminal fine of not more than \$10,000.00 or imprisonment for not more than 180 days, or both.~~

(a) Failure to insure. ~~If after a hearing under section 688 of this title, the commissioner determines that an employer has failed to comply with the provisions of section 687 of this title, the employer shall be assessed an administrative penalty of not more than \$100.00 for every day the first seven days the employer neglected to secure liability and not more than \$150.00 for every day thereafter.~~

(b) Stop-work orders. ~~Additionally, If an employer who fails to comply with the provisions of section 687 of this title for a period of five days after notice from investigation by the commissioner, the commissioner shall issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the commissioner may permit work to continue until the immediate threat to public safety or health is removed. The commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than \$250.00 for every day after five days that the employer fails to secure workers' compensation coverage after the commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than \$250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. The~~ When a stop-work order is issued, the commissioner may, after giving notice and after the expiration of the five-day period, shall post a notice at a conspicuous place on the premises work site of the employer informing the employees that their employer has failed to comply with the provisions of section 687 of this title and ordering the premises closed that work at the work site has been ordered to cease until workers' compensation insurance is secured. The stop-work order shall be rescinded as soon as the commissioner determines that the employer is in compliance with section 687 of this title. An employer against whom a stop-work order has been issued is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years following the date of the issuance of the stop-work order, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any contest of the prohibition of the employer from contracting with the state or its subdivisions.

(c) ~~If any employer fails to secure or retain workers' compensation insurance within two years after receiving an order to obtain insurance or a~~

~~notice that the commissioner intends to order the premises closed as described in subsection (b) of this section, without further notice the commissioner shall order the premises of that employer closed and that all business operations cease until the employer has secured workers' compensation insurance.~~

Penalty for violation of stop-work order. In addition to any other penalties, an employer who violates a stop-work order described in subsection (b) of this section is subject to:

(1) A civil penalty of not more than \$5,000.00 for the first violation and a civil penalty of not more than \$10,000.00 for a second or subsequent violation; or

(2) A criminal fine of not more than \$10,000.00 or imprisonment for not more than 180 days, or both.

Sec. 4. 4 V.S.A. § 1102(b) is amended to read:

(b) The judicial bureau shall have jurisdiction of the following matters:

\* \* \*

(19) Violations of 21 V.S.A. § 692(c)(1).

Sec. 5. 21 V.S.A. § 708 is amended to read:

§ 708. PENALTY FOR FALSE REPRESENTATIONS

~~(a) Action by the commissioner of labor. A person who willfully makes a false statement or representation, for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for ~~her~~ herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$5,000.00 total, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the commissioner after a determination by the commissioner that the person has willfully made a false statement or representation of a material fact.~~

(a) Action by the commissioner of labor. A person who willfully makes a false statement or representation, for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for ~~her~~ herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than ~~\$5,000.00 total~~ \$20,000.00, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the commissioner after a determination by the commissioner that the person has willfully made a false statement or representation of a material fact. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for

up to three years following the date the employer was found to have made a false statement or misrepresentation of a material fact, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any contest relating to the prohibition of the employer from contracting with the state or its subdivisions.

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

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

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

Sec. 5a. 8 V.S.A. § 3661(c) is amended to read:

(c) An employer who makes a false statement or representation that results in a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner, may be assessed an administrative penalty of not more than \$20,000.00 in addition to any other appropriate penalty. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have made a false statement or misrepresentation, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any appeal relating to prohibiting the employer from contracting with the state or its subdivisions.

Sec. 5b. 29 V.S.A. § 161 is amended to read:

§ 161. REQUIREMENTS ON STATE CONSTRUCTION PROJECTS

(a) Bids; selection.

\* \* \*

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

*(e) The agency of administration shall ensure that the state and any of its subdivisions do not contract, directly or indirectly, with employers who are prohibited from contracting by the commissioner of labor pursuant to 21 V.S.A. § § 692, 708, and 1314a or the commissioner of banking, insurance, securities, and health care administration pursuant to 8 V.S.A. § 3661.*

*(f) The agency of administration shall maintain a current list of employers that have been prohibited from contracting with the state or any of its subdivisions, and the agencies of administration and of transportation shall publish that list on their websites.*

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

§ 1314. —REPORTS AND RECORDS; FAILURE TO REPORT EMPLOYMENT INFORMATION

\* \* \*

*(h) Any employing unit ~~which~~ that fails to report employment and separation information with respect to a claimant and wages paid to a claimant required under subsection (b) of this section shall be subject to a penalty of ~~\$35.00~~ \$100.00 for each ~~such~~ report not received by the prescribed due date, which penalty shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may, ~~in his or her discretion~~, waive the penalty.*

Sec. 7. DEPARTMENT OF LABOR; EMPLOYEE MISCLASSIFICATION REPORTING SYSTEM

*The department of labor shall create and maintain an online employee misclassification reporting system. The system shall be designed to allow individuals to report suspected cases of employee misclassification, failure to have appropriate insurance coverage, and claimant fraud to the department to ensure that this information is distributed to appropriate departments and agencies. The department shall keep the name of the complainant confidential.*

Sec. 8. 21 V.S.A. § 710 is amended to read:

§ 710. UNLAWFUL DISCRIMINATION

\* \* \*

~~(c) At the request of an individual who has alleged that an employer has made a false statement or misclassified one or more employees, the department shall not include the individual's name or contact information in any publication or public report, unless it is required by law or necessary to enable enforcement of this chapter.~~

(c) The department shall not include in any publication or public report the name or contact information of any individual who has alleged that an employer has made a false statement or misclassified any employees, unless it is required by law or necessary to enable enforcement of this chapter.

(d) An employer shall not retaliate or take any other negative action against an individual because the employer knows or suspects that the individual has filed a complaint with the department or other authority, or reported a violation of this chapter, or cooperated in an investigation of misclassification, discrimination, or other violation of this chapter.

(e) The attorney general or a state's attorney may enforce the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurance and conducting civil investigations in accordance with the procedures established in sections 2458-2461 of Title 9 V.S.A. §§ 2458-2461 as though discrimination under this section were an unfair act in commerce.

Sec. 9. 21 V.S.A. § 1314a is amended to read:

§ 1314a. —QUARTERLY WAGE REPORTING REQUIRED ; MISCLASSIFICATION; PENALTIES

\* \* \*

~~(f)(1) Any employing unit or employer which ~~that~~ fails to file:~~

~~(A) File any report required by this section shall be subject to a penalty of ~~\$35.00~~ \$100.00 for each ~~such~~ report not received by the prescribed due dates, ~~which~~.~~

~~(B) Properly classify an individual regarding the status of employment is subject to a penalty of not more than \$5,000.00 for each improperly classified employee.~~

~~(2) Penalties under this subsection shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may waive the penalty.~~

*(f)(1) Any employing unit or employer ~~which~~ that fails to file:*

*(A) File any report required by this section shall be subject to a penalty of ~~\$35.00~~ \$100.00 for each ~~such~~ report not received by the prescribed due dates, ~~which~~.*

*(B) Properly classify an individual regarding the status of employment is subject to a penalty of not more than \$5,000.00 for each improperly classified employee. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have failed to properly classify, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any appeal relating to prohibiting the employer from contracting with the state or its subdivisions.*

*(2) Penalties under this subsection shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employing unit demonstrates that its failure was due to a reasonable cause, the commissioner may waive or reduce the penalty.*

\* \* \*

*Sec. 10. 21 V.S.A. § 1328 is amended to read:*

*§ 1328. FILING EMPLOYER QUARTERLY TAX CONTRIBUTION REPORTS; FAILURE*

*The commissioner shall impose a penalty of ~~\$35.00~~ \$100.00 for each failure by an employer to file any contribution report required under section 1322 of this title on or before the date on which the report is due, which shall be collected in the manner provided for the collection of contributions in section 1329 of this title and shall be paid into the contingent fund provided in section 1365 of this title. If the employer demonstrates that its failure was due to a reasonable cause, the commissioner may waive or reduce the penalty.*

*Sec. 11. 21 V.S.A. § 1369 is amended to read:*

*§ 1369. FALSE STATEMENTS TO AVOID ~~CHAPTER~~ UNEMPLOYMENT PROGRAM OBLIGATIONS*

*A person ~~shall not~~ who wilfully and intentionally make makes a material false statement or representation to avoid becoming or remaining subject to this chapter, or to avoid or reduce a contribution or other payment required of an employer under this chapter for either herself or himself or for any other*

person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$5,000.00.

Sec. 12. 21 V.S.A. § 1373 is amended to read:

§ 1373. GENERAL PENALTY; CIVIL

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

~~Sec. 13. EMPLOYEE MISCLASSIFICATION; INVESTIGATION AND ENFORCEMENT; INTERAGENCY REPORT~~

~~The department of banking, insurance, securities, and health care administration and the department of labor shall report on or before January 15, 2011, and again on January 15, 2012, to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs regarding their investigation and enforcement efforts as they relate to employee misclassification and the enforcement of Vermont labor standards, including all the following:~~

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

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

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

~~(4) The success of the employee misclassification public education and outreach program~~

Sec. 13. EMPLOYEE MISCLASSIFICATION; INVESTIGATION AND ENFORCEMENT; INTERAGENCY REPORT

(a) The agency of administration shall ensure that all state agencies and departments do the following:

(1) Coordinate to increase the efficiency and effectiveness of efforts to combat employee misclassification.

(2) Receive information concerning any employer determined to have misclassified one or more employees as independent contractors.

(b) The department of banking, insurance, securities, and health care administration and the department of labor shall report on or before January 15, 2011, and again on January 15, 2012, to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs regarding their investigation and

enforcement efforts as they relate to employee misclassification and the enforcement of Vermont labor standards, including all the following:

- (1) The number and outcome of departmental audits and investigations.
- (2) An assessment of the efficacy of the new workers' compensation fraud staff positions created in Sec. 106 of No. 54 of the Acts of 2009.
- (3) The financial costs of misclassification and miscoding.
- (4) The success of the employee misclassification public education and outreach program.

Sec. 14. 21 V.S.A. § 643a is amended to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the commissioner and shall include the date of the proposed discontinuance ~~and~~, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for seven days after the notice is received by the commissioner and the employee. Those payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the commissioner determines that the discontinuance is warranted or if otherwise ordered by the commissioner. Every notice shall be reviewed by the commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, ~~upon~~ after review of all the evidence in the file, the commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the commissioner shall order that payments continue until a hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the department that establishes that a preponderance of all evidence now supports the claim. If the commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce ~~such~~ a repayment order in any court of law having jurisdiction ~~of the amount involved.~~

*Sec. 15. 21 V.S.A. § 650 is amended to read:*

*§ 650. PAYMENT; AVERAGE WAGE; COMPUTATION*

*\* \* \**

*(e) If weekly compensation benefits or weekly accrued benefits are not paid within 21 days after becoming due and payable pursuant to an order of the commissioner, or in cases in which the overdue benefit is not in dispute, 10 percent of the overdue amount shall be added and paid to the employee, in addition to interest and any other penalties. In the case of an initial claim, benefits are due and payable upon entering into an agreement pursuant to subsection 662(a) of this title, upon issuance of an order of the commissioner pursuant to subsection 662(b) of this title, or if the employer has not denied the claim within 21 days after the claim is filed. Benefits are in dispute if the claimant has been provided actual written notice of the dispute within 21 days of the benefit being due and payable and the evidence reasonably supports the denial. Interest shall accrue and be paid on benefits that are found to be compensable during the period of nonpayment. The commissioner shall promptly review requests for payment under this section and, consistent with ~~the criteria in department rule 10.13~~ subsection 678(d) of this title, shall allow for the recovery of reasonable attorney fees associated with an employee's successful request for payment under this subsection.*

*(f) When benefits have been awarded or are not in dispute as provided in subsection (e) of this section, the employer shall establish a weekday on which payment shall be mailed or deposited and notify the claimant and the department of that day. The employer shall ensure that each weekly payment is mailed or deposited on or before the day established. If the benefit payment is not mailed or deposited on the day established, the employer shall pay to the claimant a late fee of \$10.00 or five percent of the benefit amount, whichever is greater, for each weekly payment that is made after the established day. For the purposes of this subsection, "paid" means the payment is mailed to the claimant's mailing address or, in the case of direct deposit, transferred into the designated account. In the event of a dispute, proof of payment shall be established by affidavit.*

*Sec. 16. 21 V.S.A. § 655 is amended to read:*

*§ 655. PROCEDURE IN OBTAINING COMPENSATION; MEDICAL EXAMINATION; VIDEO AND AUDIO RECORDING*

*After an injury and during the period of disability, if so requested by his or her employer, or ordered by the commissioner, the employee shall submit ~~himself or herself~~ to examination, at reasonable times and places, ~~to~~ by a duly licensed physician or surgeon designated and paid by the employer. The*

~~*employee shall have the right to* may make a video or audio recording of any examination performed by the insurer's physician or surgeon or have a physician or surgeon licensed health care provider designated and paid by himself or herself the employee present at such the examination. Such The employer may make an audio recording of the examination. The right, however, of the employee to record the examination shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability. If an employee refuses to submit himself or herself to or in any way obstructs such the examination, his or her the employee's right to take or prosecute any proceeding under the provisions of this chapter shall be suspended until such the refusal or obstruction ceases, and compensation shall not be payable for the period which such the refusal or obstruction continues.~~

~~Sec. 17. Sec. during 32 of No. 54 of the Acts of 2009 is amended to read:~~

~~Sec. 32. WORKERS' COMPENSATION; STATE CONTRACTS;  
COMPLIANCE WITH DAVIS-BACON~~

~~(a) The agencies of administration and transportation shall establish procedures to assure that state contracting procedures and contracts are designed to minimize the incidents of miscoding of employees in NCCI job codes and misclassification of the status of workers as independent contractors rather than employees by state contractors on projects with a total project cost of more than \$250,000.00 by requiring those contractors to provide, at a minimum, all the following:~~

~~\* \* \*~~

~~(3) For construction and transportation projects over \$250,000.00, a payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information, including confirmation that contractors, subcontractors, and independent contractors have the appropriate workers' compensation coverage for all workers at the jobsite, and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the department of banking, insurance, securities, and health care administration, upon request, and shall be available to the public.~~

~~\* \* \*~~

~~(c) The agencies shall assure that any state contract funded in whole or in part with American Recovery and Reinvestment Act of 2009 (ARRA) monies or any project for which the state granted, allocated, or awarded ARRA monies~~

~~shall comply with the payment of Davis-Bacon wages when required by ARRA. However, in the event the applicable Davis-Bacon wages in any county have not been updated in the previous three years, the minimum state required wage for a state contract subject to Davis-Bacon wages under ARRA shall be that of the Vermont county that has most recently updated its applicable Davis-Bacon wages, provided this provision does not result in the loss of ARRA funds and is not otherwise contrary to federal law. In the event that the most recently updated Davis-Bacon wages cannot be determined due to the simultaneous updating by two or more counties, the agencies may select the minimum state-required wage for a state contract subject to Davis-Bacon wages under ARRA from among those counties.~~

Sec. 17. Sec. 32(b) of No. 54 of the Acts of 2009 is amended to read:

~~(b) The agencies shall require by rule or by develop a procedure that ensures enforcement of the prohibition against any contractor that violates classification requirements shall be has been prohibited or restricted from bidding on future state contracts for a period of time that corresponds to the seriousness of the classification violation by the commissioner of labor or the commissioner of banking, insurance, securities, and health care administration. The rules or procedures shall also provide for an appeal process from any such prohibition or restriction consistent with existing law.~~

Sec. 18. 18 V.S.A. § 906(8) is amended to read:

(8) Establishing, by rule, levels of individual certification and application forms for advanced emergency medical care. The commissioner ~~may~~ shall use the guidelines established by the National Highway Transportation Traffic Safety Administration (NHTSA) in the U.S. Department of Transportation as a standard or other comparable standards, except that a felony conviction shall not necessarily disqualify an applicant. The rules shall also provide that:

(A) An individual may apply for and obtain one or more additional certifications, including certification as an advanced emergency medical technician or as a paramedic.

(B) An individual certified by the commissioner as an emergency medical technician, advanced emergency medical technician, or a paramedic, who is affiliated with a licensed ambulance service, fire department, or rescue service, shall be able to practice fully within the statewide scope of practice for such level of certification as established by the commissioner by rule, which shall be adopted and implemented on a statewide basis no later than January 1, 2011, provided that such person is affiliated with a rescue service, fire department, or licensed ambulance service, or other state licensed medical facility defined by NHTSA's National EMS Scope of Practice Model

notwithstanding any law or rule to the contrary, and subject to the medical direction of the commissioner or designee.

~~(C) Unless otherwise provided under this section, an individual seeking any level of certification shall be required to pass an examination approved by the commissioner for that level of certification.~~

(C) ~~Unless otherwise provided under this section, an individual seeking any level of certification shall be required to pass an examination approved by the commissioner for that level of certification. Written and practical examinations shall not be required for recertification; however, to maintain certification, all individuals shall complete a specified number of hours of continuing education as established by rule by the commissioner.~~

(D) ~~If there is a hardship imposed on any applicant for a certification under this section because of unusual circumstances, the applicant may apply to the commissioner for a temporary or permanent waiver of one or more of the certification requirements, which the commissioner may ~~waive~~ grant for good cause.~~

~~(E) An applicant who has served as an advanced emergency medical technician, such as a hospital corpsman or a medic in the United States Armed Forces, or who is licensed as a registered nurse or a physician's assistant shall be granted a permanent waiver of the training requirements to become a certified emergency medical technician, an advanced emergency medical technician, or a paramedic, provided the applicant passes the applicable examination approved by the commissioner for that level of certification, and further provided that the applicant is affiliated with a rescue service, fire department, or licensed ambulance service.~~

(E) ~~An applicant who has served as an advanced emergency medical technician, such as a hospital corpsman or a medic in the United States Armed Forces, or who is licensed as a registered nurse or a physician's assistant shall be granted a permanent waiver of the training requirements to become a certified emergency medical technician, an advanced emergency medical technician, or a paramedic, provided the applicant passes the applicable examination approved by the commissioner for that level of certification and further provided that the applicant is affiliated with a rescue service, fire department, or licensed ambulance service.~~

(F) ~~An applicant who is certified on the National Registry of Emergency Medical Technicians as an EMT-basic, EMT-intermediate, or a paramedic shall be granted certification as a Vermont EMT-basic, EMT-intermediate, or paramedic without the need for further testing, provided~~

he or she is affiliated with an ambulance service, fire department, or rescue service, or is serving as a medic with the Vermont National Guard.

~~(E)(G) No advanced certification shall be required for a trainee in established advanced training programs leading to certification as an advanced emergency medical technician, provided that the trainee is supervised by an individual holding a level of certification for which the trainee is training and the student is enrolled in an approved certification program.~~

~~Sec. 19. UPDATED RULES FOR ADVANCE EMERGENCY MEDICAL CARE~~

~~No later than March 1, 2011, the commissioner of health shall repeal or amend any existing departmental rules on emergency medical care to ensure they are in compliance with the provisions of 18 V.S.A. § 906(8).~~

~~Sec. 20. STUDY: STATEWIDE LICENSING OF EMS PROVIDERS~~

~~(a) The commissioner of health, in consultation with the Vermont secretary of state's office of professional regulation, the Professional Firefighters of Vermont, the Vermont Career Fire Chiefs Association, the Vermont State Firefighters' Association, the Vermont Ambulance Association, the Vermont Association of Hospitals and Health Systems; a representative from the Initiative for Rural Emergency Medical Services program at the University of Vermont, and a representative of three of Vermont's existing 13 EMS districts chosen jointly by the speaker of the house and the president pro tempore of the senate, one of whom shall be a medical director and one of whom shall be a volunteer certified emergency medical technician, shall develop a proposal for a statewide licensing mechanism for emergency medical services (EMS) providers, and shall assess the state's EMS capabilities and training requirements. The commissioner of health shall prepare a report along with other findings and recommendations on Vermont's EMS services to the house committees on commerce and economic development and house human services, and the senate committees on economic development, housing and general affairs and health and welfare no later than January 15, 2012.~~

~~(b) The study committee shall also consider whether there should be certain course training requirements for those licensed as a registered nurse or physician's assistant.~~

~~Sec. 21. EFFECTIVE DATES~~

~~This act shall take effect on July 1, 2010, except for this section and Secs. 1, 7, 8, 14, 17, 18, 19 and 20 which shall take effect on passage.~~

~~Sec. 19. UPDATED RULES FOR ADVANCED EMERGENCY MEDICAL CARE~~

No later than March 1, 2011, the commissioner of health shall adopt, repeal, or amend any existing departmental rules on emergency medical care to ensure they are in compliance with the provisions of 18 V.S.A. § 906(8).

**Sec. 20. STUDY; STATEWIDE LICENSING OF EMS PROVIDERS**

(a) The commissioner of health, in consultation with the Vermont secretary of state's office of professional regulation, the Professional Firefighters of Vermont, the Vermont Career Fire Chiefs Association, the Vermont State Firefighters' Association, the Vermont Ambulance Association, the Vermont Association of Hospitals and Health Systems, a representative from the Initiative for Rural Emergency Medical Services program at the University of Vermont, and a representative of three of Vermont's existing 13 EMS districts chosen jointly by the speaker of the house and the president pro tempore of the senate, one of whom shall be a medical director and one of whom shall be a volunteer certified emergency medical technician, shall develop a proposal for a statewide licensing mechanism for emergency medical services (EMS) providers and shall assess the state's EMS capabilities and training requirements. In addition, the commissioner, also in consultation with the entities referenced in this subsection, shall study whether an individual may provide emergency medical services that exceed the scope of practice for the license level of the service or department with which the individual is affiliated if the individual is licensed and certified at a more advanced level.

(b) The commissioner of health shall prepare a proposal on a statewide licensing mechanism in the form of draft legislation and shall submit that proposal along with findings and recommendations related to the other topics itemized in subsection (a) of this section to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs no later than January 15, 2012.

(c) Pending the results of the study required under this section and any subsequent legislative action, an individual may provide emergency medical services that exceed the scope of practice for the license level of the service or department with which the individual is affiliated if the individual is licensed and certified at a more advanced level provided the emergency medical services are in accordance with a protocol cooperatively developed by the individual and the district medical advisor.

**Sec. 21. EFFECTIVE DATES**

This act shall take effect on July 1, 2010, except for this section and Secs. 7, 8, 14, 18, 19, and 20, which shall take effect on passage.