

1 S.257

2 Introduced by Senators MacDonald and Racine

3 Referred to Committee on

4 Date:

5 Subject: Labor; workers' compensation; task force recommendations

6 Statement of purpose: This bill proposes to enact the recommendations of the  
7 workers' compensation employee classification, coding, and fraud enforcement  
8 task force.

9 An act relating to workers' compensation

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

11 Sec. 1. 13 V.S.A. § 2024 is amended to read:

12 § 2024. WORKERS' COMPENSATION FRAUD

13 Any person, including an employee, employer, medical case manager,  
14 health care provider, vocational rehabilitation provider, or workers'  
15 compensation insurance carrier who, knowingly and with intent to defraud  
16 makes a false statement or representation for the purpose of obtaining,  
17 affecting, or denying any benefit or payment ~~under the provisions of chapter 9~~  
18 ~~of Title 21~~, either for her or himself or for any other person, shall forfeit all  
19 benefits or payments obtained as a result of the false statement or

1 representation and all or a portion of any right to compensation under the  
2 provisions of chapter 9 of Title 21 as determined by the commissioner and:

3 (1) For fraud involving \$10,000.00 or more, be fined not more than  
4 \$100,000.00 or imprisoned not more than three years, or both.

5 (2) For fraud involving less than \$10,000.00, be fined not more than  
6 \$10,000.00 or imprisoned not more than two years, or both.

7 Sec. 2. 21 V.S.A. § 601 is amended to read:

8 § 601. DEFINITIONS

9 Unless the context otherwise requires, words and phrases used in this  
10 chapter shall be construed as follows:

11 \* \* \*

12 (14) “Worker” and “employee” means an individual who has entered  
13 into the employment of, or works under contract of service or apprenticeship  
14 with, an employer. Any reference to a worker who has died as the result of a  
15 work injury shall include a reference to the worker’s dependents, and any  
16 reference to a worker who is a minor or incompetent shall include a reference  
17 to the minor’s committee, guardian, or next friend. The term “worker” or  
18 “employee” does not include:

19 \* \* \*

20 (F) The sole proprietor or partner owner or partner owners of an  
21 unincorporated business ~~provided:~~

1           ~~(i) The individual performs work that is distinct and separate from~~  
2 ~~that of the person with whom the individual contracts.~~

3           ~~(ii) The individual controls the means and manner of the work~~  
4 ~~performed.~~

5           ~~(iii) The individual holds him or herself out as in business for him~~  
6 ~~or herself.~~

7           ~~(iv) The individual holds him or herself out for work for the~~  
8 ~~general public and does not perform work exclusively for or with another~~  
9 ~~person.~~

10          ~~(v) The individual is not treated as an employee for purposes of~~  
11 ~~income or employment taxation with regard to the work performed.~~

12          ~~(vi) The services are performed pursuant to a written agreement or~~  
13 ~~contract between the individual and another person, and the written agreement~~  
14 ~~or contract explicitly states that the individual is not considered to be an~~  
15 ~~employee under this chapter, is working independently, has no employees, and~~  
16 ~~has not contracted with other independent contractors. The written contract or~~  
17 ~~agreement shall also include information regarding the right of the individual~~  
18 ~~to purchase workers' compensation insurance coverage and the individual's~~  
19 ~~election not to purchase that coverage. However, if the individual who is party~~  
20 ~~to the agreement or contract under this subdivision is found to have employees,~~  
21 ~~those employees may file a claim for benefits under this chapter against either~~

1 ~~or both parties to the agreement~~ unless the sole proprietor or partner notifies  
2 the commissioner that he or she is to be included within the provisions of this  
3 chapter; the submission of a contract or an amendment to a contract to elect  
4 coverage of the sole proprietor or partner shall be considered sufficient notice.

5 \* \* \*

6 (I) An independent contractor if it can be demonstrated that the  
7 independent contractor meets all of the following conditions:

8 (i) Maintains a separate business with a separate office,  
9 equipment, materials, or other facilities and has continuing recurring business  
10 liabilities or obligations.

11 (ii) Holds or has applied for a federal employer identification  
12 number with the Internal Revenue Service or has filed business or  
13 self-employment income tax returns with the federal Internal Revenue Service  
14 based on that work or service in the previous year.

15 (iii) Operates under a written contract that specifies that the  
16 independent contractor complies with all of the following:

17 (I) Will perform specific services or work for specific amounts  
18 of money, and the independent contractor controls the means of performing the  
19 services or work.

20 (II) Incurs the main expenses related to the service or work that  
21 the independent contractor performs under contract.

1                   (III) Is responsible for the satisfactory completion of work or  
2 services that he or she contracts to perform and is liable for a failure to  
3 complete the work or service.

4                   (IV) Receives compensation for work or service performed  
5 under a written contract on a commission or per-job competitive bid basis and  
6 not on any other basis.

7                   (V) May realize a profit or suffer a loss under contracts to  
8 perform work or service.

9                   (iv) Voluntarily elected the status of independent contractor.  
10 Coercing an individual to sign a statement of independent contractor status or  
11 to obtain other documents of such status is false representation and is subject to  
12 the penalties found in section 708 of this title.

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

14       § 692. PENALTIES

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

1           (b) ~~Additionally, If~~ an employer ~~who~~ fails to comply with the provisions of  
2 section 687 of this title for a period of five days after notice from the  
3 commissioner, the commissioner shall order the premises of that employer  
4 closed and that all business operations cease until the employer has secured  
5 workers' compensation insurance, and the employer shall be assessed an  
6 administrative penalty of not more than \$250.00 for every day after five days  
7 that the employer fails to secure workers' compensation coverage as required  
8 in section 687 of this title. ~~The commissioner may, after giving notice and after~~  
9 ~~the expiration of the five day period, post a notice at a conspicuous place on~~  
10 ~~the premises of the employer informing the employees that their employer has~~  
11 ~~failed to comply with the provisions of section 687 of this title and ordering the~~  
12 ~~premises closed until workers' compensation insurance is secured.~~

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

19           (d) An employer who violates the closure order described in subsections  
20 (b) and (c) of this section shall be fined not more than \$5,000.00 or be  
21 imprisoned for not more than 30 days, or both.

1 Sec. 4. 21 V.S.A. § 1301 is amended to read:

2 § 1301. DEFINITIONS

3 The following words and phrases, as used in this chapter, shall have the  
4 following meanings unless the context clearly requires otherwise:

5 \* \* \*

6 (6)(A)(i) "Employment," subject to the other provisions of this  
7 subdivision (6), means service within the jurisdiction of this state, performed  
8 prior to January 1, 1978, which was employment as defined in this subdivision  
9 prior to such date and, subject to the other provisions of this subdivision,  
10 service performed after December 31, 1977, by an employee, as defined in  
11 subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including  
12 service in interstate commerce, performed for wages or under any contract of  
13 hire, written or oral, expressed or implied. Services partly within and partly  
14 without this state may by election ~~as hereinbefore provided~~ be treated as if  
15 wholly within the jurisdiction of this state. ~~And whenever~~ Whenever an  
16 employing unit ~~shall have~~ has elected to come under the provisions of a similar  
17 act of a state where a part of the services of an employee are performed, the  
18 commissioner, ~~upon his or her~~ after approval of ~~said~~ the election ~~as to any such~~  
19 ~~employee,~~ may treat the services ~~covered by said approved election~~ the  
20 employing unit as having been performed wholly without the jurisdiction of  
21 this state.

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(B) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless ~~and until it is shown to the satisfaction of the commissioner that:~~

~~(i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact; and~~

~~(ii) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and~~

~~(iii) Such individual is customarily engaged in an independently established trade, occupation, profession or business they are specifically excluded under this chapter.~~

(C) The term “employment” ~~shall~~ does not include:

\* \* \*

(xxii) Service performed by an independent contractor if the employer can demonstrate that the independent contractor meets all of the following conditions:

1                   (I) Maintains a separate business with his or her own office,  
2 equipment, materials, or other facilities and has continuing or recurring  
3 liabilities or obligations.

4                   (II) Holds or has applied for a federal employer identification  
5 number with the federal Internal Revenue Service or has filed business or  
6 self-employment income tax returns with the federal Internal Revenue Service  
7 based on that work or service in the previous year.

8                   (III) Operates under a written contract which specifies that the  
9 independent contractor:

10                   (aa) Will perform specific services or work for specific  
11 amounts of money and under which the independent contractor controls the  
12 means of performing the services or work.

13                   (bb) Incurs the main expenses related to the service or work  
14 that he or she performs under contract.

15                   (cc) Is responsible for the satisfactory completion of work or  
16 services that he or she contracts to perform and is liable for a failure to  
17 complete the work or service.

18                   (dd) Receives compensation for work or service performed  
19 under a written contract on a commission or per-job competitive bid basis and  
20 not on any other basis.





1 subdivision 1301(6)(C)(xxii) of this title, on each quarterly employment and  
2 wage report for the quarter that the contractor provided service.

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

4 § 1328. FILING REPORTS; FAILURE

5 The commissioner shall impose a penalty of ~~\$35.00~~ \$100.00 for each failure  
6 by an employer to file any contribution report required under section 1322 of  
7 this title on or before the date on which the report is due, which shall be  
8 collected in the manner provided for the collection of contributions in section  
9 1329 of this title and shall be paid into the contingent fund provided in section  
10 1365 of this title. If the employer demonstrates that its failure was due to a  
11 reasonable cause, the commissioner may waive the penalty.

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

13 § 1369. FALSE STATEMENTS TO AVOID CHAPTER

14 A person ~~shall not~~ who wilfully ~~and intentionally make~~ makes a false  
15 statement or representation to avoid becoming or remaining subject to this  
16 chapter, or to avoid or reduce a contribution or other payment required of an  
17 employer under this chapter for either himself or herself or for any other  
18 person, after notice and opportunity for hearing may be assessed an  
19 administrative penalty of not more than \$5,000.00 total, as determined to be  
20 appropriate by the commissioner after a determination by the commissioner

1 that the person has wilfully made a false statement or representation of a  
2 material fact.

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

4 § 1373. GENERAL PENALTY

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

9 Sec. 10. INSURANCE FRAUD TASK FORCE

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

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

14 (2) The attorney general or designee.

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

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

18 (5) A member of the insurance industry appointed by the American  
19 Insurance Association.

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

21 (c) The task force shall:

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

4           (2) Issue a final report on or before November 15, 2010. The final  
5           report shall be provided to the house committee on commerce and the senate  
6           committee on economic development, housing and general affairs and shall  
7           outline the task force's findings and recommendations regarding the  
8           development of an insurance fraud bureau as well as any other relevant issues.

9           Sec. 11. REPORT; DEPARTMENT OF BANKING, INSURANCE,  
10           SECURITIES, AND HEALTH CARE ADMINISTRATION;  
11           DEPARTMENT OF LABOR

12           On or before November 15, 2010, the department of banking, insurance,  
13           securities, and health care administration and the department of labor shall  
14           report to the house committee on commerce and the senate committee on  
15           economic development, housing and general affairs regarding the following:

16           (1) The implementation of the workers' compensation requirements in  
17           No. 54 of the Acts of 2009 as well as the enforcement of Vermont labor  
18           standards more generally, including:

19           (A) the number and outcome of departmental audits and  
20           investigations; and

- 1                   (B) an assessment of the efficacy of the new workers' compensation  
2                   fraud staff positions created in Sec. 106 of No. 54 of the Acts of 2009.  
3                   (2) The financial costs of misclassification and miscoding.