

1 H.247

2 Introduced by Representatives Scheuermann of Stowe, Burditt of West

3 Rutland, Clark of Vergennes, Dickinson of St. Albans Town,

4 Eckhardt of Chittenden, Marcotte of Coventry, McNeil of

5 Rutland Town, Olsen of Jamaica, Savage of Swanton and Shaw

6 of Pittsford

7 Referred to Committee on

8 Date:

9 Subject: Labor; workers' compensation; independent contractor

10 Statement of purpose: This bill proposes to establish a common definition of
11 an "independent contractor" for the workers' compensation and unemployment
12 compensation statutes.

13 An act relating to independent contractors

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

15 Sec. 1. 21 V.S.A. § 601 is amended to read:

16 § 601. DEFINITIONS

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

19 * * *

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

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

7 (I) Will perform specific services or work for specific amounts
8 of money, and the independent contractor controls the means of performing the
9 services or work.

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

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

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

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

20 (iv) Voluntarily elected the status of independent contractor.
21 Coercing an individual to sign a statement of independent contractor status or

1 to obtain other documents of such status is false representation and is subject to
2 the penalties found in section 708 of this title.

3 Sec. 2. 21 V.S.A. § 1301 is amended to read:

4 § 1301. DEFINITIONS

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

7 * * *

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

1 employing unit as having been performed wholly without the jurisdiction of
2 this state.

3 * * *

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

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

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

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

17 (C) The term "employment" ~~shall~~ does not include:

18 * * *

19 (xxii) Service performed by an independent contractor if the
20 employer can demonstrate that the independent contractor meets all of the
21 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 service 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 service that he or she contracts to perform and is liable for a failure to complete
17 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.

