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H.762

Introduced by Committee on Commerce and Economic Development

Date:

Subject: Labor; workers' compensation; unemployment compensation

Statement of purpose: This bill proposes to make changes to the workers' compensation and unemployment compensation statutes.

An act relating to workers' compensation and unemployment compensation

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

Sec. 1. 14 V.S.A. § 1205 is amended to read:

§ 1205. CLASSIFICATION OF CLAIMS

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the executor or administrator shall make payment in the following order:

(1) costs and expenses of administration;

(2) reasonable funeral, burial, and headstone expenses, and perpetual care, not to exceed \$3,800.00 exclusive of governmental payments, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending him or her;

(3) all outstanding wages due employees ~~which have been earned within three months prior to the death of the decedent, not to exceed \$300.00 to each claimant of the decedent;~~



1 and opportunity for hearing under this section shall be in accordance with  
2 3 V.S.A. chapter 25.

3 \* \* \*

4 Sec. 3. 21 V.S.A. § 348 is added to read:

5 § 348. RETALIATION PROHIBITED

6 (a) An employer shall not discharge or in any other manner retaliate against  
7 an employee because:

8 (1) The employee lodged a complaint of a violation of this subchapter.

9 (2) The employee has cooperated with the commissioner or  
10 commissioner's designee in an investigation of a violation of this subchapter.

11 (3) The employer believes that the employee may lodge a complaint or  
12 cooperate in an investigation of a violation of this subchapter.

13 (b) Any person aggrieved by a violation of this section may bring an action  
14 in the civil division of the superior court seeking compensatory and punitive  
15 damages or equitable relief, including restraint of prohibited acts, restitution of  
16 wages or benefits, reinstatement, costs, reasonable attorney's fees, and other  
17 appropriate relief.

18 Sec. 4. 21 V.S.A. § 397 is added to read:

19 § 397. RETALIATION PROHIBITED

20 (a) An employer shall not discharge or in any other manner retaliate against  
21 an employee because:

1           (1) The employee lodged a complaint of a violation of this subchapter.

2           (2) The employee has cooperated with the commissioner or  
3           commissioner's designee in an investigation of a violation of this subchapter.

4           (3) The employer believes that the employee may lodge a complaint or  
5           cooperate in an investigation of a violation of this subchapter.

6           (b) Any person aggrieved by a violation of this section may bring an action  
7           in the civil division of the superior court seeking compensatory and punitive  
8           damages or equitable relief, including restraint of prohibited acts, restitution of  
9           wages or benefits, reinstatement, costs, reasonable attorney's fees, and other  
10          appropriate relief.

11          Sec. 5. 21 V.S.A. § 603 is amended to read:

12          § 603. WITNESSES, OATHS, BOOKS, PAPERS, RECORDS

13           (a) So far as it is necessary in his or her examinations; or investigations and  
14           in the determination of matters within his or her jurisdiction, the commissioner  
15           shall have power to subpoena witnesses, administer oaths, and to demand the  
16           production of books, papers, records, and documents for his or her  
17           examination. Additionally, the commissioner may, upon presenting  
18           appropriate credentials, at reasonable times enter and inspect any place of  
19           business or employment, question any employees, and investigate any facts,  
20           conditions, or matters necessary and material to the administration of this  
21           chapter. If entry is refused, the commissioner may apply to the civil division

1 of the superior court for an order to enforce the rights given the commissioner  
2 under this section.

3 \* \* \*

4 Sec. 6. 21 V.S.A. § 692 is amended to read:

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

6 \* \* \*

7 (b) Stop-work orders. If an employer fails to comply with the provisions of  
8 section 687 of this title after investigation by the commissioner, the  
9 commissioner shall issue an emergency order to that employer to stop work  
10 until the employer has secured workers' compensation insurance. If the  
11 commissioner determines that issuing a stop-work order would immediately  
12 threaten the safety or health of the public, the commissioner may permit work  
13 to continue until the immediate threat to public safety or health is removed.  
14 The commissioner shall document the reasons for permitting work to continue,  
15 and the document shall be available to the public. In addition, the employer  
16 shall be assessed an administrative penalty of not more than \$250.00 for every  
17 day that the employer fails to secure workers' compensation coverage after the  
18 commissioner issues an order to obtain insurance and may also be assessed an  
19 administrative penalty of not more than \$250.00 for each employee for every  
20 day that the employer fails to secure workers' compensation coverage as  
21 required in section 687 of this title. When a stop-work order is issued, the

1 commissioner shall post a notice at a conspicuous place on the work site of the  
2 employer informing the employees that their employer failed to comply with  
3 the provisions of section 687 of this title and that work at the work site has  
4 been ordered to cease until workers' compensation insurance is secured. An  
5 employer that fails to comply with a stop-work order may be enjoined from  
6 employing individuals in employment as defined in this chapter, upon  
7 complaint of the commissioner in the civil division of the superior court. The  
8 stop-work order shall be rescinded as soon as the commissioner determines  
9 that the employer is in compliance with section 687 of this title. An employer  
10 against whom a stop-work order has been issued, or who is not in compliance  
11 with section 687 of this title, is prohibited from contracting, directly or  
12 indirectly, with the state or any of its subdivisions for a period of up to three  
13 years following the date of the issuance of the stop-work order, as determined  
14 by the commissioner in consultation with the commissioner of buildings and  
15 general services or the secretary of transportation, as appropriate. Either the  
16 secretary or the commissioner, as appropriate, shall be consulted in any contest  
17 of the prohibition of the employer from contracting with the state or its  
18 subdivisions.

19 \* \* \*

1 Sec. 7. 21 V.S.A. § 1101 is amended to read:

2 § 1101. APPRENTICESHIP DIVISION AND COUNCIL

3 The apprenticeship division and state apprenticeship council, hereinafter  
4 referred to as the “council,” shall be located within the department of labor.  
5 The commissioner of labor shall supervise the work of the division, and shall  
6 be the chair of the council. The council shall consist of ~~40~~ 12 members, four  
7 ex officio members and ~~six~~ eight members who shall be appointed by the  
8 governor. Of the ex officio members, one shall be the commissioner of labor,  
9 or designee, one shall be the commissioner of public safety, or designee, one  
10 shall be the commissioner of education or designee, and one shall be the  
11 director of the apprenticeship division who shall act as secretary of the council  
12 without vote. The council shall be composed of persons familiar with  
13 apprenticeable occupations. Of the ~~appointive~~ appointed members, three shall  
14 be individuals who ~~on account of previous vocation, employment, occupation,~~  
15 ~~or affiliation can be classed as~~ represent employers ~~and three,~~ three shall be  
16 individuals who ~~on account of previous vocation, employment, occupation, or~~  
17 ~~affiliation can be classed as employees~~ represent employees or employee  
18 organizations, and two shall be members of the public. Appointment of the  
19 employer and the employee members shall be made for the term of three years  
20 except the employer and employee members first appointed shall be appointed  
21 for the term of one, two, and three years respectively. The governor shall

1 annually designate one member of the council as chair. Each member of the  
2 council who is not a salaried official or employee of the state shall be entitled  
3 to compensation and expenses as provided in 32 V.S.A. § 1010.

4 Sec. 8. 21 V.S.A. § 1301a is amended to read:

5 § 1301a. DEPARTMENT OF LABOR; COMPOSITION

6 The department of labor, created by ~~section 3 V.S.A. § 212 of Title 3~~, shall  
7 consist of a commissioner of labor, the Vermont employment security board,  
8 the Vermont workforce development division, the economic and labor market  
9 information division, the workforce development council, the unemployment  
10 insurance and wages division, and the workers' compensation and safety  
11 division. The chair of the employment security board shall be the  
12 commissioner of labor ex officio. The deputy commissioner of labor or a  
13 designee chosen by the commissioner may serve as chair in the absence of the  
14 commissioner as the commissioner's designee.

15 Sec. 9. 21 V.S.A. § 1307 is amended to read:

16 § 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

17 The commissioner of labor shall administer this chapter. The commissioner  
18 may employ such persons, make such expenditures, require such reports, make  
19 such investigations and take such other action as he or she considers necessary  
20 or suitable to that end. In the discharge of his or her duties imposed by this  
21 chapter, the commissioner may administer oaths, take depositions, certify to

1 official acts and subpoena witnesses and compel the production of books,  
2 papers, correspondence, memoranda, and other records necessary and material  
3 to the administration of this chapter. Additionally, the commissioner may,  
4 upon presenting appropriate credentials, at reasonable times enter and inspect  
5 any place of business or employment, question any employees, and investigate  
6 any facts, conditions, or matters necessary and material to the administration of  
7 this chapter. If entry is refused, the commissioner may apply to the civil  
8 division of the superior court for an order to enforce the rights given the  
9 commissioner under this section.

10 Sec. 10. 21 V.S.A. § 1347 is amended to read:

11 § 1347. NONDISCLOSURE OR MISREPRESENTATION

12 \* \* \*

13 (c) The person liable under this section shall repay such amount to the  
14 commissioner for the fund. In addition to the repayment, if the commissioner  
15 finds that a person intentionally misrepresented or failed to disclose a material  
16 fact with respect to his or her claim for benefits, the person shall pay an  
17 additional penalty of 15 percent of the amount of the overpaid benefits. Such  
18 amount may be collectible by civil action in a Vermont district or superior  
19 court, in the name of the commissioner. ~~No action shall be commenced for the~~  
20 ~~collection of such amount more than five years after the date of such~~

1 ~~determination under this section or the final decision confirming the liability of~~  
2 ~~such person on an appeal from such determination.~~

3 (d) In any case in which under this section a person is liable to repay any  
4 amount to the commissioner for the fund, the commissioner may withhold, in  
5 whole or in part, any future benefits payable to such person, and credit such  
6 withheld benefits against the amount due from such person until it is repaid in  
7 full, less any penalties assessed under subsection (c) of this section. ~~No~~  
8 ~~benefits shall be withheld after five years from the date of such determination~~  
9 ~~or the date of the final decision confirming the liability of such person on an~~  
10 ~~appeal from such determination.~~

11 (e) In addition to the foregoing, when it is found by the commissioner that  
12 a person intentionally misrepresented or failed to disclose a material fact with  
13 respect to his or her claim for benefits and in the event the person is not  
14 prosecuted under section 1368 of this title and penalty provided in section  
15 1373 of this title is not imposed, the person shall be disqualified and shall not  
16 be entitled to receive benefits to which he or she would otherwise be entitled  
17 after the determination for such number of weeks not exceeding 26 as the  
18 commissioner shall deem just, ~~provided, however, that no benefits shall be~~  
19 ~~denied to a claimant because of such determination after three years from the~~  
20 ~~date thereof or the date of final decision on an appeal from such determination.~~

1 The notice of determination shall also specify the period of disqualification  
2 imposed hereunder.

3 \* \* \*

4 Sec. 11. 21 V.S.A. § 1451 is amended to read:

5 § 1451. DEFINITIONS

6 For the purpose of this subchapter:

7 (1) "Affected unit" means a specific plan, department, shift, or other  
8 definable unit consisting of not less than five employees to which an approved  
9 short-time compensation plan applies.

10 (2) "Short-time compensation" or "STC" means the unemployment  
11 benefits payable to employees in an affected unit under an approved short-time  
12 compensation plan as distinguished from the unemployment benefits otherwise  
13 payable under the conventional unemployment compensation provisions of this  
14 chapter.

15 (3) "Short-time compensation plan" means a plan of an employer under  
16 which there is a reduction in the number of hours worked by employees of an  
17 affected unit rather than temporary layoffs. The term "temporary layoffs" for  
18 this purpose means the total separation of one or more workers in the affected  
19 unit for an indefinite period expected to last for more than two months but not  
20 more than six months.

1           (4) “Short-time compensation employer” means an employer who has  
2 one or more employees covered by an approved “Short-Time Compensation  
3 Plan.” ~~Both employers with experience rating records and employers who~~  
4 ~~make payments in lieu of tax contributions to the UI Trust Fund may become~~  
5 ~~short time compensation employers.~~ “Short-time compensation employer”  
6 includes an employer with experience-rating records and an employer who  
7 makes payments in lieu of tax contributions to the unemployment  
8 compensation trust fund and that meets the following:

9                   (A) Has five or more employees covered by an approved short-time  
10 compensation plan.

11                   (B) Is not delinquent in the payment of contributions or  
12 reimbursement, or in the reporting of wages.

13                   (C) Is not a negative balance employer. For the purposes of this  
14 section, a negative balance employer is an employer who has for three or more  
15 consecutive calendar years paid more in unemployment benefits to its  
16 employees than it has contributed to its unemployment insurance account.

17           (5) “Usual weekly hours of work” means the normal hours of work for  
18 full-time and regular part-time employees in the affected unit when that unit is  
19 operating on its normally full-time basis but not less than 30 hours and not to  
20 exceed 40 hours and not including overtime.

1           (6) “Unemployment compensation” means the unemployment benefits  
2 payable under this chapter other than short-time compensation and includes  
3 any amounts payable pursuant to an agreement under any federal law  
4 providing for compensation, assistance, or allowances with respect to  
5 unemployment.

6           (7) “Fringe benefits” means benefits, including health insurance,  
7 retirement benefits, paid vacations and holidays, sick leave, and similar  
8 benefits that are incidents of employment.

9           (8) “Intermittent employment” means employment that is not  
10 continuous but may consist of intervals of weekly work and intervals of no  
11 weekly work.

12           (9) “Seasonal employment” means employment in an industry in which  
13 because of the seasonal nature of the industry it is customary to operate only  
14 during a regularly recurring period or periods of fewer than 26 weeks in a  
15 calendar year.

16       Sec. 12. 21 V.S.A. § 1452 is amended to read:

17       § 1452. CRITERIA FOR APPROVAL

18           An employer wishing to participate in an STC program shall submit a  
19 department of labor electronic application or a signed written short-time  
20 compensation plan to the commissioner for approval. The commissioner may  
21 approve an STC plan only if the following criteria are met:

1 (1) the plan identifies the specified affected units to which it applies;

2 (2) the employees in the affected unit or units are identified by name,

3 Social Security number, and by any other information required by the

4 commissioner;

5 (3) the plan ~~specifies any impact on~~ certifies that fringe benefits,

6 including health insurance, of employees participating in the plan will not be

7 reduced;

8 (4) the usual total weekly hours of work for employees in the affected

9 unit or units are reduced by not less than 20 percent and not more than 50

10 percent;

11 (5) the plan certifies that the aggregate reduction in work hours is in lieu

12 of temporary total layoffs of one or more workers which would have resulted

13 in an equivalent reduction in work hours and which the commissioner finds

14 would have caused an equivalent dollar amount to be payable in

15 unemployment compensation;

16 (6) the plan certifies that the STC employer will submit a request for an

17 STC plan termination to the department within 24 hours of a layoff that occurs

18 during an active STC plan;

19 (7) the identified workweek reduction is applied consistently throughout

20 the duration of the plan;

1           ~~(6)~~(8) the plan applies to at least 10 percent of the employees in the  
2 affected unit, and ~~when applicable~~ applies to all affected employees of the unit  
3 equally;

4           ~~(7)~~(9) the plan will not subsidize seasonal employers during the  
5 off-season, nor subsidize employers who have traditionally used part-time  
6 employees or intermittent employment;

7           ~~(8)~~(10) the employer agrees to maintain records relative to the plan for a  
8 period of three years and furnish reports relating to the proper conduct of the  
9 plan and agrees to allow the commissioner or his or her authorized  
10 representatives access to all records necessary to verify the plan prior to  
11 approval and, after approval, to monitor and evaluate application of the plan;

12           ~~(9)~~(11) the plan certifies that the collective bargaining agent or agents  
13 for the employees, if any, have agreed to participate in the program. If there is  
14 no bargaining unit, the employer specifies how he or she will notify the  
15 employees in the affected group and work with them to implement the program  
16 once the plan is approved; and

17           ~~(10)~~(12) in addition to subdivisions (1) through ~~(9)~~(11) of this section,  
18 the commissioner shall take into account any other factors which may be  
19 pertinent to proper implementation of the plan.

1 Sec. 13. 21 V.S.A. § 1453 is amended to read:

2 § 1453. APPROVAL OR REJECTION; RESUBMISSION

3 The commissioner shall approve or reject a plan in writing within 30 days  
4 of its receipt, and in the case of rejection shall state the reasons therefor. The  
5 reasons for rejection shall be final and nonappealable, but the employer shall  
6 be allowed to submit another plan for approval, that addresses the reasons that  
7 led to the rejection of the original plan.

8 Sec. 14. 21 V.S.A. § 1454 is amended to read:

9 § 1454. EFFECTIVE DATE; DURATION

10 A plan shall be effective on the date specified in the plan or on a date  
11 mutually agreed upon by the employer and the commissioner. It shall expire at  
12 the end of the sixth full calendar month after its effective date or on the date  
13 specified in the plan if such date is earlier; provided, that the plan is not  
14 previously revoked by the commissioner; or on the effective date of any  
15 transfer of ownership of the legal business entity. If a plan is revoked by the  
16 commissioner, it shall terminate on the date specified in the commissioner's  
17 written order of revocation. No employer shall be eligible for a short-time  
18 compensation plan for more than 26 weeks in any 12-month period.

19 Sec. 15. 21 V.S.A. § 1458 is amended to read:

20 § 1458. SHORT-TIME COMPENSATION BENEFITS

21 \* \* \*

1           (f)(1) If an individual works in the same week for both the short-time  
2 employer and another employer and his or her combined hours of work for  
3 both employers are equal to or greater than 81 percent of the usual hours of  
4 work with the short-time employer, he or she shall not be entitled to benefits  
5 under these short-time provisions or the unemployment compensation  
6 provisions.

7           (2) If an individual works in the same week for both the short-time  
8 employer and another employer and his or her combined hours of work for  
9 both employers are equal to or less than 80 percent of the usual hours of work  
10 for the short-time employer, the benefit amount payable for that week shall be  
11 the weekly unemployment compensation amount reduced by the same  
12 percentage that the combined hours are of the usual hours of work. A week for  
13 which benefits are paid under this provision shall count as a week of short-time  
14 compensation.

15           (3) An individual who does not work during a week for the short-time  
16 employer, and is otherwise eligible, shall be paid his or her full weekly  
17 unemployment compensation benefit amount under the provisions of the  
18 regular unemployment compensation program. Such a week shall not be  
19 counted as a week for which short-time compensation benefits were received.

20           (4) An individual who does not work the short-time employer's  
21 identified workweek reduction hours as certified by the application due to the

1 use of paid vacation or personal time shall be paid benefits for the week under  
2 the partial unemployment compensation provisions of the regular  
3 unemployment compensation program.

4 ~~(4)~~(5) An individual who does not work for the short-time employer  
5 during a week but works for another employer and is otherwise eligible, shall  
6 be paid benefits for that week under the partial unemployment compensation  
7 provisions of the regular UI program. Such a week shall not be counted as a  
8 week with respect to which STC benefits were received.

9 Sec. 16. 33 V.S.A. § 4110 is amended to read:

10 § 4110. EMPLOYER OBLIGATIONS

11 \* \* \*

12 (c) As used in this section:

13 (1) "Employee" ~~means~~:

14 (A) means an individual who is an employee within the meaning of  
15 chapter 24 of the Internal Revenue Code of 1986; and

16 (B) does not include an employee of a federal or state agency  
17 performing intelligence or counterintelligence functions, if the head of such  
18 agency has determined that reporting pursuant to this section with respect to  
19 the employee could endanger the safety of the employee or compromise an  
20 ongoing investigation or intelligence mission.

1           (2) "Employer" has the meaning given such term in Section 3401(d) of  
2 the Internal Revenue Code of 1986 and includes any governmental entity and  
3 any labor organization.

4           (3) "First date of employment" is the first day services are performed for  
5 compensation as a new hire.

6           (4) "New hire" ~~means an employee for whom a W-4 filing is required~~  
7 ~~and whose wages have not been reported by the filing employer to the~~  
8 ~~department of labor during the last reporting quarter~~ means an employee who:

9                   (A) has not previously been employed by the employer; or

10                   (B) was previously employed by the employer but has been separated  
11 from that employment for at least 60 consecutive days.

12 Sec. 17. 21 V.S.A. § 1340a is added to read:

13 § 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

14           (a) The commissioner may establish a pilot project for a self-employment  
15 assistance project based on the criteria outlined in this section for a period of  
16 up to two years, provided that it conforms to state and federal unemployment  
17 law. The commissioner may terminate the pilot program with approval of the  
18 secretary of administration in the event that it presents unintended adverse  
19 consequences to the unemployment trust fund. The commissioner may allow  
20 up to 20 participants per year, and each individual may participate for up to 26  
21 weeks as determined by the commissioner.

1           **(b) For purposes of this section:**

2           **(1) “Full-time basis” means that the individual is devoting such amount**  
3           **of time as is determined by the commissioner to be necessary to establish a**  
4           **business which will serve as a full-time occupation for that individual.**

5           **(2) “Regular benefits” has the same meaning as in subdivision 1421(5)**  
6           **of this title.**

7           **(3) “Self-employment assistance activities” means activities approved**  
8           **by the commissioner in which an individual participates for the purpose of**  
9           **establishing a business and becoming self-employed, including entrepreneurial**  
10           **training, business counseling, and technical assistance.**

11           **(4) “Self-employment assistance allowance” means an allowance**  
12           **payable in lieu of regular benefits from the unemployment compensation fund**  
13           **to an individual who meets the requirements of this section until such time as**  
14           **the employee’s net income is determined by the commissioner, in consultation**  
15           **with the business advisor, to be at least 150 percent of his or her regular**  
16           **weekly benefit for a period of six consecutive weeks.**

17           **(5) “Self-employment assistance program” means a program under**  
18           **which an individual who meets the requirements of subsection (e) of this**  
19           **section is eligible to receive an allowance in lieu of regular benefits for the**  
20           **purpose of assisting that individual in establishing a business and becoming**  
21           **self-employed.**

1       (c) The weekly amount of the self-employment assistance allowance  
2       payable to an individual shall be equal to the weekly benefit amount for regular  
3       benefits otherwise payable under this title.

4       (d) The maximum amount of the self-employment assistance allowances  
5       paid under this section may not exceed the maximum amount of benefits  
6       established under section 1340 of this title with respect to any benefit year.

7       (e)(1) An individual may receive a self-employment assistance allowance if  
8       that individual:

9               (A) Is eligible to receive regular benefits or would be eligible to  
10              receive regular benefits except for the requirements described in subdivisions  
11              (A) and (B) of subdivision (2) of this subsection;

12              (B) is identified by a worker profiling system as an individual likely  
13              to exhaust regular benefits;

14              (C) has been accepted into a program approved by the commissioner  
15              that will provide self-employment assistance activities, including but not  
16              limited to regular counseling and direction from a business advisor;

17              (D) is actively engaged in a full-time basis in activities, which may  
18              include training, related to establishing a business and becoming  
19              self-employed; and

20              (E) has filed a weekly claim for the self-employment assistance  
21              allowance and provided the information the commissioner prescribes.

1           (2) A self-employment allowance shall be payable to an individual at the  
2 same interval, on the same terms, and subject to the same conditions as regular  
3 benefits under this chapter, except:

4           (A) the requirements of section 1343 of this title, relating to  
5 availability for work, efforts to secure work, and refusal to accept work, are not  
6 applicable to the individual;

7           (B) the individual is not considered to be self-employed pursuant to  
8 subdivision 1301(24) of this title;

9           (C) an individual who meets the requirements of this section shall be  
10 considered to be unemployed under section 1338 of this title; and

11           (D) an individual who fails to participate in self-employment  
12 assistance activities or who fails to actively engage on a full-time basis in  
13 activities, including training, relating to the establishment of a business and  
14 becoming self-employed shall be disqualified from receiving an allowance for  
15 the week the failure occurs.

16           (f) The commissioner may approve not more than 20 persons each year  
17 during this pilot project to participate in this program and shall ensure that the  
18 aggregate number of individuals receiving a self-employment assistance  
19 allowance at any time does not exceed five percent of the number of  
20 individuals receiving regular benefits at that time.





1 on economic development, housing and general affairs no later that January 15,  
2 2013.

3 Sec. 20. 26 V.S.A. § 290 is added to read:

4 § 290. EMPLOYMENT OF COSMETOLOGISTS; INDEPENDENT  
5 CONTRACTORS

6 (a) A licensed cosmetologist who rents a booth at a salon shall be deemed  
7 to be an employee of the salon unless:

8 (1) A written agreement exists between the cosmetologist and the salon  
9 specifying that the cosmetologist is an independent contractor.

10 (2) The salon has no right to control the methodology used by the  
11 cosmetologist to produce a given result.

12 (3) The amount of rent to be paid by the cosmetologist to the salon is  
13 either calculated at a fixed percentage of the cosmetologist's gross receipts or  
14 is a flat fee.

15 (b) The salon shall maintain records of all rental payments made to it and  
16 all distributions made to the cosmetologist.

17 Sec. 21. 21 V.S.A. chapter 23 is added to read:

18 CHAPTER 23. CERTIFIED CONTRACTOR PROCESS

19 § 1801. PURPOSE

20 (a) An individual who seeks to work as a sole operator of his or her own  
21 business and who can meet the standards and criteria set forth in this chapter

1 shall be provided a certificate by the department of labor allowing him or her  
2 to operate independently and without the benefits and protections afforded  
3 employees under this title.

4 (b) An individual who engages in any activities outside the parameters  
5 established for a certified contractor will be considered an employee for all  
6 purposes under this title, and any person or entity utilizing the services of the  
7 individual will also be liable for any obligations under this title.

8 (c) All persons working as a certified contractor shall follow the  
9 certification process established in this chapter.

10 § 1802. DEFINITIONS

11 For purposes of this chapter:

12 (1) “Certified contractor” means an individual who is approved by the  
13 certification process established in § 1805 of this chapter.

14 (2) “Certification review board” means the board established pursuant to  
15 this chapter that is responsible for reviewing applications from individuals  
16 seeking certified contractor status.

17 (3) “Commissioner” means the commissioner of the department of labor  
18 or designee.

19 (4) “Department” means the department of labor.

1     § 1803. CERTIFIED CONTRACTOR CRITERIA

2             The certification review board shall determine if an individual is eligible for  
3     certified contractor status. An individual seeking certification shall provide the  
4     board with information demonstrating that he or she meets the certified  
5     contractor criteria including:

6             (1) A notarized statement from the individual seeking certification  
7     affirming that he or she has not been requested or coerced into claiming to be  
8     an individual certified contractor.

9             (2) Possession of a federal employer identification number (FEIN) that  
10    is used for federal tax reporting purposes.

11            (3) Possession of a social security number or a work visa.

12            (4) Proof of registration with the Vermont secretary of state, either as a  
13    single individual with a trade name or as a single member LLC or single  
14    member corporation.

15            (5) A demonstrated history of having his or her own business, including  
16    evidence of tax returns, recurring business expenditures such as equipment  
17    purchases, shop rent, or charge accounts for supplies which establish that he or  
18    she is customarily engaged in an established trade or business.

19            (6) Proof that he or she works for multiple employers in the course of  
20    his or her business.

1           (7) Proof of past work, including written contracts or agreements,  
2           invoices, or competitive bids, on a per job basis.

3           (8) Evidence that he or she is free to control and direct his or her work,  
4           hours of work, and the means and manner of the performance of such work,  
5           subject only to the broad framework of the project goals and completion date.

6           (9) Evidence that he or she has no employees or assistants, whether paid  
7           or unpaid, and does not engage in any joint ventures or associations with other  
8           certified contractors to perform work.

9           (10) Demonstrates that he or she is fully and solely responsible for the  
10           work produced, possesses his or her own tools, equipment, and instruments of  
11           trade, and normally provides materials and supplies necessary to complete the  
12           work.

13           § 1804. PRESUMPTION OF STATUS

14           (a) An individual who is certified pursuant to this chapter shall not be  
15           presumed to be an employee when operating under the provisions of this  
16           chapter, and the entity hiring the certified contractor shall not be considered the  
17           statutory employer of the certified contractor. Notwithstanding this  
18           presumption, if the certified contractor is working for the employer or a  
19           subcontractor in a capacity that does not qualify as an individual certified  
20           contractor, then all statutory provisions relating to unemployment, workers'

1 compensation, wage and hour provisions, and employment practices  
2 shall apply.

3 (b) An employer who needs multiple workers in the same trade or  
4 occupation for the same work project or site will be presumed to be the  
5 statutory employer and shall be obligated to comply with all laws relating to  
6 employment of persons.

7 § 1805. COMPOSITION OF BOARD

8 A certification review board is hereby established consisting of eleven  
9 members, five of whom shall represent labor and five of whom shall represent  
10 business to be appointed by the governor, and one who shall be an employee of  
11 the department appointed by the commissioner. Nominations for members for  
12 the review board shall be solicited from organizations representing employer  
13 organizations, trade associations, and employee organizations and from the  
14 commissioner of labor, as well as from a public notice conducted by the  
15 department of labor. The review board members appointed by the governor  
16 shall be appointed for a term of two years, with no member serving more than  
17 three consecutive terms.

18 § 1806. BOARD REVIEW PROCESS

19 (a) Representatives from the board shall meet weekly in three-member  
20 panels at the direction of the commissioner, consisting of one member each

1 representing labor and business and the department representative. The  
2 members of the panels shall rotate weekly.

3 (b) The board shall meet to review pending applications and may schedule  
4 in-person reviews with individuals seeking certification. The board shall  
5 review documentation and information and take testimony from the applicants.  
6 The board's decision to grant certification shall be based on the criteria  
7 established in this chapter. If additional information is necessary to render a  
8 decision, the applicant will be given sufficient time to submit such information.  
9 Once the board determines that it has sufficient information, it shall make a  
10 recommendation to the commissioner. The commissioner shall review the  
11 recommendation and make a decision within ten days. If additional  
12 information is needed, the commissioner may remand for additional  
13 information, which shall be provided to the commissioner within 14 days. The  
14 commissioner shall issue a decision based on the additional information within  
15 five days of its receipt.

16 § 1807. APPEAL

17 An applicant may appeal a decision of the commissioner to the supreme  
18 court within 45 days of the date of the decision.

19 § 1808. INFORMATION AND EDUCATION

20 The commissioner of labor in consultation with the certification review  
21 board shall conduct a comprehensive information and education campaign

1 regarding the provisions of this chapter for a period of not less than 12 months  
2 upon instituting this certification process and shall continue to provide regular  
3 information to the labor and business communities about the certification  
4 program and the issues of misclassification and miscoding.

5 § 1809. INVESTIGATION AND ENFORCEMENT

6 (a) The commissioner is authorized to investigate and enforce the  
7 provisions of this chapter including:

8 (1) Whether a certified contractor is in compliance with this chapter.

9 (2) Whether a certified contractor or an entity hiring a certified  
10 contractor is in compliance with the provisions of this title, including workers'  
11 compensation, unemployment insurance compensation, wage and hour laws,  
12 and employment practices.

13 (b) Upon request, a certified contractor shall provide the department with  
14 books, records, or other documentation or evidence establishing his or her  
15 qualifications to be a certified contractor and evidence that all work performed  
16 as a certified contractor is performed in accordance with this chapter.

17 (c) The commissioner shall be responsible for the collaborative work of the  
18 inter-agencies and departments task force and shall ensure that  
19 misclassification and miscoding and other fraudulent activity by an individual  
20 or entity is reviewed for action by each agency and department of the task  
21 force.

1       (d) Any person or entity engaged in misrepresentation or fraudulent  
2       activities in relation to this chapter shall be listed on the department's website  
3       and debarment list.

4       § 1810. PENALTIES

5       (a) A person who willfully makes a false statement or representation for the  
6       purpose of obtaining or assisting another to obtain certified contractor status  
7       may, after notice and opportunity for hearing, be assessed an administrative  
8       penalty of up to \$5,000.00 and may lose the certificate for up to two years.

9       (b) A certified contractor who violates the terms and conditions of his or  
10       her certification may, after notice and opportunity for hearing, be assessed an  
11       administrative penalty of up to \$5,000.00 and may lose the certificate for up to  
12       one year.

13       (c) Any person or entity who coerces an employee or prospective employee  
14       into becoming a certified contractor for the purpose of avoiding its obligations  
15       under this title or Title 32 may, after notice and opportunity for hearing, be  
16       assessed an administrative penalty of up to \$5,000.00.

17       (d) An administrative penalty issued pursuant to this section may be in  
18       addition to other penalties authorized by chapters 9 and 17 of this title.

19       (e) Administrative hearings shall be conducted in accordance with the  
20       Administrative Procedure Act, 3 V.S.A. § 801 et seq. Appeals from penalty  
21       assessment determinations shall be to the Vermont supreme court.

1       (f) Penalties collected under this section shall be utilized by the department  
2       to offset the expenses of the contractor certification program.

3       § 1811. FEES AND COSTS

4       (a) The fee for a certified contractor certificate shall be \$100.00, which  
5       shall be deposited into a special fund within the department. The department  
6       shall utilize the funds to administer the certified contractor program including  
7       for the purposes of providing a per diem and mileage reimbursement for  
8       review board members.

9       (b) The commissioner is authorized to hire and employ one permanent  
10       position and one limited service position for a limited term of three years for  
11       program administration. The program shall be funded by the fees and  
12       administrative penalties collected pursuant to this chapter and supplemented by  
13       the general fund when fees and penalties do not cover the full costs of the  
14       positions and program administration.

15       Sec. 22. EFFECTIVE DATE

16       Sec. 10 (relating to nondisclosure or misrepresentation in order to receive  
17       unemployment benefits) of this act shall take effect on July 1, 2013. Sec. 16  
18       (relating to state directory of new hires) shall take effect on October 1, 2012.