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H.170

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Introduced by Representative Bouchard of Colchester

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Referred to Committee on

4

Date:

5

Subject: Labor; workers' compensation; independent contractor

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Statement of purpose of bill as introduced: This bill proposes to establish a

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common definition of an "independent contractor" for the workers'

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compensation and unemployment compensation statutes.

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An act relating to independent contractors

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

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

12

§ 601. DEFINITIONS

13

Unless the context otherwise requires, words and phrases used in this

14

chapter shall be construed as follows:

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\* \* \*

16

(14) "Worker" and "employee" ~~means~~ mean an individual who has

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entered into the employment of; or works under contract of service or

18

apprenticeship with; an employer. Any reference to a worker who has died as

19

the result of a work injury shall include a reference to the worker's dependents,

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and any reference to a worker who is a minor or incompetent shall include a

1 reference to the minor's committee, guardian, or next friend. The term  
2 "worker" or "employee" does not include:

3 \* \* \*

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

6 (i) maintains a separate business with a separate office, equipment,  
7 materials, or other facilities and has continuing recurring business liabilities or  
8 obligations;

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

13 (iii) operates under a written contract that specifies that the  
14 independent contractor complies with all of the following:

15 (I) will perform specific services or work for specific amounts  
16 of money, and the independent contractor controls the means of performing the  
17 services or work;

18 (II) incurs the main expenses related to the service or work that  
19 the independent contractor performs under contract;



1 Sec. 3. 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~~ State,  
8 performed prior to January 1, 1978, which was employment as defined in this  
9 subdivision prior to such date and, subject to the other provisions of this  
10 subdivision, service performed after December 31, 1977, by an employee, as  
11 defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act,  
12 including service in interstate commerce, performed for wages or under any  
13 contract of hire, written or oral, expressed or implied. Services partly within  
14 and partly without this ~~state~~ State may by election ~~as hereinbefore provided~~ be  
15 treated as if wholly within the jurisdiction of this ~~state~~ State. ~~And whenever~~  
16 Whenever an employing unit ~~shall have~~ has elected to come under the  
17 provisions of a similar act of a state where a part of the services of an  
18 employee are performed, the ~~commissioner~~ Commissioner, ~~upon his or her~~  
19 after approval of ~~said the~~ election ~~as to any such employee~~, may treat the  
20 services ~~covered by said approved election~~ the employing unit as having been  
21 performed wholly without the jurisdiction of this ~~state~~ State.

1 \* \* \*

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

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

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

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

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

16 \* \* \*

17 (xxii) Service performed by an independent contractor if the  
18 employer can demonstrate that the independent contractor meets all of the  
19 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; and

