

1
2
3
4
5
6
7
8

9
10
11
12
13
14
15
16
17
18
19
20

H.177

Introduced by Representatives Conquest of Newbury and Scheuermann of

Stowe

Referred to Committee on

Date:

Subject: Labor; certified contractors; registry

Statement of purpose of bill as introduced: This bill proposes to create a
process for certifying independent contractors.

An act relating to certified contractors

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

Sec. 1. 21 V.S.A. chapter 23 is added to read:

CHAPTER 23. CERTIFIED CONTRACTOR PROCESS

§ 1801. PURPOSE

(a) An individual who seeks to work as the sole operator of his or her own
business and who can meet the standards and criteria set forth in this chapter
shall be provided a certificate by the Department of Labor allowing him or her
to operate independently and without the benefits and protections afforded
employees under this title.

(b) An individual who engages in any activities outside the parameters
established for a certified contractor will be considered an employee for all

1 purposes under this title, and any person or entity utilizing the services of the
2 individual will also be liable for any obligations under this title.

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

5 § 1802. DEFINITIONS

6 As used in this chapter:

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

9 (2) “Certification Review Board” means the Board established pursuant
10 to this chapter that is responsible for reviewing applications from individuals
11 seeking certified contractor status.

12 (3) “Commissioner” means the Commissioner of Labor or designee.

13 (4) “Department” means the Department of Labor.

14 § 1803. CERTIFIED CONTRACTOR CRITERIA

15 The Certification Review Board shall determine if an individual is eligible
16 for certified contractor status. An individual seeking certification shall provide
17 the Board with information demonstrating that he or she meets the certified
18 contractor criteria including:

19 (1) a notarized statement from the individual seeking certification
20 affirming that he or she has not been requested or coerced into claiming to be
21 an individual certified contractor;

1 (2) possession of a federal employer identification number (FEIN) that
2 is used for federal tax reporting purposes;

3 (3) possession of a social security number or a work visa;

4 (4) proof of registration with the Vermont Secretary of State, either as a
5 single individual with a trade name or as a single-member LLC or
6 single-member corporation;

7 (5) a demonstrated history of having his or her own business, including
8 evidence of tax returns, recurring business expenditures such as equipment
9 purchases, shop rent, or charge accounts for supplies which establish that he or
10 she is customarily engaged in an established trade or business;

11 (6) proof that he or she works for multiple employers in the course of
12 his or her business;

13 (7) proof of past work, including written contracts or agreements,
14 invoices, or competitive bids, on a per-job basis;

15 (8) evidence that he or she is free to control and direct his or her work,
16 hours of work, and the means and manner of the performance of such work,
17 subject only to the broad framework of the project goals and completion date;

18 (9) evidence that he or she has no employees or assistants, whether paid
19 or unpaid, and does not engage in any joint ventures or associations with other
20 certified contractors to perform work; and

1 (10) demonstrates that he or she is fully and solely responsible for the
2 work produced, possesses his or her own tools, equipment, and instruments of
3 trade, and normally provides materials and supplies necessary to complete the
4 work.

5 § 1804. PRESUMPTION OF STATUS

6 (a) An individual who is certified pursuant to this chapter shall not be
7 presumed to be an employee when operating under the provisions of this
8 chapter, and the entity hiring the certified contractor shall not be considered the
9 statutory employer of the certified contractor. Notwithstanding this
10 presumption, if the certified contractor is working for the employer or a
11 subcontractor in a capacity that does not qualify as an individual certified
12 contractor, then all statutory provisions relating to unemployment, workers'
13 compensation, wage and hour provisions, and employment practices
14 shall apply.

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

19 § 1805. COMPOSITION OF BOARD

20 A Certification Review Board is hereby established consisting of eleven
21 members, five of whom shall represent labor and five of whom shall represent

1 business to be appointed by the Governor and one who shall be an employee of
2 the Department appointed by the Commissioner. Nominations for members
3 for the Board shall be solicited from organizations representing employer
4 organizations, trade associations, and employee organizations and from the
5 Commissioner, as well as from a public notice conducted by the Department.
6 The Board members appointed by the Governor shall be appointed for a term
7 of two years, with no member serving more than three consecutive terms.

8 § 1806. BOARD REVIEW PROCESS

9 (a) Representatives from the Board shall meet weekly in three-member
10 panels at the direction of the Commissioner, consisting of one member each
11 representing labor and business and the Department representative. The
12 members of the panels shall rotate weekly.

13 (b) The Board shall meet to review pending applications and may schedule
14 in-person reviews with individuals seeking certification. The Board shall
15 review documentation and information and take testimony from the applicants.
16 The Board's decision to grant certification shall be based on the criteria
17 established in this chapter. If additional information is necessary to render a
18 decision, the applicant shall be given sufficient time to submit such
19 information. Once the Board determines that it has sufficient information, it
20 shall make a recommendation to the Commissioner. The Commissioner shall
21 review the recommendation and make a decision within ten days. If additional

1 information is needed, the Commissioner may remand for additional
2 information, which shall be provided to the Commissioner within 14 days.

3 The Commissioner shall issue a decision based on the additional information
4 within five days of its receipt.

5 § 1807. APPEAL

6 An applicant may appeal a decision of the Commissioner to the Supreme
7 Court within 45 days of the date of the decision.

8 § 1808. INFORMATION AND EDUCATION

9 The Commissioner in consultation with the Board shall conduct a
10 comprehensive information and education campaign regarding the provisions
11 of this chapter for a period of not less than 12 months upon instituting the
12 certification process and shall continue to provide regular information to the
13 labor and business communities about the certification program and the issues
14 of misclassification and miscoding.

15 § 1809. INVESTIGATION AND ENFORCEMENT

16 (a) The Commissioner is authorized to investigate and enforce the
17 provisions of this chapter including:

18 (1) whether a certified contractor is in compliance with this chapter; and

19 (2) whether a certified contractor or an entity hiring a certified

20 contractor is in compliance with the provisions of this title, including workers'

1 compensation, unemployment insurance compensation, wage and hour laws,
2 and employment practices.

3 (b) Upon request, a certified contractor shall provide the Department with
4 books, records, or other documentation or evidence establishing his or her
5 qualifications to be a certified contractor and evidence that all work performed
6 as a certified contractor is performed in accordance with this chapter.

7 (c) Any person or entity engaged in misrepresentation or fraudulent
8 activities in relation to this chapter shall be listed on the Department's website
9 and debarment list.

10 § 1810. PENALTIES

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

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

19 (c) Any person or entity who coerces an employee or prospective employee
20 into becoming a certified contractor for the purpose of avoiding its obligations

1 under this title or Title 32 may, after notice and opportunity for hearing, be
2 assessed an administrative penalty of up to \$5,000.00.

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

5 (e) Administrative hearings shall be conducted in accordance with the
6 Administrative Procedure Act, 3 V.S.A. chapter 25. Appeals from penalty
7 assessment determinations shall be to the Vermont Supreme Court.

8 (f) Penalties collected under this section shall be utilized by the Department
9 to offset the expenses of the contractor certification program.

10 § 1811. FEES AND COSTS

11 (a) The fee for a certified contractor certificate shall be \$100.00, which
12 shall be deposited into a special fund within the Department. The Department
13 shall utilize the funds to administer the certified contractor program including
14 for the purposes of providing a per diem and mileage reimbursement for Board
15 members.

16 (b) The Commissioner is authorized to hire and employ one permanent
17 position and one limited service position for a limited term of three years for
18 program administration. The program shall be funded by the fees and
19 administrative penalties collected pursuant to this chapter and supplemented by
20 the general fund when fees and penalties do not cover the full costs of the
21 positions and program administration.

- 1 Sec. 2. EFFECTIVE DATE
- 2 This act shall take effect on July 1, 2013.