

1 H.274

2 Introduced by Representatives Botzow of Pownal, Cross of Winooski,
3 Kitzmiller of Montpelier, Kupersmith of South Burlington, and
4 Marcotte of Coventry

5 Referred to Committee on

6 Date:

7 Subject: Labor; employers' liability and workers' compensation; failure to
8 insure

9 Statement of purpose of bill as introduced: This bill proposes to amend the
10 workers' compensation statutes.

11 An act relating to workers' compensation

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

13 Sec. 1. 21 V.S.A. § 692 is amended to read:

14 § 692. PENALTIES; FAILURE TO INSURE; ~~STOP WORK~~ STOP-WORK

15 ORDERS

16 (a)(1) Failure to insure. If after a hearing under section 688 of this title, the
17 ~~commissioner~~ Commissioner determines that an employer has failed to comply
18 with the provisions of section 687 of this title, the employer shall be assessed
19 an administrative penalty of not more than \$100.00 for every day for the first
20 seven days the employer neglected to secure liability and not more than

1 \$150.00 for every day thereafter. In addition to any other remedies and
2 proceedings authorized by this chapter, the Commissioner may bring an action
3 in the Civil Division of the Superior Court. The remedies available in a civil
4 action, including attachment and trustee process, shall be available for the
5 collection of any fines, penalties, and amounts assessed under this chapter.

6 (2) If an employer materially understates or conceals payroll or
7 employee duties so as to avoid proper classification for premium
8 classifications or materially misrepresents or conceals information pertinent to
9 the computation and application of an experience rating modification factor,
10 the employer shall be deemed to have failed to secure workers' compensation
11 in violation of section 687 of this title.

12 (3) A stop-work order issued against an employer for violating
13 subdivision (2) of this subsection shall not change an employer's duty to
14 provide benefits under this chapter or any of the employer's rights and
15 defenses under this chapter.

16 (b)(1) Stop-work orders. If an employer fails to comply with the
17 provisions of section 687 of this title after investigation by the commissioner,
18 the commissioner shall issue an emergency order to that employer to stop work
19 until the employer has secured workers' compensation insurance. If the
20 commissioner determines that issuing a stop-work order would immediately
21 threaten the safety or health of the public, the commissioner may permit work

1 ~~to continue until the immediate threat to public safety or health is removed.~~
2 ~~The commissioner shall document the reasons for permitting work to continue,~~
3 ~~and the document shall be available to the public. In addition, the employer~~
4 ~~shall be assessed an administrative penalty of not more than \$250.00 for every~~
5 ~~day that the employer fails to secure workers' compensation coverage after the~~
6 ~~commissioner issues an order to obtain insurance and may also be assessed an~~
7 ~~administrative penalty of not more than \$250.00 for each employee for every~~
8 ~~day that the employer fails to secure workers' compensation coverage as~~
9 ~~required in section 687 of this title. When a stop work order is issued, the~~
10 ~~commissioner shall post a notice at a conspicuous place on the work site of the~~
11 ~~employer informing the employees that their employer failed to comply with~~
12 ~~the provisions of section 687 of this title and that work at the work site has~~
13 ~~been ordered to cease until workers' compensation insurance is secured. The~~
14 ~~stop work order shall be rescinded as soon as the commissioner determines~~
15 ~~that the employer is in compliance with section 687 of this title. An employer~~
16 ~~against whom a stop work order has been issued is prohibited from~~
17 ~~contracting, directly or indirectly, with the state or any of its subdivisions for a~~
18 ~~period of up to three years following the date of the issuance of the stop work~~
19 ~~order, as determined by the commissioner in consultation with the~~
20 ~~commissioner of buildings and general services or the secretary of~~
21 ~~transportation, as appropriate. Either the secretary or the commissioner, as~~

1 ~~appropriate, shall be consulted in any contest of the prohibition of the~~
2 ~~employer from contracting with the state or its subdivisions. If the~~
3 Commissioner determines that an employer has failed to secure workers'
4 compensation in accordance with this chapter, the failure shall be deemed an
5 immediate serious danger to employee health, safety, and welfare so that the
6 Commissioner may issue and serve on the employer a stop-work order
7 requiring the cessation of all business operations. If the Commissioner
8 determines that issuing a stop-work order would immediately threaten the
9 health or safety of the public, the Commissioner may permit work to continue
10 until that threat is removed. The Commissioner shall document the reasons for
11 permitting work to continue, and the document shall be available to the public.

12 (2) The stop-work order shall take effect:

13 (A) with respect to all of the employer's worksites when served upon
14 the employer; or

15 (B) with respect to a particular employer worksite when served at the
16 worksite.

17 (3) A stop-work order may be served on an employer's worksite by
18 posting a copy of the order at a conspicuous location at the worksite.

19 (4) The stop-work order shall remain in force until rescinded by the
20 Commissioner upon determining that the employer has come into compliance

1 with the requirements of this chapter and has paid any penalty assessed under
2 this chapter.

3 (5) The Commissioner may issue an order of conditional release from a
4 stop-work order upon a finding that the employer has secured the required
5 workers' compensation coverage and has agreed to remit periodic payments to
6 satisfy any penalties assessed under this chapter pursuant to a written payment
7 arrangement approved by the Commissioner. If the Commissioner issues an
8 order of conditional release, the employer's failure to meet any term or
9 condition of the order or to make periodic payments shall result in the
10 immediate reinstatement of the stop-work order and the entire unpaid balance
11 of the penalty shall become due immediately.

12 (6) An order of conditional release may include a provision requiring the
13 employer to file with the Commissioner periodic reports for a probationary
14 period not exceeding two years that establish the employer's continued
15 compliance with this chapter. The Commissioner shall specify by rule the
16 reports required and the time for filing under this subdivision.

17 (7) A stop-work order issued against an employer shall apply to any
18 successor employer that has substantially common ownership, management, or
19 control as the employer on whom the stop-work order was issued and is
20 engaged in the same or similar trade or activity.

1 (8) The Commissioner may bring an action in the Civil Division of the
2 Superior Court of Washington County or in the county in which the employer
3 has its principal office or is continuing to work in violation of the stop-work
4 order to enjoin any employer from violating a stop-work order until the
5 employer establishes that it is in compliance with this chapter and has paid any
6 penalty assessed by the Commissioner.

7 (9)(A) In addition to any other penalty under this chapter, after a hearing
8 under section 688 of this title, an employer who violates a stop-work order
9 may be assessed:

10 (i) a civil penalty of not more than \$5,000.00 for the first day the
11 employer violates the stop-work order and not more than \$10,000.00 for each
12 subsequent day the order is violated; or

13 (ii) a criminal fine of not more than \$10,000.00 or imprisonment
14 for not more than six months, or both.

15 (B) The Commissioner may bring an action to enforce this subsection
16 against an employer, including the president and treasurer of a corporation that
17 is an employer, in the Civil Division of the Superior Court of Washington
18 County or in the county in which the employer has its principal office or is
19 performing services. The remedies available in the action, including
20 attachment and trustee process, shall be available to the Commissioner for the
21 collection of any fines, penalties, and amounts assessed.

1 (10) The Attorney General may deputize one or more employees of the
2 Department to prosecute criminal proceedings under this chapter.

3 ~~(c) Penalty for violation of stop work order. In addition to any other~~
4 ~~penalties, an employer who violates a stop work order described in subsection~~
5 ~~(b) of this section is subject to:~~

6 ~~(1) A civil penalty of not more than \$5,000.00 for the first violation and~~
7 ~~a civil penalty of not more than \$10,000.00 for a second or subsequent~~
8 ~~violation; or~~

9 ~~(2) A criminal fine of not more than \$10,000.00 or imprisonment for not~~
10 ~~more than 180 days, or both. (1) Penalty for violation of a stop-work order. A~~
11 ~~person who loses a competitive bid for a contract including construction,~~
12 ~~repair, remodeling, alteration, conversion, modernization, replacement, or~~
13 ~~renovation of a building, roadway, or structure may bring an action for~~
14 ~~damages against the person or firm who is awarded the contract if the other~~
15 ~~person or firm was awarded the contract because of the cost advantages~~
16 ~~achieved by violating the provisions of sections 687 or 687a of this chapter or~~
17 ~~by the deliberate misclassification of employees for the purpose of avoiding~~
18 ~~full payment of workers' compensation premiums.~~

19 (2) A person bringing an action under this subsection shall establish a
20 violation by a preponderance of the evidence. Upon establishing that the

1 violation occurred, the person shall recover as liquidated damages 10 percent
2 of the total amount bid on the contract or \$15,000.00, whichever is less.

3 (3) An action under this subsection shall be commenced within one year
4 from the date the contract is awarded.

5 (4) A person shall not recover under this subsection if the person was in
6 violation of sections 687 or 687a at the time of bidding on the contract.

7 (5) In an action under this subsection, the prevailing party shall be
8 entitled to reasonable attorney's fees.

9 (d) Debarment. An employer against whom a stop-work order has been
10 issued may be prohibited from contracting, directly or indirectly, with the State
11 or any of its subdivisions for a period of up to three years following the date of
12 the issuance of the stop-work order, as determined by the Commissioner in
13 consultation with the Commissioner of Buildings and General Services or the
14 Secretary of Transportation, as appropriate. Either the Secretary or the
15 Commissioner, as appropriate, will be consulted in any contest of the
16 prohibition on the employer from contracting with the State or its subdivisions.
17 The Commissioner of Labor may make rules to carry out the provisions of this
18 subsection.

1 languages required by the Commissioner. The posted statement shall be
2 constructed of materials capable of withstanding adverse weather conditions.

3 (b) Within 30 days of the effective date of this section, the Commissioner
4 shall create the notice described in subsection (a) of this section and post the
5 notice on the Department's website for downloading by hiring entities.

6 (c) Employers who violate this section shall be subject to an administrative
7 penalty of up to \$100.00 per violation.

8 Sec. 4. 21 V.S.A. § 643a is amended to read:

9 § 643a. DISCONTINUANCE OF BENEFITS

10 Unless an injured worker has successfully returned to work, an employer
11 shall notify both the ~~commissioner~~ Commissioner and the employee prior to
12 terminating benefits under either section 642 or 646 of this title. The notice of
13 intention to discontinue payments shall be filed on forms prescribed by the
14 ~~commissioner~~ Commissioner and shall include the date of the proposed
15 discontinuance, the reasons for it, and, if the employee has been out of work
16 for 90 days, a verification that the employer offered vocational rehabilitation
17 screening and services as required under this chapter. All relevant evidence,
18 including evidence that does not support discontinuance in the possession of
19 the employer not already filed, shall be filed with the notice. The liability for
20 the payments shall continue for ~~seven~~ 14 days after the notice is received by
21 the ~~commissioner~~ Commissioner and the employee. Those payments shall be

1 made without prejudice to the employer and may be deducted from any
2 amounts due pursuant to section 648 of this title if the ~~commissioner~~
3 Commissioner determines that the discontinuance is warranted or if otherwise
4 ordered by the ~~commissioner~~ Commissioner. Every notice shall be reviewed
5 by the ~~commissioner~~ Commissioner to determine the sufficiency of the basis
6 for the proposed discontinuance. If, after review of all the evidence in the file,
7 the ~~commissioner~~ Commissioner finds that a preponderance of all the evidence
8 in the file does not reasonably support the proposed discontinuance, the
9 ~~commissioner~~ Commissioner shall order that payments continue until a hearing
10 is held and a decision is rendered. Prior to a formal hearing, an injured worker
11 may request reinstatement of benefits by providing additional new evidence to
12 the ~~department~~ Department that establishes that a preponderance of all
13 evidence now supports the claim. If the ~~commissioner's~~ Commissioner's
14 decision, after a hearing, is that the employee was not entitled to any or all
15 benefits paid between the discontinuance and the final decision, upon request
16 of the employer, the ~~commissioner~~ Commissioner may order that the employee
17 repay all benefits to which the employee was not entitled. The employer may
18 enforce a repayment order in any court of law having jurisdiction.

19 Sec. 5. WORKERS' COMPENSATION PREMIUMS

20 The Department of Financial Regulation in consultation with the
21 Department of Labor shall study the issue of workers' compensation premiums

1 increasing as a result of an employee completing a job-related safety course.

2 The Department of Financial Regulation shall investigate how workers'

3 compensation premiums can be decreased or kept at a steady rate for

4 employers who are providing approved safety and health training to

5 employees.

6 Sec. 6. EFFECTIVE DATE

7 This act shall take effect on July 1, 2013.