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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 ~~(4) all other claims; including the balance of wages due but unpaid~~  
2 ~~under subdivision (3) of this subsection.~~

3 \* \* \*

4 Sec. 2. 21 V.S.A. § 342 is amended to read:

5 § 342. WEEKLY PAYMENT OF WAGES

6 (a)(1) Any person having employees doing and transacting business within  
7 the state shall pay each week, in lawful money or checks, the wages earned by  
8 each employee to a day not more than six days prior to the date of such  
9 payment.

10 (2) After giving written notice to the employees, any person having  
11 employees doing and transacting business within the state may,  
12 notwithstanding subdivision (1) of this subsection, pay ~~bi-weekly~~ biweekly or  
13 ~~semi-monthly~~ semimonthly in lawful money or checks, each employee the  
14 wages earned by the employee to a day not more than six days prior to the date  
15 of the payment. If a collective bargaining agreement so provides, the payment  
16 may be made to a day not more than 13 days prior to the date of payment.

17 (3) Any person having employees within the state who fails to make  
18 timely payment upon separation from employment in accordance with this  
19 section may be assessed an administrative penalty of up to \$100.00 for each  
20 day that wages remain unpaid, not to exceed \$500.00 per employee. Notice

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, not 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 ~~(g) The self-employment assistance allowance shall not be charged to an~~  
2 ~~employer in accordance with section 1325 of this title.~~

3 ~~(h) The commissioner may adopt rules to implement this section.~~

4 Sec. 18. 21 V.S.A. § 601 is amended to read:

5 § 601. DEFINITIONS

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

8 \* \* \*

9 (11) "Personal injury by accident arising out of and in the course of  
10 employment" includes an injury caused by the willful act of a third person  
11 directed against an employee because of that employment.

12 \* \* \*

13 (C) "Line of duty," as applied to firefighters and rescue and  
14 ambulance workers means one or more of the following:

15 (i) Service in the worker's town or district for firefighting or  
16 emergency purposes, in answer to a call of the department, including going to  
17 and returning from a fire or emergency or participating in a fire or emergency  
18 drill, parade, test, or trial of any firefighting or emergency equipment.

19 (ii) Similar service in another town or district to which the  
20 department has been called for firefighting or emergency purposes.

1 ~~(iii) Service under orders of any department officer or the~~  
2 ~~established regulations of the department in any other emergency to which the~~  
3 ~~department is called in the town or district where the department is established.~~

4 (iv) Activities authorized by the department for the purpose of  
5 raising funds for the department.

6 (v) Activities relating to the construction, repair, maintenance, or  
7 inspection of the firehouse or fire equipment.

8 (vi) Fire prevention activities, including inspection of property for  
9 fire hazards, public education efforts, and administrative functions.

10 (vii) Meetings of fire service organizations.

11 \* \* \*

12 Sec. 19. WORKERS' COMPENSATION PREMIUMS

13 (a) The department of banking, insurance, securities, and health care  
14 administration (BISHCA) in consultation with the department of labor shall  
15 study the issue of workers' compensation premiums increasing as a result of an  
16 employee completing a job-related safety course. BISHCA shall investigate  
17 how workers' compensation premiums can be kept at a steady rate for  
18 employees who receive job training.

19 (b) The department of banking, insurance, securities, and health care  
20 administration shall report its findings and any recommendations to the house  
21 committee on commerce and economic development and the senate committee



1 ~~on economic development, housing and general affairs no later than 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.

~~§ 1803. CERTIFIED CONTRACTOR CRITERIA~~

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

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

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

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

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

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

~~(6) Proof that he or she works for multiple employers in the course of 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.

*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;~~*

*(4) all other claims; ~~including the balance of wages due but unpaid under subdivision (3) of this subsection.~~*

\* \* \*

*Sec. 2. 21 V.S.A. § 342 is amended to read:*

*§ 342. WEEKLY PAYMENT OF WAGES*

*(a)(1) Any person having employees doing and transacting business within the state shall pay each week, in lawful money or checks, the wages earned by each employee to a day not more than six days prior to the date of such payment.*

*(2) After giving written notice to the employees, any person having employees doing and transacting business within the state may,*

*notwithstanding subdivision (1) of this subsection, pay ~~bi-weekly~~ biweekly or ~~semi-monthly~~ semimonthly in lawful money or checks, each employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.*

*(3) Any person having employees within the state who fails to make timely payment upon separation from employment in accordance with this section may be assessed an administrative penalty of up to \$100.00 for each day that wages remain unpaid, not to exceed \$500.00 per employee. Notice and opportunity for hearing under this section shall be in accordance with 3 V.S.A. chapter 25.*

\* \* \*

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

*§ 348. RETALIATION PROHIBITED*

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

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

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

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

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

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

§ 397. RETALIATION PROHIBITED

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

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

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

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

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

Sec. 5. 21 V.S.A. § 398 is added to read:

§ 398. NOTICE TO PERSONS RECEIVING REMUNERATION AS AN

INDEPENDENT CONTRACTOR

(a) Every employer shall post in a prominent and accessible place on the site where work is performed a legible statement, provided by the commissioner, that describes the responsibility of independent contractors to pay taxes required by state and federal law, the rights of employees to workers' compensation, unemployment benefits, minimum wage, overtime and other federal and state workplace protections, and the protections against retaliation and the penalties in this title if the independent contractor ~~fails to~~ does not properly classify an individual as an employee. This notice shall also contain contact information for individuals to file complaints or inquire with the commissioner about employment classification status. This information shall be provided in English or other languages required by the commissioner. If the posted statement is displayed outside it shall be constructed of materials capable of withstanding adverse weather conditions.

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

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

Sec. 6. 21 V.S.A. § 603 is amended to read:

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

*(a) So far as it is necessary in his or her examinations; or investigations and in the determination of matters within his or her jurisdiction, the commissioner shall have power to subpoena witnesses, administer oaths, and to demand the production of books, papers, records, and documents for his or her examination. Additionally, the commissioner or designee may, upon presenting appropriate credentials, at reasonable times and without disrupting critical business operations enter and inspect any place of business or employment, question any employees, and investigate any facts, conditions, or matters necessary and material to the administration of this chapter. The employer shall make the employees available to the department on the day of inspection by the commissioner. The commissioner or designee shall inform the employer of his or her right to refuse entry. If entry is refused, the commissioner may apply to the civil division of the superior court for an order to enforce the rights given the commissioner under this section.*

\* \* \*

*Sec. 7. 21 V.S.A. § 692 is amended to read:*

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

\* \* \*

*(b) Stop-work orders. If an employer fails to comply with the provisions of section 687 of this title after investigation by the commissioner, the commissioner shall issue an emergency order to that employer to stop work*

*until the employer has secured workers' compensation insurance. If the commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the commissioner may permit work to continue until the immediate threat to public safety or health is removed. The commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than \$250.00 for every day that the employer fails to secure workers' compensation coverage after the commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than \$250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. When a stop-work order is issued, the commissioner shall post a notice at a conspicuous place on the work site of the employer informing the employees that their employer failed to comply with the provisions of section 687 of this title and that work at the work site has been ordered to cease until workers' compensation insurance is secured. An employer that fails to comply with a stop-work order may be enjoined from employing individuals in employment as defined in this chapter, upon complaint of the commissioner in the civil division of the superior court. The stop-work order shall be rescinded as soon as the commissioner determines that the employer is in compliance with section 687 of this title. An employer*

*against whom a stop-work order has been issued, or who has not been in compliance with section 687 of this title, unless the commissioner determines that the failure to comply was inadvertent or excusable is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for a period of up to three years following the date of the issuance of the stop-work order, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. ~~Either the secretary or the commissioner, as appropriate, shall be consulted in any contest of the prohibition of the employer from contracting with the state or its subdivisions~~ The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.*

\* \* \*

*Sec. 7a. 8 V.S.A. § 3661 is amended to read:*

*§ 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND  
PENALTIES*

\* \* \*

*(c) An employer who makes a false statement or representation that results in a lower workers' compensation premium, after notice and opportunity for hearing before the commissioner, may be assessed an administrative penalty of not more than \$20,000.00 in addition to any other appropriate penalty. In*



*addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have made a false statement or misrepresentation, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, as appropriate. ~~Either the secretary or the commissioner, as appropriate, shall be consulted in any appeal relating to prohibiting the employer from contracting with the state or its subdivisions.~~ The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.*

\* \* \*

*Sec. 7b. 21 V.S.A. § 1314a is amended to read:*

*§ 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;  
PENALTIES*

\* \* \*

*(f)(1) Any employing unit or employer that fails to:*

*(A) File any report required by this section shall be subject to a penalty of \$100.00 for each report not received by the prescribed due dates.*

*(B) Properly classify an individual regarding the status of employment is subject to a penalty of not more than \$5,000.00 for each improperly classified employee. In addition, an employer found to have*

*violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have failed to properly classify, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, ~~as appropriate. Either the secretary or the commissioner, as appropriate, shall be consulted in any appeal relating to prohibiting the employer from contracting with the state or its subdivisions.~~ The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.*

\* \* \*

*Sec. 8. 21 V.S.A. § 708 is amended to read:*

*§ 708. PENALTY FOR FALSE REPRESENTATION*

*(a) Action by the commissioner of labor. A person who ~~willfully~~ purposefully makes a false statement or representation, ~~for the purpose of obtaining to obtain~~ any benefit or payment under the provisions of this chapter, either for herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$20,000.00, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the commissioner after a determination by the commissioner*

*that the person has ~~willfully~~ made a false statement or representation of a material fact. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have made a false statement or misrepresentation of a material fact, as determined by the commissioner in consultation with the commissioner of buildings and general services or the secretary of transportation, ~~as~~ appropriate. ~~Either the secretary or the commissioner, as appropriate, shall be consulted in any contest relating to the prohibition of the employer from contracting with the state or its subdivisions.~~ The consultation may be informal and shall occur within ten days of a referral by the commissioner. The outcome of the referral shall be documented.*

*(b) ~~When~~ In addition to penalties assessed pursuant to subsection (a) of this section, when the department of labor has sufficient reason to believe that an employer has made a false statement or representation for the purpose of obtaining a lower workers' compensation premium, the department shall refer the alleged violation to the commissioner of banking, insurance, securities, and health care administration for the commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).*

\* \* \*

*Sec. 9. 21 V.S.A. § 1101 is amended to read:*

*§ 1101. APPRENTICESHIP DIVISION AND COUNCIL*

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

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

*Sec. 10. 21 V.S.A. § 1301a is amended to read:*

*§ 1301a. DEPARTMENT OF LABOR; COMPOSITION*

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

*Sec. 11. 21 V.S.A. § 1307 is amended to read:*

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

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

*certify to official acts and subpoena witnesses and compel the production of books, papers, correspondence, memoranda, and other records necessary and material to the administration of this chapter. Additionally, the commissioner or designee may, upon presenting appropriate credentials, at reasonable times and without disrupting critical business operations enter and inspect any place of business or employment, question any employees, and investigate any facts, conditions, or matters necessary and material to the administration of this chapter. The employer shall make the employees available to the department on the day of inspection by the commissioner. The commissioner or designee shall inform the employer of his or her right to refuse entry. If entry is refused, the commissioner may apply to the civil division of the superior court for an order to enforce the rights given the commissioner under this section.*

*Sec. 12. 21 V.S.A. § 1347 is amended to read:*

*§ 1347. NONDISCLOSURE OR MISREPRESENTATION*

*\* \* \**

*(c) The person liable under this section shall repay such amount to the commissioner for the fund. In addition to the repayment, if the commissioner finds that a person intentionally misrepresented or failed to disclose a material fact with respect to his or her claim for benefits, the person shall pay an additional penalty of 15 percent of the amount of the overpaid benefits. Such amount may be collectible by civil action in a Vermont district or superior*

~~court, in the name of the commissioner. No action shall be commenced for the collection of such amount more than five years after the date of such determination under this section or the final decision confirming the liability of such person on an appeal from such determination.~~

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

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

~~date thereof or the date of final decision on an appeal from such determination.~~ The notice of determination shall also specify the period of disqualification imposed hereunder.

\* \* \*

Sec. 13. 21 V.S.A. § 1451 is amended to read:

§ 1451. DEFINITIONS

For the purpose of this subchapter:

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

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

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



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

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

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

*(C) Is not a negative balance employer. For the purposes of this section, a negative balance employer is an employer who has for three or more consecutive calendar years prior to applying for the STC plan paid more in unemployment benefits to its employees than it has contributed to its unemployment insurance account. In the event that an employer has been a negative balance employer for three consecutive years, the employer shall be ineligible for participation unless the commissioner grants a waiver based upon extenuating economic conditions or other good cause.*

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

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

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

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

(9) “Seasonal employment” means employment with an employer who experiences at least a 20-percent difference between its highest level of employment during a particular season and its lowest level of employment during the off-season in each of the previous three years as reported to the department, or employment with an employer on a temporary basis during a particular season.

*Sec. 14. 21 V.S.A. § 1452 is amended to read:*

§ 1452. CRITERIA FOR APPROVAL

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

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

*(2) the employees in the affected unit or units are identified by name, Social Security number, and by any other information required by the commissioner;*

*(3) the plan ~~specifies any impact on~~ outlines to the commissioner the extent to which fringe benefits, including health insurance, of employees participating in the plan may be reduced, which shall be factored into the evaluation of the business plan for resolving the conditions that ~~lead~~ led to the need for the STC plan;*

*(4) the usual total weekly hours of work for employees in the affected unit or units are reduced by not less than 20 percent and not more than 50 percent;*

*(5) the plan certifies that the aggregate reduction in work hours is in lieu of temporary total layoffs of one or more workers which would have resulted in an equivalent reduction in work hours and which the commissioner*

*finds would have caused an equivalent dollar amount to be payable in unemployment compensation;*

*(6) the plan certifies that the STC employer will notify the department within 24 hours after any layoff of an employee, at which time the commissioner shall have the right to terminate the STC plan;*

*(7) the identified workweek reduction is applied consistently throughout the duration of the plan unless otherwise approved by the department;*

*(6)(8) the plan applies to at least 10 percent of the employees in the affected unit, and when ~~applicable~~ determined to be applicable by the commissioner applies to all affected employees of the unit equally;*

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

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

*(9)(11) the plan certifies that the collective bargaining agent or agents for the employees, if any, have agreed to participate in the program. If there is no bargaining unit, the employer specifies how he or she will notify the*

*employees in the affected group and work with them to implement the program once the plan is approved; and*

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

*Sec. 15. 21 V.S.A. § 1453 is amended to read:*

*§ 1453. APPROVAL OR REJECTION; RESUBMISSION*

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

*Sec. 16. 21 V.S.A. § 1454 is amended to read:*

*§ 1454. EFFECTIVE DATE; DURATION*

*A plan shall be effective on the date specified in the plan or on a date mutually agreed upon by the employer and the commissioner. It shall expire at the end of the sixth full calendar month after its effective date or on the date specified in the plan if such date is earlier; provided, that the plan is not previously revoked by the commissioner; or on the effective date of any transfer of ownership of the legal business entity. If a plan is revoked or terminated by the commissioner, it shall terminate on the date specified in the*

*commissioner's written order of revocation. No employer shall be eligible for a short-time compensation plan that results in an employee receiving benefits in excess of 26 times the amount of regular unemployment benefits payable to such individual for a week of total unemployment.*

*Sec. 17. 21 V.S.A. § 1458 is amended to read:*

*§ 1458. SHORT-TIME COMPENSATION BENEFITS*

*\* \* \**

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

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

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

*(4) An individual who does not work the short-time employer's identified workweek reduction hours as certified by the application due to the use of paid vacation or personal time shall be paid benefits for the week under the partial unemployment compensation provisions of the regular unemployment compensation program.*

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

*Sec. 18. 33 V.S.A. § 4110 is amended to read:*

*§ 4110. EMPLOYER OBLIGATIONS*

*\* \* \**

*(c) As used in this section:*

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

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

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

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

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

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

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

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

Sec. 18a. COMPLIANCE WITH UNITED STATES DEPARTMENT OF

LABOR



In the event that the United States secretary of labor determines that any provision of the short-time compensation program (21 V.S.A. chapter 19, subchapter 3) is not in conformance with 26 U.S.C. § 3306(v) as added by the federal Layoff Prevention Act of 2012, the provision shall be unenforceable.

Sec. 19. 21 V.S.A. § 1340a is added to read:

§ 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

(a) The commissioner may establish a pilot project for a self-employment assistance project based on the criteria outlined in this section for a period of up to two years, provided that it conforms to state and federal unemployment law. The commissioner may terminate the pilot program with approval of the secretary of administration and notice to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs in the event that it presents unintended adverse consequences to the unemployment trust fund. The commissioner may allow up to 20 participants per year, and each individual may participate for up to 26 weeks as determined by the commissioner.

(b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) The self-employment assistance allowance shall not be charged to an employer in accordance with section 1325 of this title.

(h) The commissioner may adopt rules to implement this section.

(i) If the commissioner establishes a pilot project for self-employment assistance, the commissioner shall report on the progress of the project to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs by January 15 of the year following the start of the project.

Sec. 20. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

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

\* \* \*

(12) "Public employment" means the following:

\* \* \*

(K) other municipal workers, including volunteer firefighters and rescue and ambulance ~~squads~~ services while acting in the line of duty in any capacity under the direction and control of the fire department or rescue or ambulance service, after the governing officials of such municipal body so vote;

\* \* \*

(L) members of any regularly organized private volunteer fire department while acting in ~~the line of duty~~ any capacity under the direction

*and control of the fire department after election by the organization to have its members covered by this chapter;*

*(M) members of any regularly organized private volunteer rescue or ambulance ~~squad~~ service while acting in ~~the line of duty~~ any capacity under the direction and control of the rescue or ambulance service after election by the organization to have its members covered by this chapter;*

\* \* \*

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

*CHAPTER 23. SOLE CONTRACTOR AUTHORIZATION 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 may voluntarily request an authorization by the department of labor allowing him or her to operate independently and without the benefits and protections afforded employees under chapters 9 and 17 of this title when working within the scope of the sole contractor authorization.*

*(b) The sole contractor authorization is limited to activities that are within the scope of the certification applied for by the individual. If an authorized sole contractor engages in activities outside the scope of the authorization, the sole contractor shall be presumed to be the statutory employee of the hiring entity.*

(c) This chapter is not intended to change the existing laws governing employees and employers. The chapter applies only to individuals that have received a sole contractor authorization.

(d) Nothing in this chapter shall prohibit an individual from working as an independent contractor without the sole contractor authorization, provided the individual meets the test for an independent contractor under law.

§ 1802. DEFINITIONS

For purposes of this chapter:

(1) "Commissioner" means the commissioner of labor or designee.

(2) "Department" means the department of labor.

(3) "Hiring entity" means any person hiring an authorized sole contractor to perform work.

(4) "Sole contractor" means an individual who is approved by the authorization process established in section 1806 of this chapter. A sole contractor may be an individual, a single-member limited liability company, or a single shareholder corporation.

(5) "Sole contractor authorization review board" means the board established pursuant to this chapter that is responsible for reviewing applications from individuals seeking sole contractor status.

§ 1803. SOLE CONTRACTOR CRITERIA

(a) The authorization review board shall determine if an individual is eligible for sole contractor status. An individual operating an existing business or starting a new business and seeking authorization shall provide the board with information demonstrating that he or she meets the sole contractor criteria. The applicant shall provide:

(1) A ~~notarized~~ sworn statement from the individual seeking authorization affirming that he or she has not been coerced into falsely claiming to be a sole contractor.

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

(3) Possession of a Social Security number or a work visa.

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

(5) An affidavit attesting that he or she is and will be free to control and direct his or her work, hours of work, and the means and manner of the performance of such work, subject only to the broad framework of the project goals and completion date.

(6) An affidavit attesting that he or she has no employees or assistants and will not have any employees or assistants as a sole contractor, whether



paid or unpaid, and does not engage in any joint ventures or associations with other sole contractors to perform work.

(7) Demonstrates that he or she is in good standing regarding any outstanding child support or taxes.

(b) The applicant shall provide additional information reasonably required by the panel demonstrating that he or she meets the sole contractor criteria, which may include:

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

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

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

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

#### § 1804. PRESUMPTION OF STATUS

(a) An individual who is authorized pursuant to this chapter shall not be presumed to be an employee when operating under the provisions of this

chapter, and the entity hiring the sole contractor shall not be considered the statutory employer of the sole contractor. Notwithstanding this presumption, if the sole contractor is working for the employer or a subcontractor in a capacity that does not qualify as an individual sole contractor, then all statutory provisions relating to unemployment, workers' compensation, wage and hour provisions, and employment practices shall apply.

(b) A hiring entity shall not hire multiple sole authorized contractors to do the same work on a project or at a job site.

§ 1805. COMPOSITION OF BOARD

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

§ 1806. BOARD REVIEW PROCESS

(a) Representatives from the board shall meet weekly in three-member panels at the direction of the commissioner, consisting of one member each representing labor and business and the department representative. The members of the panels shall rotate weekly.

(b) The board shall meet to review pending applications and may schedule in-person reviews with individuals seeking authorization. The board shall review documentation and information and take testimony from the applicants. The board's decision to grant authorization shall be based on the criteria established in this chapter. If additional information is necessary to render a decision, the applicant will be given sufficient time to submit such information. Once the board determines that it has sufficient information, it shall make a recommendation to the commissioner. The commissioner shall review the recommendation and make a decision within ten days. If additional information is needed, the commissioner may remand for additional information, which shall be provided to the commissioner within 14 days. The commissioner shall issue a decision based on the additional information within five days of its receipt. The failure to render a decision within the prescribed time limits shall not result in an individual receiving authorization.

§ 1807. APPEAL

An applicant may appeal a decision of the commissioner to the supreme court within 30 days of the date of the decision.

§ 1808. INFORMATION AND EDUCATION

(a) The commissioner of labor in consultation with the authorization review board shall conduct a comprehensive information and education campaign regarding the provisions of this chapter for a period of not less than 12 months upon instituting this authorization process and shall continue to provide regular information to the labor and business communities about the authorization program and the issues of misclassification and miscoding.

(b) The commissioner shall create and maintain an on-line sole contractor registry listing the names of currently authorized sole contractors and the names of individuals that had previously been certified.

(c) The department shall provide all employers notice and information of the provisions relating to sole contractor authorization and hiring. The department shall establish a simple method for employers utilizing sole contractors to acknowledge receipt of the information, including by electronic means. An employer shall not hire a sole contractor until acknowledging receipt of the information with the department. An employer hiring a sole contractor shall make the acknowledgment annually.

§ 1809. INVESTIGATION AND ENFORCEMENT

(a) The commissioner is authorized to investigate and enforce the provisions of this chapter, including whether a sole contractor or a hiring entity is in compliance with the provisions of this title, including workers'

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

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

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

#### § 1810. PENALTIES

(a) A person who purposefully makes a false statement or representation to obtain or assist another to obtain sole contractor status may, after notice and opportunity for hearing, be assessed an administrative penalty of up to \$5,000.00 and may lose the authorization for up to two years.

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

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

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

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

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

§ 1811. FEES AND COSTS

(a) The application fee for a sole contractor authorization shall be \$100.00, which shall be deposited into the sole contractor registry special fund. The authorization shall be valid for two years and may be renewed for subsequent two-year periods upon reapplication and payment of the fee. The department shall utilize the funds to administer the sole contractor program, including for the purpose of providing a per diem and mileage reimbursement for review board members.

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

(c) There is created a sole contractor registry special fund pursuant to 32 V.S.A. chapter 7, subchapter 5, to be expended by the commissioner consistent with the provisions of this section.

§ 1812. RULEMAKING

The commissioner may adopt rules to implement the provisions of this chapter.

Sec. 22. 31 V.S.A. § 722 is amended to read:

§ 722. CERTIFICATE OF OPERATION

(a) An amusement ride may not be operated in this state unless the secretary of state has issued a certificate of operation to the owner or operator.

(b) The secretary of state shall issue a "certificate of operation" no later than 15 days before the amusement ride is first operated in the state, if the owner or operator submits all the following:

(1) Certificate of insurance in the amount of not less than \$1,000,000.00 which insures both the owner and the operator against liability for injury to persons and property arising out of the use or operation of the amusement ride.

(2) Payment of a fee in the amount of \$100.00.

(3) Documentation that the owner has complied with 21 V.S.A. § 687.

Upon receiving the documentation, the secretary of state shall forward a copy of the documentation to the department of labor.

(c) The certificate of operation shall be valid for one year from the date of issue, provided that the owner remains in compliance with the requirements of subsection (b) of this section.

(d) A copy of the certificate of operation shall be posted on or near each amusement ride covered by the certificate and shall be in full public view at all times during the operation of the ride.

*Sec. 23. INTERAGENCY AND DEPARTMENTAL TASK FORCE*

(a) The agency of administration shall create an interagency and departmental task force to coordinate efforts to combat misclassification of workers and to ensure enforcement of all related laws and regulations. The task force shall be overseen by the department of labor and include the secretaries, commissioners, or designees of the following:

(1) The agency of administration.

(2) The agency of transportation.

(3) The department of buildings and general services.

(4) The department of labor.

(5) The department of financial regulation.

(6) The agency of human services.



(7) The department of taxes.

(8) The office of attorney general.

(9) The department of liquor control.

(10) Any other state licensing agency as determined by the commissioner of labor.

(b) The task force shall meet at least six times per year.

(c) The agency of administration shall enter into a memorandum of understanding with all state agencies to facilitate the coordination and investigation of misclassification and miscoding of workers, including, unless prohibited by state or federal law, the sharing of information concerning the names of businesses found to have misclassified or miscoded workers, the relevant investigation materials, and the number of investigations of misclassification and miscoding.

(d) The department of labor shall pursue entering into a common interest agreement with the United States Department of Labor and the Internal Revenue Service, and any willing states or federal agencies regarding the sharing of information regarding misclassification and miscoding of workers. The department shall notify the chairs of the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs before entering into a common interest agreement. The department shall consider whether the common

interest agreement would result in the disclosure of an individual's personal information, or disclose information in violation of state or federal law.

(e) The department of labor shall report to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs on the progress of the interagency and departmental task force, the memorandum of understanding, the status of the common interest agreement, and any other information regarding misclassification and miscoding annually by January 15 in 2013, 2014, and 2015.

**Sec. 24. WORKERS' COMPENSATION PREMIUMS**

(a) The department of financial regulation in consultation with the department of labor shall study the issue of workers' compensation premiums increasing as a result of an employee completing a job-related safety course. The department of financial regulation shall investigate how workers' compensation premiums can be decreased or kept at a steady rate for employees who receive job safety training.

(b) The department of financial regulation shall report its findings and any recommendations to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs no later than January 15, 2013.

**Sec. 25. REPORT**

The commissioner of labor shall report to the house committee on commerce and economic development and the senate committee on economic development, housing and general affairs regarding the implementation and operation of the sole contractor authorization process. The report shall be made on or before January 15, 2013.

*Sec. 26. SHORT-TIME COMPENSATION FUNDING*

The commissioner of labor is hereby authorized to pursue federal funding for Vermont's short-time compensation program, if after an analysis of the eligibility requirements for receiving such funding, he or she concludes that doing so would be in the best interest of the state of Vermont.

*Sec. 26a. 21 V.S.A. § 601 is amended to read:*

*§ 601. DEFINITIONS*

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

\* \* \*

*(14) "Worker" and "employee" means an individual who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. Any reference to a worker who has died as the result of a work injury shall include a reference to the worker's dependents, and any reference to a worker who is a minor or incompetent shall include a reference*

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

\* \* \*

*(I) An individual who receives foster care payments excluded from the definition of gross income under Section 131 of Title 26 of the Internal Revenue Code.*

\* \* \*

*Sec. 26b. STUDY*

*The commissioner of labor and the secretary of human services shall determine the instances in which arrangements made or paid for directly or indirectly by the agency of human services to recipients constitute employment. The commissioner and the secretary shall also assess whether contracts entered into by the agency comply with employment law including workers' compensation requirements. The commissioner and the secretary shall report their findings and, to the extent that the agency is required or may elect to provide workers' compensation and unemployment compensation, shall provide an analysis of the financial costs concerning the provision of workers' compensation and unemployment compensation as well as an analysis of how the compensation could be administered. ~~The report shall be made to the house committees on appropriations and on commerce and economic development and the senate committees on appropriations and on economic~~*

~~development, housing and general affairs by January 15, 2013. The report shall be made to the house committees on appropriations, on commerce and economic development, and on human services and the senate committees on appropriations, on economic development, housing and general affairs, and on health and welfare by January 15, 2013.~~

*Sec. 27. APPROPRIATION*

~~The amount of \$40,000.00 is appropriated in fiscal year 2013 from the general fund to the department of labor to partially fund the one limited service position created in 21 V.S.A. § 1811 to administer the sole contractor authorization program.~~

*Sec. 28. EFFECTIVE DATE*

~~Sec. 12 (relating to nondisclosure or misrepresentation in order to receive unemployment benefits) of this act shall take effect on July 1, 2013. Sec. 18 (relating to employer obligations) of this act shall take effect on October 1, 2012.~~