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H.280

Introduced by Representatives Moran of Wardsboro, Botzow of Pownal,  
Consejo of Sheldon, O’Sullivan of Burlington, Stevens of  
Waterbury, and Weed of Enosburgh

Referred to Committee on

Date:

Subject: Labor; employment practices; payment of wages

Statement of purpose of bill as introduced: This bill proposes to make changes  
to the statutes regarding payment of wages.

An act relating to payment of wages

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

Sec. 1. 21 V.S.A. 341 is amended to read:

§ 341. DEFINITIONS

As used in this subchapter:

~~(a)(1)~~ “Employee” as used in this chapter means a person who has  
entered into the employment of an employer, where the employer is unable to  
show that:

~~(A)~~ the individual has been and will continue to be free from  
control or direction over the performance of such services, both under the  
contract of service and in fact; and

1           ~~(2)~~(B) the service is either outside all the usual course of business for  
2           which such service is performed, or outside all the places of business of the  
3           enterprise for which such service is performed; and

4           ~~(3)~~(C) the individual is customarily engaged in an independently  
5           established trade, occupation, profession or business.

6           ~~(b)(2)~~ “Employer” as used in sections 342-345 of this title means any  
7           person having employees in his or her service. Any officers of a corporation or  
8           agents of an employer who knowingly permit the employer to violate the  
9           provisions of this subchapter shall be deemed to be employers for the purposes  
10          of this subchapter.

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

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

13          (5) “Wages” means all remuneration payable for services rendered by an  
14          employee, including salary, commissions, bonuses, and other forms of  
15          compensation.

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

17          § 342. WEEKLY PAYMENT OF WAGES

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



1 mail sent to the employer's last known address, together with an order to file  
2 with the Department within 10 calendar days of receipt.

3 ~~(b) If the commissioner finds that the unpaid wages were willfully withheld~~  
4 ~~by the employer, the commissioner may collect from the employer an~~  
5 ~~additional amount not to exceed twice the amount of the unpaid wages, one-~~  
6 ~~half of which will be remitted to the employee and one half of which shall be~~  
7 ~~retained by the commissioner to offset estimated administrative and collection~~  
8 ~~costs. The Commissioner shall investigate the complaint, and may examine~~  
9 ~~the employer's records, enter and inspect the employee's business premises,~~  
10 ~~question such employees, subpoena witnesses, and compel the production of~~  
11 ~~books, papers, correspondence, memoranda, and other records necessary and~~  
12 ~~material to investigate the complaint. If a person fails to comply with any~~  
13 ~~lawfully issued subpoena, or a witness refuses to testify to any matter on which~~  
14 ~~he or she may be lawfully interrogated, the Commissioner may seek an order~~  
15 ~~from the Civil Division of the Superior Court compelling testimony or~~  
16 ~~compliance with the subpoena.~~

17 ~~(c) The commissioner shall enforce an order for collection under this~~  
18 ~~section in superior court. The commissioner may authorize an agent to~~  
19 ~~administer oaths and to compel testimony for the purposes of this section. If~~  
20 ~~after the investigation wages are found to be due, the Commissioner shall~~  
21 ~~attempt to settle the matter between the employer and employee. If the attempt~~

1 fails, the Commissioner shall issue a written determination and order for  
2 collection, which shall specify the facts and the conclusions upon which the  
3 determination is based. The Department shall collect from the employer the  
4 amounts due and remit them to the employee. Notice of the determination and  
5 the order for collection to the employer shall be provided to all interested  
6 parties by certified mail or service.

7 (d) If the Commissioner determines that the unpaid wages were willfully  
8 withheld by the employer, the order for collection may provide that the  
9 employer is liable to pay an additional amount not to exceed twice the amount  
10 of unpaid wages, one-half of which will be remitted to the employee and  
11 one-half of which shall be retained by the Commissioner to offset  
12 administrative and collection costs.

13 (e) Within 30 days after the date of the collection order, the employer or  
14 employee may file an appeal from the determination to a departmental  
15 administrative law judge. The appeal shall, after notice to the employer and  
16 employee, be heard by the administrative law judge within a reasonable time.  
17 The administrative law judge shall review the complaint de novo, and after a  
18 hearing, the determination and order for collection shall be sustained,  
19 modified, or reversed by the administrative law judge. Prompt notice in  
20 writing of the decision of the administrative law judge and the reasons for it  
21 shall be given to all interested parties.

1       (f) The employer or employee may appeal the decision of the  
2       administrative law judge within 30 days by filing a written request with the  
3       Employment Security Board. The appeal shall be heard by the Board after  
4       notice to the employee and employer. The Board may affirm, modify, or  
5       reverse the decision of the administrative law judge solely on the basis of  
6       evidence in the record or any additional evidence it may direct to be taken.  
7       Prompt notice of the decision of the Board shall be given to the employer and  
8       employee in the manner provided by section 1357 of this title. The Board's  
9       decision shall be final unless an appeal to the Supreme Court is taken.  
10       Testimony given at any hearing upon a complaint of unpaid wages shall be  
11       recorded, but the record need not be transcribed unless ordered.

12       (g) The Commissioner may enforce a final order for collection under this  
13       section within two years of the date of the final order in the Civil Division of  
14       the Superior Court.

15       (h) Information obtained from any employer, employee, or witness in the  
16       course of investigating a complaint of unpaid wages and determinations as to  
17       complaints of unpaid wages shall be confidential and shall not be disclosed or  
18       open to public inspection in any manner that reveals the employee's or  
19       employer's identity or be admissible in evidence in any action or proceeding  
20       other than one arising under this subchapter. However, such information may

1 be released to any public official for the purposes provided in subdivision  
2 1314(e)(1) of this title.

3 Sec. 4. 21 V.S.A. § 345 is amended to read:

4 § 345. PENALTY FOR NONPAYMENT OF WAGES

5 Each employer who violates sections 342 and 343 of this title ~~and the~~  
6 ~~officers of any corporation, cooperative or stock association, who fraudulently~~  
7 ~~permit their corporation, or cooperative association to violate these sections,~~  
8 shall be fined not more than \$ 500.00 ~~or imprisoned not more than one year or~~  
9 ~~both. Upon conviction, the court shall make an order requiring the payment of~~  
10 ~~wages due and not paid.~~

11 Sec. 5. 21 V.S.A. § 345a is amended to read:

12 § 345a. FAILURE OF ANY EMPLOYER TO PROVIDE BENEFITS FOR  
13 EMPLOYEES

14 In addition to any other penalty or punishment otherwise prescribed by law,  
15 any employer who is party to a written agreement to provide benefits or wage  
16 supplements, and who fails to pay the amount required by the agreement:

17 (1) shall be liable to the employee for actual damages caused by the  
18 failure to pay; and

19 (2) where the failure to pay is fraudulently made and continues for 30  
20 days after such payments are required to be made, shall be fined not more than  
21 \$500.00 ~~or imprisoned not more than one year, or both. Where the employer is~~

1 a corporation, the president and other officers who have control of funds of the  
2 corporation shall be considered employers for the purposes of this section. The  
3 court, in passing sentence, shall make an order requiring the employer to pay  
4 over to the employee the benefits or wage supplements to which he or she is  
5 entitled.

6 Sec. 6. 21 V.S.A. § 347 is amended to read:

7 § 347. FORFEITURE

8 ~~A person~~ An employer who violates section 342 or 343 of this title shall  
9 forfeit to the individual injured twice the value thereof, to be recovered in a  
10 civil action, and all costs and reasonable attorney's fees. However, ~~no~~ an  
11 action may not be maintained under this section unless at the time the action is  
12 brought, the wages remain unpaid or improperly paid.

13 Sec. 7. 3 V.S.A. § 816 is amended to read:

14 § 816. EXEMPTIONS

15 (a) Sections 809-813 of this title shall not apply to:

16 \* \* \*

17 (3) Acts, decisions, findings, or determinations by the ~~department of~~  
18 ~~labor or the commissioner of labor~~ Department of Labor or the Commissioner  
19 of Labor or his or her, its or their duly authorized agents as to any and all  
20 procedures or hearings before and by the ~~department or commissioner~~  
21 Department or Commissioner or his or her or their ~~said~~ agents, arising out of or



1 with respect to 21 V.S.A. chapter 5, subchapter 2, and chapters 9 and 11 of  
2 Title 21.

3 \* \* \*

4 Sec. 8. 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 in an  
10 investigation of a violation of this subchapter; or

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. 9. 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 in an

3 investigation of a violation of this subchapter; or

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. 10. EFFECTIVE DATE

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