

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 867 entitled “An act relating to classification of
4 employees and independent contractors” respectfully reports that it has
5 considered the same and recommends that the bill be amended by striking out
6 all after the enacting clause and inserting in lieu thereof the following:

7 **Sec. 1. PURPOSE**

8 By enacting this legislation, the General Assembly intends to promote the
9 proper classification of employees and independent contractors by more clearly
10 defining the “statutory employer” concept and the definitions of “employee”
11 and “employer,” and by establishing a consistent definition of “independent
12 contractor” between Vermont’s workers’ compensation and unemployment
13 insurance laws. In particular, this legislation is intended to:

14 (1) honor and build on the over 100-year evolution and improvement on
15 the grand bargain between employers and employees under Vermont’s
16 workers’ compensation law;

17 (2) ensure that Vermont’s workers’ compensation and unemployment
18 insurance systems reflect and support the unique character and spirit of
19 innovation that is inherent in Vermont’s workforce and economy;

20 (3) address decades of challenges in relation to the proper classification
21 of employees and independent contractors ;

1 the term “employer” includes the employer’s insurer so far as applicable. A
2 person is not deemed to be an “employer” for the purposes of this chapter as
3 the result of entering into a contract for services or labor with ~~an individual~~
4 a sole proprietor or partner owner who has knowingly and voluntarily waived
5 coverage of this chapter pursuant to subdivision (14)(F) of this section, or an
6 individual who is a corporate officer or L.L.C. member or manager that has
7 filed, and had approved, an exclusion pursuant to subdivision 14(H) of this
8 section and who meets the criteria set forth in that subdivision.

9 * * *

10 (14) “Worker” and “employee” means ~~an individual~~ a person who has
11 entered into the employment of, or works under contract of service or
12 apprenticeship with, an employer. Any reference to a worker who has died as
13 the result of a work injury shall include a reference to the worker’s dependents,
14 and any reference to a worker who is a minor or incompetent shall include a
15 reference to the minor’s committee, guardian, or next friend. ~~The term~~
16 ~~“worker” or “employee” does not include~~ A person who performs services for
17 compensation is presumed to be an employee unless the person is one of the
18 following:

19 * * *

1 (B) An individual engaged in amateur sports, including a referee or
2 official who is paid on a per game or per event basis, even if an employer
3 contributes to the support of such sports.

4 * * *

5 (F)(i) ~~The~~ A sole proprietor or partner owner or partner owners of an
6 unincorporated business provided the following conditions are met:

7 ~~(i)(I)(aa)~~ The individual or partner owner is an independent
8 contractor who performs work that is distinct and separate from that of the
9 person with whom the individual or partner owner contracts; or

10 (bb) the individual or partner owner is an independent
11 contractor and is either actively registered as a business with the Vermont
12 Secretary of State or actively registered as a business in the state or country of
13 domicile.

14 ~~(ii) The individual controls the means and manner of the work~~
15 ~~performed.~~

16 ~~(iii) The individual holds him or herself out as in business for him~~
17 ~~or herself.~~

18 ~~(iv) The individual holds him or herself out for work for the~~
19 ~~general public and does not perform work exclusively for or with another~~
20 ~~person.~~

1 ~~(v) The individual is not treated as an employee for purposes of~~
2 ~~income or employment taxation with regard to the work performed.~~

3 ~~(vi)~~(II) The services are performed pursuant to a written
4 agreement or contract between the individual or partner owner and ~~another~~
5 ~~person~~ the person who is providing compensation for the services, and the
6 written agreement or contract explicitly states that the individual or partner
7 owner is not considered to be an employee under this chapter, is working
8 independently, has no employees, and has not contracted with other
9 independent contractors. The written contract or agreement shall also include
10 information regarding the right of the individual or partner owner to purchase
11 workers' compensation insurance coverage ~~and the individual's election not to~~
12 ~~purchase that coverage~~. However, if the individual or partner owner who is
13 party to the agreement or contract under this subdivision is found to have
14 employees, those employees may file a claim for benefits under this chapter
15 against either or both parties to the agreement.

16 (ii)(I) An individual or partner owner that meets the conditions of
17 subdivision (i) of this subdivision (14)(F) may elect to file with the
18 Commissioner a notice to waive the right to make a claim for workers'
19 compensation against the person with whom the individual or partner owner
20 contracts.

1 (II) If, after filing a notice under subdivision (I) of this
2 subdivision (14)(F)(ii), the individual or partner owner suffers a personal
3 injury arising out of and in the course of his or her employment, he or she may
4 bring an action to recover damages for personal injury against the person who
5 is providing compensation for the services, and in such action the person who
6 is providing compensation for the services shall have all of the defenses
7 available in a personal injury claim. However, this election shall not prevent
8 any other individual, other than the individual excluded pursuant to subdivision
9 (i) of this subdivision (14)(F), who is determined to be an employee of the
10 unincorporated business from claiming workers' compensation benefits under
11 this chapter from the unincorporated business, or from a statutory employer.

12 (iii) An individual or partner owner that makes an election under
13 subdivision (i) of this subdivision (14)(F) shall collect and maintain
14 documentation that any other person hired to perform services for the sole
15 proprietor or partner owner's unincorporated business has workers'
16 compensation coverage, or is otherwise in compliance with the provisions of
17 this chapter.

18 * * *

19 (H) With the approval of the Commissioner, a corporation or a
20 limited liability company (L.L.C.) may elect to file exclusions from the
21 provisions of this chapter. A corporation or an L.L.C. may elect to exclude up

1 to four corporate executive officers or four L.L.C. managers or members from
2 coverage requirements under this chapter. If all officers of the corporation or
3 all managers or members of an L.L.C. make such election, receive approval,
4 and the business has no employees, the corporation or L.L.C. shall not be
5 required to purchase workers' compensation coverage. ~~If after election, the~~
6 ~~officer, manager, or member experiences a personal injury and files a claim~~
7 ~~under this chapter, the employer shall have all the defenses available in a~~
8 ~~personal injury claim. However, this election shall not prevent any other~~
9 ~~individual, other than the individual excluded under this section, found to be an~~
10 ~~employee of the corporation or L.L.C. to recover workers' compensation from~~
11 ~~either the corporation, L.L.C., or the statutory employer.~~

12 (i) A person shall not be deemed to be an "employer" for purposes
13 of this chapter of corporate executive officers or L.L.C. managers or members
14 that are excluded under this subdivision (14) if the following conditions
15 are met:

16 (I) The corporate executive officers or L.L.C. managers or
17 members operate a separate and distinct business that is an independent
18 contractor, is actively registered with the Vermont Secretary of State, and
19 elects to file a corporate officer or L.L.C. member exclusion from the
20 provisions of this chapter.

1 (II) The services are performed pursuant to a written agreement
2 or contract between the corporation or L.L.C. and the person who is providing
3 compensation for the services, and the written agreement or contract explicitly
4 states that the corporate executive officers or L.L.C. managers or members are
5 not considered to be employees under this chapter and are working
6 independently. The written contract or agreement shall also include
7 information regarding the right of the corporation or L.L.C. to purchase
8 workers' compensation insurance coverage and of the corporate executive
9 officers or the L.L.C. managers or members to elect not to exclude themselves
10 from coverage.

11 (ii) If, after making an election under this subdivision (14), the
12 corporate officer or L.L.C. manager or member suffers a personal injury
13 arising out of and in the course of his or her employment, he or she may bring
14 an action to recover damages for personal injury against the person who is
15 providing compensation for the services, and in such action the person who is
16 providing compensation for the services shall have all of the defenses available
17 in a personal injury claim. However, this election shall not prevent any other
18 individual, other than the individual excluded pursuant to this subdivision, who
19 is determined to be an employee of the corporation or L.L.C. from claiming
20 workers' compensation benefits under this chapter from the corporation or
21 L.L.C. or from a statutory employer.

1 (iii) A corporation or L.L.C. whose executive officers, members,
2 or managers make an election under subdivision (H)(i) of this subdivision (14)
3 shall collect and maintain documentation that any other person hired to
4 perform services for the corporation or L.L.C. has workers' compensation
5 coverage, or is otherwise in compliance with this chapter.

6 (I) An individual who provides services for which he or she receives
7 foster care payments that are specifically excluded from gross income pursuant
8 to Section 131 of the federal Internal Revenue Code, 26 U.S.C. § 131.

9 * * *

10 (31)(A) "Independent contractor" means a person that is economically
11 independent of the person's employing unit under the totality of the
12 circumstances based on an assessment of the following factors:

13 (i) whether the person is free from the direction and control of the
14 employing unit with respect to the means and manner of the services
15 performed, both under the person's contract of service and in fact;

16 (ii) whether the person operates a separate and distinct business
17 from that of the employing unit and the extent to which the person is either:

18 (I) performing work that is not a substantial, essential, and
19 recurring part of the business of the employing unit; or

20 (II) performing work for the employing unit on a sporadic or
21 intermittent basis;

1 (iii) whether the person's contract of service provides that the
2 person will receive a specified amount of compensation for the performance of
3 specific services and does not provide that the services will be performed on an
4 ongoing or indefinite basis, and whether the person may realize a profit or
5 suffer a loss under the contract of service;

6 (iv) the extent of the person's investment in the resources, assets,
7 or equipment necessary to perform the services contracted for; whether the
8 person possesses specialized skills or knowledge necessary to perform the
9 services contracted for; and whether the person has continuing and recurring
10 business liabilities and obligations;

11 (v) whether the person holds itself out as in business for itself and
12 offers its services to the general public; and

13 (vi) whether the person is not treated as an employee for purposes
14 of income or employment taxation with regard to the work performed and
15 either:

16 (I) holds or has applied for a federal employer identification
17 number; or

18 (II) has filed business or self-employment tax returns with the
19 federal Internal Revenue Service within the past year or will file business or
20 self-employment tax returns with the federal Internal Revenue Service for the
21 current year.

1 (B) In considering whether a person is economically independent
2 pursuant to subdivision (A) of this subdivision (31), no single factor in and of
3 itself shall be dispositive.

4 **[Alternative 1]**

5 (C) If multiple persons are performing the same work on a project or
6 jobsite, the determination of whether the person is economically independent
7 of the employing unit shall take into account both the circumstances related to
8 the services performed by the person and the circumstances related to the work
9 performed on the overall project or jobsite.

10 **[Alternative 2]**

11 (C)(i) An employing unit may hire multiple individual independent
12 contractors to perform the same or similar work. However, the number of
13 independent contractors employed by an employing unit to perform the same
14 or similar work at any one time shall not exceed:

15 (I) for an employing unit that has ten or fewer employees in
16 Vermont, 40 percent of the number of the employer's employees;

17 (II) for an employing unit that has between 11 and 50
18 employees in Vermont, 20 percent of the number of the employer's
19 employees; and

20 (III) for an employing unit that has more than 50 employees in
21 Vermont, five percent of the number of the employer's employees.

1 (ii) Notwithstanding any provision of this section to the contrary,
2 if an employing unit exceeds the number of independent contractors permitted
3 to perform the same or similar work pursuant to subdivision (C)(i) of this
4 subdivision (31), each person hired in excess of the permitted number of
5 independent contractors shall be deemed to be an employee.

6 **[Alternative 3]**

7 (C)(i) An employing unit may hire multiple individual independent
8 contractors for periods exceeding six months. However, the number of
9 independent contractors employed by an employing unit for a period exceeding
10 six months at any one time shall not exceed:

11 (I) for an employing unit that has ten or fewer employees in
12 Vermont, 40 percent of the number of the employer's employees;

13 (II) for an employing unit that has between 11 and 50
14 employees in Vermont, 20 percent of the number of the employer's
15 employees; and

16 (III) for an employing unit that has more than 50 employees in
17 Vermont, five percent of the number of the employer's employees.

18 (ii) Notwithstanding any provision of this section to the contrary, if
19 an employing unit exceeds the number of independent contractors permitted to
20 be employed for a period exceeding six months pursuant to subdivision (C)(i)

1 of this subdivision (31), each person hired in excess of the permitted number of
2 independent contractors shall be deemed to be an employee.

3 (D) An independent contractor shall purchase workers' compensation
4 coverage for its employees as provided in this chapter.

5 **[Eastman, Olsen, Sibia Alternative]**

6 (C) Notwithstanding subdivision (A) of this subdivision (31), the
7 term "independent contractor" does not include a person that contracts with no
8 more than one employing unit and performs 1,000 hours or more of services
9 during a calendar year, provided that the services performed by the person
10 would not exclude an employee from the minimum wage and maximum hour
11 requirements of the federal Fair Labor Standards Act pursuant to 29 U.S.C.
12 § 213(a)(1).

13 (D) There shall be a rebuttable presumption that a person that
14 performs services on a per-job or fixed fee basis, rather than on an hourly
15 basis, is an independent contractor.

16 Sec. 2. 21 V.S.A. § 1301 is amended to read:

17 § 1301. DEFINITIONS

18 The following words and phrases, as used in this chapter, shall have the
19 following meanings unless the context clearly requires otherwise:

20 * * *

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

4 ~~(ii) Such service is either outside the usual course of the business~~
5 ~~for which such service is performed, or that such service is performed outside~~
6 ~~of all the places of business of the enterprise for which such service is~~
7 ~~performed; and~~

8 ~~(iii) Such individual is customarily engaged in an independently~~
9 ~~established trade, occupation, profession, or business.~~

10 (I) whether the individual is free from the direction and control
11 of his or her employing unit with respect to the means and manner of the
12 services performed, both under his or her contract of service and in fact;

13 (II) whether the individual operates a separate and distinct
14 business from that of the employing unit and the extent to which the individual
15 is either:

16 (aa) performing work that is not a substantial, essential, and
17 recurring part of the business of the employing unit; or

18 (bb) performing work for the employing unit on a sporadic
19 or intermittent basis;

20 (III) whether the individual's contract of service provides that
21 he or she will receive a specified amount of compensation for the performance

1 of specific services and does not provide that the services will be performed on
2 an ongoing or indefinite basis, and whether the individual may realize a profit
3 or suffer a loss under his or her contract of service;

4 (IV) the extent of the individual's investment in the resources,
5 assets, and equipment, as well as the specialized skills or knowledge necessary
6 to perform the services contracted for, and whether he or she has continuing
7 and recurring business liabilities and obligations;

8 (V) whether the individual holds him- or herself out as in
9 business for him- or herself and offers his or her services to the general
10 public; and

11 (VI) whether the individual is not treated as an employee for
12 purposes of income or employment taxation with regard to the work performed
13 and either:

14 (aa) holds or has applied for a federal employer
15 identification number; or

16 (bb) has filed business or self-employment tax returns with
17 the federal Internal Revenue Service within the past year or will file business
18 or self-employment tax returns with the federal Internal Revenue Service for
19 the current year.

1 (ii) In considering whether an individual is economically
2 independent pursuant to subdivision (i) of this subdivision (6)(B), no single
3 factor in and of itself shall be dispositive.

4 **[Alternative 1]**

5 (iii) If multiple individuals are performing the same work on a
6 project or jobsite, the determination of whether an individual is economically
7 independent of the employing unit shall take into account both the
8 circumstances related to the services performed by the individual and the
9 circumstances related to the work performed on the overall project or jobsite.

10 **[Alternative 2]**

11 (iii)(I) An employing unit may hire multiple individuals that are
12 performing the same or similar services that do not constitute employment on a
13 project or jobsite pursuant to subdivision (B)(i) of this subdivision (6).
14 However, the number of individuals performing the same or similar services
15 that do not constitute employment on a project or jobsite for an employing unit
16 at any one time shall not exceed:

17 (aa) for an employing unit that has ten or fewer employees
18 in Vermont, 40 percent of the number of the employer's employees;

19 (bb) for an employing unit that has between 11 and 50
20 employees in Vermont, 20 percent of the number of the employer's
21 employees; and

1 (cc) for an employing unit that has more than 50 employees in
2 Vermont, five percent of the number of the employer's employees.

3 (II) Notwithstanding any provision of this section to the contrary,
4 if an employing unit exceeds the number of individuals that are permitted to
5 perform the same or similar services that do not constitute employment on a
6 project or jobsite pursuant to subdivision (C)(i) of this subdivision (31), each
7 person hired in excess of the permitted number shall be deemed to be
8 performing services in employment.

9 **[Alternative 3]**

10 (C)(i) An employing unit may hire multiple individuals that are
11 performing services that do not constitute employment for periods exceeding
12 six months. However, the number of individuals that are performing services
13 that do not constitute employment for periods exceeding six months employed
14 by an employing unit for a period exceeding six months at any one time shall
15 not exceed:

16 (I) for an employing unit that has ten or fewer employees in
17 Vermont, 40 percent of the number of the employer's employees;

18 (II) for an employing unit that has between 11 and 50
19 employees in Vermont, 20 percent of the number of the employer's
20 employees; and

1 ~~of all the places of business of the enterprise for which such service is~~
2 ~~performed; and~~

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

5 ~~(I) is free from the direction and control of the employing unit,~~
6 ~~both under the individual's contract of service and in fact;~~

7 ~~(II) controls the means and manner of the services performed;~~

8 ~~(III) operates a separate and distinct business from that of the~~
9 ~~person with whom he or she contracts;~~

10 ~~(IV) holds him- or herself out as in business for him- or herself;~~

11 ~~(V) offers his or her services to the general public; and~~

12 ~~(VI) is not treated as an employee for purposes of income or~~
13 ~~employment taxation with regard to the services performed.~~

14 ~~(ii) An individual that performs services on a per-job or fixed fee~~
15 ~~basis, rather than on an hourly basis, shall be presumed to not be performing~~
16 ~~services in employment until it is shown to the satisfaction of the~~
17 ~~Commissioner that the individual does not meet all of the criteria set forth in~~
18 ~~subdivisions (B)(i)(I)–(VI) of this subdivision (6).~~

19 ~~(C) Notwithstanding subdivision (B) of this subdivision (6), an~~
20 ~~individual shall be deemed to be performing services in employment if he or~~
21 ~~she performs 1,000 hours or more of services during a calendar year and~~

1 performs services for no more than one employing unit during that year,
2 provided that the individual is performing services that would not exclude an
3 employee from the minimum wage and maximum hour requirements of the
4 federal Fair Labor Standards Act pursuant to 29 U.S.C. § 213(a)(1).

5 (D) The term “employment” shall not include:

6 * * *

7 (~~D~~)(E) Notwithstanding any other provisions of this subdivision,
8 service with respect to which a tax is required to be paid under any federal law
9 imposing a tax against which credit may be taken for contributions required to
10 be paid into a state unemployment fund or which as a condition for full tax
11 credit against the tax imposed by the Federal Unemployment Tax Act is
12 required to be covered under this chapter.

13 * * *

14 Sec. 3. 3 V.S.A. § 2222d is added to read:

15 § 2222d. VERMONT EMPLOYEE CLASSIFICATION TASK FORCE

16 (a) Creation and purpose. The Vermont Employee Classification Task
17 Force is created in the Agency of Administration to reduce the frequency of
18 employee misclassification through enhanced education, improved
19 coordination of State resources, and increased collaboration among State
20 government, businesses, labor, and other stakeholders.

1 (b) Membership. The Task Force shall be composed of the following nine
2 members:

3 (1) the Secretary of Administration or designee;

4 (2) the Commissioner of Labor or designee;

5 (3) the Secretary of Transportation or designee;

6 (4) the Commissioner of Buildings and General Services or designee;

7 (5) the Commissioner of Financial Regulation or designee;

8 (6) the Secretary of Human Services or designee;

9 (7) the Commissioner of Taxes or designee;

10 (8) the Attorney General or designee; and

11 (9) the Commissioner of Liquor Control or designee.

12 (c) Meetings.

13 (1) The Task Force shall meet at least six times per year.

14 (2) The Secretary of Administration or designee shall be the Chair.

15 (3) A majority of the membership of the Task Force shall constitute a

16 quorum.

17 (d) Duties.

18 (1) The Task Force shall have the following duties:

19 (A) to develop and implement an ongoing outreach program to

20 educate and inform employers, workers, and the general public about the

21 proper classification of employees and independent contractors;

1 (B) to examine and evaluate existing misclassification enforcement
2 by State agencies and departments;

3 (C) to develop and implement strategies to improve coordination,
4 cooperation, and information sharing among State agencies and departments in
5 relation to the investigation and enforcement of employee misclassification;

6 (D) to review and establish reasonable mechanisms to accept
7 complaints and reports of noncompliance;

8 (E) to ensure that State agencies and departments are engaged in
9 timely enforcement;

10 (F) to ensure that penalties and debarment periods are posted on a
11 publically available website in a timely manner, to the extent permitted by law;

12 (G) to review and recommend additional methods to provide public
13 notice and share information regarding enforcement, penalties, and debarment
14 periods;

15 (H) to develop strategies and programs to assist businesses in
16 complying with Vermont’s requirements for the proper classification of
17 employees and independent contractors, and to reduce the frequency of
18 employee misclassification; and

19 (I) to recommend legislative, regulatory, and administrative measures
20 to reduce the frequency of employee misclassification.

1 (2) The Task Force shall consult and collaborate with businesses, labor,
2 and other interested stakeholders to accomplish the duties set forth in
3 subdivision (1) of this subsection, and may appoint representatives of business,
4 labor, and other interested stakeholders to subcommittees as the Task Force
5 deems appropriate.

6 (e) Reports.

7 (1) The Task Force shall report annually on or before January 15 to the
8 House Committee on Commerce and Economic Development and the Senate
9 Committee on Finance regarding the activities that it has undertaken pursuant
10 to this section, the progress of the Task Force’s ongoing education and
11 outreach programs, the number and results of the employer audits conducted
12 during the previous calendar year, and any barriers or impediments to the
13 proper classification of employees and independent contractors that the Task
14 Force has identified. The report may recommend legislative, regulatory, and
15 administrative measures to reduce the frequency of employee misclassification.
16 The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not
17 apply to the report to be made under this subsection.

18 (2) The Task Force shall examine the issue of comprehensive
19 enforcement of employee misclassification within Vermont’s workers’
20 compensation system and potential measures to improve the efficacy of the
21 State’s misclassification enforcement mechanisms, including by transferring

1 the responsibility for the investigation and enforcement of misclassification to
2 the Office of the Attorney General. The Task Force shall develop and
3 establish performance measures to evaluate the efficacy of efforts to enforce
4 the requirements for classification of employees and independent contractors,
5 and any improvement in the outcomes of the State’s enforcement efforts over
6 time. On or before February 15, 2017, the Task Force shall report to the House
7 Committee on Commerce and Economic Development and the Senate
8 Committee on Finance with a recommendation for a comprehensive plan to
9 improve the State’s misclassification enforcement mechanisms and any
10 legislative, regulatory, or administrative measures necessary to implement
11 the plan.

12 (3) The Task Force shall study the use of multiple independent
13 contractors to perform the same work on a project or jobsite to determine how
14 often employee misclassification occurs in such situations. In performing its
15 study, the Task Force shall review documented instances of misclassification
16 and may consult with business, labor, and other interested stakeholders. On or
17 before February 15, 2017, the Task Force shall submit a written report to the
18 General Assembly with its findings and any recommendations for legislative
19 action.

20 (4) The Task Force shall examine the issue of whether all workers in
21 certain industries should be required to be covered by workers’ compensation

1 insurance. On or before February 15, 2017, the Task Force shall submit a
2 written report to the General Assembly with its findings and any
3 recommendations for legislative action.

4 (f) Definition. As used in this section, “employee misclassification” means
5 the improper classification of employees as independent contractors.

6 Sec. 4. 21 V.S.A. § 398 is added to read:

7 § 398. NOTICE TO PERSONS RECEIVING COMPENSATION AS AN
8 INDEPENDENT CONTRACTOR

9 (a)(1) Every employer shall post in a prominent and accessible place on a
10 site where work is performed a poster provided by the Department that shall
11 explain the differences between an “employee” and an “independent
12 contractor” pursuant to the applicable provisions of chapters 9 and 17 of this
13 title. The poster shall also include information regarding:

14 (A) the protections against retaliation provided by this title;

15 (B) the penalties provided pursuant to this title for failure to classify
16 an individual properly as an employee;

17 (C) how an individual may file a complaint or inquiry with the
18 Commissioner about his or her employment classification status; and

19 (D) how an employer may obtain guidance or information from the
20 Department with respect to the proper classification of employees and
21 independent contractors.

1 (2)(A) The information set forth on the poster shall be in English or
2 other languages as required by the Commissioner.

3 (B) If the poster is located outdoors, it shall be constructed of
4 materials capable of withstanding adverse weather conditions.

5 (3) An employer shall, at the time of hiring, provide home-based
6 employees and employees that do not work at a fixed worksite with the
7 information required under subdivision (1) of this subsection. The information
8 shall be provided to the employees in a format provided by the Department.

9 (b) On or before August 1, 2016, the Commissioner shall create the poster
10 required pursuant to subsection (a) of this section and shall make it available to
11 employers on the Department’s website.

12 (c) An employer who violates the provisions of this section shall be subject
13 to an administrative penalty of not more than \$100.00 per violation.

14 Sec. 5. 21 V.S.A. § 603 is amended to read:

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

16 (a) So far as it is necessary in his or her examinations, and investigations
17 and in the determination of matters within his or her jurisdiction, the
18 ~~commissioner~~ Commissioner shall have power to subpoena witnesses,
19 administer oaths, and ~~to~~ demand the production of books, papers, records, and
20 documents for his or her examination. In addition, the Commissioner or his or
21 her designee may, upon presenting appropriate credentials, at reasonable times

1 and without unduly disrupting business operations enter and inspect any place
2 of business or employment, question any employees, and investigate any facts,
3 conditions, or matters necessary and material to the administration of this
4 chapter. The employer shall, at reasonable times and without unduly
5 disrupting business operations, make its workers available to meet with the
6 Commissioner or designee, as required by the Commissioner. The
7 Commissioner or designee shall inform the employer of his or her rights to
8 refuse entry and to consult with legal counsel, and of the Commissioner's
9 rights under this section. If entry is refused, the Commissioner may apply to
10 the Civil Division of the Superior Court for an order to enforce the rights given
11 to the Commissioner under this section.

12 * * *

13 Sec. 6. 21 V.S.A. § 692 is amended to read:

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

15 * * *

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

1 to continue until the immediate threat to public safety or health is removed.
2 The Commissioner shall document the reasons for permitting work to continue,
3 and the document shall be available to the public. In addition, the employer
4 shall be assessed an administrative penalty of not more than \$250.00 for every
5 day that the employer fails to secure workers' compensation coverage after the
6 Commissioner issues an order to obtain insurance and may also be assessed an
7 administrative penalty of not more than \$250.00 for each employee for every
8 day that the employer fails to secure workers' compensation coverage as
9 required in section 687 of this title. When a stop-work order is issued, the
10 Commissioner shall post a notice at a conspicuous place on the work site of the
11 employer informing the employees that their employer failed to comply with
12 the provisions of section 687 of this title and that work at the work site has
13 been ordered to cease until workers' compensation insurance is secured. If an
14 employer fails to comply with a stop-work order, the Commissioner may seek
15 an order from the Civil Division of the Superior Court to enjoin the employer
16 from employing any individual. The stop-work order shall be rescinded as
17 soon as the Commissioner determines that the employer is in compliance with
18 section 687 of this title.

19 (c) Debarment. An employer ~~against whom a stop-work order has been~~
20 ~~issued~~ who has not been in compliance with section 687 of this chapter, unless
21 the Commissioner determines that the failure to comply was inadvertent or

1 ~~excusable,~~ is prohibited from ~~contracting~~ entering into subsequent contracts,
2 directly or indirectly, with the State or any of its subdivisions for a period of up
3 to three years following the date of the issuance of ~~the stop-work order~~ an
4 administrative citation, as determined by the Commissioner in consultation
5 with the ~~Commissioner of Buildings and General Services or the Secretary of~~
6 ~~Transportation,~~ as appropriate. ~~Either the Secretary or the Commissioner, as~~
7 ~~appropriate, shall be consulted in any contest of the prohibition of the~~
8 ~~employer from contracting with the State or its subdivisions~~ Secretary of
9 Administration. The consultation shall be informal and shall occur within five
10 business days of the notification by the Commissioner. The results of the
11 consultation shall be documented.

12 (e)~~(d)~~ Penalty for violation of stop-work order. In addition to any other
13 penalties, an employer who violates a stop-work order described in subsection
14 (b) of this section is subject to:

15 (1) ~~a civil~~ an administrative penalty of not more than \$5,000.00 for the
16 first violation and ~~a civil~~ an administrative penalty of not more than
17 \$10,000.00 for a second or subsequent violation; or

18 (2) a criminal fine of not more than \$10,000.00 or imprisonment for not
19 more than 180 days, or both.

1 Sec. 7. 21 V.S.A. § 7 is added to read:

2 § 7. COLLECTION OF ADMINISTRATIVE PENALTIES

3 The Commissioner may collect any unpaid administrative penalty assessed
4 pursuant to this title by filing an action in Superior Court, or through any other
5 means available to State agencies.

6 Sec. 8. 4 V.S.A. § 1102 is amended to read:

7 § 1102. JUDICIAL BUREAU; JURISDICTION

8 * * *

9 (b) The Judicial Bureau shall have jurisdiction of the following matters:

10 * * *

11 (20) ~~Violations of 21 V.S.A. § 692(c)(1).~~ [Repealed.]

12 * * *

13 Sec. 9. 21 V.S.A. § 690 is amended to read:

14 § 690. CERTIFICATE, FORM; COPY OF POLICY

15 * * *

16 (b)(1) In addition to any other authority provided to the ~~commissioner~~
17 Commissioner pursuant to this chapter, the ~~commissioner~~ Commissioner may
18 issue a written request to an employer subject to the provisions of this chapter
19 to provide a workers' compensation compliance statement on a form provided
20 by the ~~commissioner~~ Commissioner. The employer shall provide the
21 compliance statement to the Commissioner within 30 days of the request. For

1 the purposes of this subsection, an employer includes subcontractors and
2 independent contractors. The form shall require all the following information
3 sorted by job site:

4 * * *

5 (c) Upon receiving written authorization from an employer to release
6 information to the Commissioner, the employer's agent or broker or the
7 authorized representative of an insurance or guarantee company shall provide
8 within five business days any contract or policy information, including an
9 insurance application, binder, or reported payroll, that is requested by the
10 Commissioner pursuant to this section.

11 **Sec. 10. 21 V.S.A. § 625 is amended to read:**

12 **§ 625. CONTRACTING OUT FORBIDDEN; PROHIBITED ACTS;**

13 **PENALTIES**

14 **(a) ~~An~~ Except as provided in subdivisions 601(3) and (14) of this chapter,**
15 **an employer shall not be relieved in whole or in part from liability created by**
16 **the provisions of this chapter by any contract, rule, regulation, or device**
17 **whatsoever.**

18 **(b) The Commissioner may investigate complaints and determine whether**
19 **the requirements to be an independent contractor set forth in subdivision**
20 **601(31) of this title are met. Unless the Commissioner determines that the**
21 **improper classification was inadvertent or excusable, any person that, for the**

1 purpose of avoiding its obligations under this title, improperly classifies an
2 employee as an independent contractor, may, after notice and an opportunity
3 for a hearing, be assessed an administrative penalty of not more than
4 \$5,000.00.

5 (c) A person who, for the purpose of avoiding its obligations under this
6 chapter, provides an individual that is or will be performing services for the
7 person with substantial and material assistance related to the registration of an
8 unincorporated business with the Vermont Secretary of State or with the
9 establishment of a corporation or LLC may, after notice and an opportunity for
10 a hearing, be assessed an administrative penalty of not more than \$5,000.00.

11 As used in this subsection, “substantial and material assistance” does not
12 include:

13 (1) inquiring about whether an unincorporated business, corporation, or
14 LLC is actively registered with the Secretary of State;

15 (2) inquiring about whether an individual that is or will be performing
16 services operates an unincorporated business, corporation, or LLC;

17 (3) providing basic information regarding the registration of an
18 unincorporated business or the establishment of a corporation or LLC; or

19 (4) referring an individual to a State agency, department, or website
20 related to the registration or establishment of an unincorporated business,
21 corporation, or LLC.

1 Sec. 11. 8 V.S.A. § 3661 is amended to read:

2 § 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND
3 PENALTIES

4 * * *

5 (c) An employer who purposefully makes a false statement or
6 representation that results in a lower workers' compensation premium, after
7 notice and opportunity for hearing before the Commissioner, may be assessed
8 an administrative penalty of not more than \$20,000.00 in addition to any other
9 appropriate penalty. In addition, an employer found to have violated this
10 section is prohibited from ~~contracting~~ entering into subsequent contracts,
11 directly or indirectly, with the State or any of its subdivisions for up to three
12 years following the date the employer was found to have made a false
13 statement or misrepresentation, as determined by the Commissioner in
14 consultation with the ~~Commissioner of Buildings and General Services or the~~
15 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~
16 ~~Commissioner, as appropriate, shall be consulted in any appeal relating to~~
17 ~~prohibiting the employer from contracting with the State or its subdivisions~~
18 Secretary of Administration. The consultation may be informal and shall occur
19 within five business days of the notification by the Commissioner. The
20 outcome of the consultation shall be documented.

21 * * *

1 Sec. 12. 21 V.S.A. § 1314a is amended to read:

2 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;

3 PENALTIES

4 * * *

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

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

9 (B) Properly classify an individual regarding the status of
10 employment is subject to a an administrative penalty of not more than
11 \$5,000.00 for each improperly classified employee. In addition, an employer
12 found to have violated this section is prohibited from ~~contracting~~ entering into
13 subsequent contracts, directly or indirectly, with the State or any of its
14 subdivisions for up to three years following the date the employer was found to
15 have failed to properly classify, as determined by the Commissioner in
16 consultation with the ~~Commissioner of Buildings and General Services or the~~
17 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~
18 ~~Commissioner, as appropriate, shall be consulted in any appeal relating to~~
19 ~~prohibiting the employer from contracting with the State or its subdivisions~~
20 Secretary of Administration. The consultation may be informal and shall occur

1 within five business days of the notification by the Commissioner. The
2 outcome of the consultation shall be documented.

3 Sec. 13. 21 V.S.A. § 708 is amended to read:

4 § 708. PENALTY FOR FALSE REPRESENTATION

5 (a) Action by the Commissioner of Labor. A person who ~~willfully~~
6 purposefully makes a false statement or representation, ~~for the purpose of~~
7 ~~obtaining to obtain~~ any benefit or payment under the provisions of this chapter,
8 either for herself or himself or for any other person, after notice and
9 opportunity for hearing, may be assessed an administrative penalty of not more
10 than \$20,000.00, and shall forfeit all or a portion of any right to compensation
11 under the provisions of this chapter, as determined to be appropriate by the
12 Commissioner after a determination by the Commissioner that the person has
13 ~~willfully~~ purposefully made a false statement or representation of a material
14 fact. In addition, an employer found to have violated this section is prohibited
15 from ~~contracting~~ entering into subsequent contracts, directly or indirectly, with
16 the State or any of its subdivisions for up to three years following the date the
17 employer was found to have made a purposeful false statement or
18 misrepresentation of a material fact, as determined by the Commissioner in
19 consultation with the ~~Commissioner of Buildings and General Services or the~~
20 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~
21 ~~Commissioner, as appropriate, shall be consulted in any contest relating to the~~

1 ~~prohibition of the employer from contracting with the State or its subdivisions~~
2 Secretary of Administration. The consultation may be informal and shall occur
3 within five business days of the notification by the Commissioner. The
4 outcome of the consultation shall be documented.

5 (b) ~~When~~ In addition to any penalties assessed pursuant to subsection (a) of
6 this section, when the Department of Labor has sufficient reason to believe that
7 an employer has purposefully made a false statement or representation ~~for the~~
8 ~~purpose of obtaining~~ to obtain a lower workers' compensation premium, the
9 Department shall refer the alleged violation to the Commissioner of Financial
10 Regulation for the Commissioner's consideration of enforcement pursuant to
11 8 V.S.A. § 3661(c).

12 Sec. 14. 21 V.S.A. § 1307 is amended to read:

13 § 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

14 ~~The commissioner of labor~~ Commissioner of Labor shall administer this
15 chapter. ~~The commissioner~~ Commissioner may employ such persons, make
16 such expenditures, require such reports, make such investigations, and take
17 such other action as he or she considers necessary or suitable to that end. In
18 the discharge of his or her duties imposed by this chapter, ~~the commissioner~~
19 Commissioner may administer oaths, take depositions, certify to official acts,
20 and subpoena witnesses and compel the production of books, papers,
21 correspondence, memoranda, and other records necessary and material to the

1 administration of this chapter. In addition, the Commissioner or his or her
2 designee may, upon presenting appropriate credentials, at reasonable times and
3 without unduly disrupting business operations, enter and inspect any place of
4 business or employment, question any employee, and investigate any fact,
5 condition, or matter necessary and material to the administration of this
6 chapter. The employer shall, at reasonable times and without unduly
7 disrupting business operations, make its workers available to meet with the
8 Commissioner or his or her designee, as required by the Commissioner. The
9 Commissioner or his or her designee shall inform the employer of his or her
10 rights to refuse entry and to consult with legal counsel, and of the
11 Commissioner’s rights under this section. If entry is refused, the
12 Commissioner may apply to the Civil Division of the Superior Court for an
13 order to enforce the rights given to the Commissioner under this section.

14 Sec. 15. EFFECTIVE DATE

15 This act shall take effect on July 1, 2016.

16

17

18 (Committee vote: _____)

19

20

Representative _____

21

FOR THE COMMITTEE