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H.867

Representative Pearson of Burlington moves that the bill be amended as follows:

First: In Sec. 1, 21 V.S.A. § 601, in subdivision (14)(F), after subdivision (i)(II), by adding a subdivision (III) to read as follows:

(III) The person who is providing the individual or partner owner with compensation for the services has not hired multiple sole proprietors, partnerships, or single-member corporations or L.L.C.s to perform the same work as the individual or partner owner is performing on the project or jobsite.

Second: In Sec. 1, 21 V.S.A. § 601, in subdivision (14)(H), after subdivision (i)(II), by adding a subdivision (III) to read as follows:

(III) The person who is providing the corporation or L.L.C. with compensation for the services has not hired multiple sole proprietors, partnerships, or single-member corporations or L.L.C.s to perform the same work as the corporate executive officer or the L.L.C. manager or member is performing on the project or jobsite.

Third: In Sec. 1, 21 V.S.A. § 601, in subdivision (31), by striking out subdivision (A)(v) in its entirety and inserting a new subdivision (A)(v) to read as follows:



1 his or her approval of said election as to any such employee, may treat the  
2 services covered by said approved election as having been performed wholly  
3 without the jurisdiction of this State.

4 \* \* \*

5 (B) Services performed by an individual for wages shall be deemed  
6 to be employment subject to this chapter unless and until it is shown to the  
7 satisfaction of the Commissioner that the individual:

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

11 (ii) ~~Such service is either outside the usual course of the business~~  
12 ~~for which such service is performed, or that such service is performed outside~~  
13 ~~of all the places of business of the enterprise for which such service is~~  
14 ~~performed; and~~

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

17 is free from the direction and control of the employing unit, both under the  
18 individual's contract of service and in fact;

19 (ii) controls the means and manner of the services performed;

20 (iii) operates a separate and distinct business from that of the  
21 person with whom he or she contracts;



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

2 § 625. CONTRACTING OUT FORBIDDEN

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

7 (b) Any person who, for the purpose of avoiding its obligations under this  
8 title, coerces an employee or prospective employee into becoming an  
9 independent contractor, after notice and an opportunity for a hearing, may be  
10 assessed an administrative penalty of not more than \$5,000.00.