

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 of Vermont’s workers’ compensation law that provides
16 employees with a prompt, no-fault remedy for workplace injuries while
17 limiting the potential liability of employers;

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

1 (3) embrace, strengthen, and build upon the emerging independent and
2 collaborative sectors of Vermont’s workforce and economy;

3 (4) affirm that under Vermont’s workers’ compensation and
4 unemployment insurance laws, an individual that performs services for
5 compensation is presumed to be an employee unless the statute clearly
6 provides otherwise;

7 (5) address decades of challenges in relation to the proper classification
8 of employees and independent contractors;

9 (6) provide clarity to Vermont employers, employees, independent
10 contractors, and the Department of Labor surrounding the classification of
11 employees and independent contractors;

12 (7) reduce the frequency of misclassification of employees as
13 independent contractors, and the related harmful effects of misclassification to
14 individuals, businesses, and society;

15 (8) assist businesses in complying with the requirements for the proper
16 classification of employees and independent contractors; and

17 (9) provide for the efficient and fair enforcement of Vermont’s workers’
18 compensation and unemployment insurance laws by the Department of Labor.

1 Sec. 2. 21 V.S.A. § 601 is amended to read:

2 § 601. DEFINITIONS

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

5 * * *

6 (3) “Employer” includes any body of persons, corporate or
7 unincorporated, public or private, and the legal representative of a deceased
8 employer, and includes the owner or lessee of premises or other person who is
9 virtually the proprietor or operator of the business there carried on, but who, by
10 reason of there being an independent contractor or for any other reason, is not
11 the direct employer of the workers there employed. If the employer is insured,
12 the term “employer” includes the employer’s insurer so far as applicable. A
13 person is not deemed to be an “employer” for the purposes of this chapter as
14 the result of entering into a contract for services or labor with ~~an individual~~
15 a sole proprietor or partner owner who has knowingly and voluntarily waived
16 coverage of this chapter pursuant to subdivision (14)(F) of this section, or an
17 individual who is a corporate officer or L.L.C. member or manager that has
18 filed, and had approved, an exclusion pursuant to subdivision 14(H) of this
19 section and who meets the criteria set forth in that subdivision.

20 * * *

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

10 * * *

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

14 * * *

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

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

20 (bb) the individual or partner owner is an independent
21 contractor and is either actively registered as a business with the Vermont

1 Secretary of State or actively registered as a business in the state or country of
2 domicile.

3 ~~(ii) The individual controls the means and manner of the work~~
4 ~~performed.~~

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

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

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

12 ~~(vi)~~(II) The services are performed pursuant to a written
13 agreement or contract between the individual or partner owner and ~~another~~
14 ~~person~~ the person who is providing compensation for the services, and the
15 written agreement or contract explicitly states that the individual or partner
16 owner is not considered to be an employee under this chapter, is working
17 independently, has no employees, and has not contracted with other
18 independent contractors. The written contract or agreement shall also include
19 information regarding the right of the individual or partner owner to purchase
20 workers' compensation insurance coverage ~~and the individual's election not to~~
21 ~~purchase that coverage.~~ However, if the individual or partner owner who is

1 party to the agreement or contract under this subdivision is found to have
2 employees, those employees may file a claim for benefits under this chapter
3 against either or both parties to the agreement.

4 (ii)(I) An individual or partner owner that meets the conditions of
5 subdivision (i) of this subdivision (14)(F) may elect to file with the
6 Commissioner a notice to waive the right to make a claim for workers’
7 compensation against the person with whom the individual or partner owner
8 contracts.

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

20 (iii) An individual or partner owner that makes an election under
21 subdivision (ii) of this subdivision (14)(F) shall collect and maintain

1 documentation that any other person hired to perform services for the sole
2 proprietor or partner owner’s unincorporated business has workers’
3 compensation coverage, or is otherwise in compliance with the provisions of
4 this chapter.

5 * * *

6 (H) With the approval of the Commissioner, a corporation or a
7 limited liability company (L.L.C.) may elect to file exclusions from the
8 provisions of this chapter. A corporation or an L.L.C. may elect to exclude up
9 to four corporate executive officers or four L.L.C. managers or members from
10 coverage requirements under this chapter. If all officers of the corporation or
11 all managers or members of an L.L.C. make such election, receive approval,
12 and the business has no employees, the corporation or L.L.C. shall not be
13 required to purchase workers’ compensation coverage. ~~If after election, the~~
14 ~~officer, manager, or member experiences a personal injury and files a claim~~
15 ~~under this chapter, the employer shall have all the defenses available in a~~
16 ~~personal injury claim. However, this election shall not prevent any other~~
17 ~~individual, other than the individual excluded under this section, found to be an~~
18 ~~employee of the corporation or L.L.C. to recover workers’ compensation from~~
19 ~~either the corporation, L.L.C., or the statutory employer.~~

20 (i) A person shall not be deemed to be an “employer” for purposes
21 of this chapter of corporate executive officers or L.L.C. managers or members

1 that are excluded under this subdivision (14) if the following conditions
2 are met:

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

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

18 (ii) If, after making an election under this subdivision (14), the
19 corporate officer or L.L.C. manager or member suffers a personal injury
20 arising out of and in the course of his or her employment, he or she may bring
21 an action to recover damages for personal injury against the person who is

1 providing compensation for the services, and in such action the person who is
2 providing compensation for the services shall have all of the defenses available
3 in a personal injury claim. However, this election shall not prevent any other
4 individual, other than the individual excluded pursuant to this subdivision, who
5 is determined to be an employee of the corporation or L.L.C. from claiming
6 workers' compensation benefits under this chapter from the corporation or
7 L.L.C. or from a statutory employer.

8 (iii) A corporation or L.L.C. whose executive officers, members,
9 or managers make an election under this subdivision (14) shall collect and
10 maintain documentation that any other person hired to perform services for the
11 corporation or L.L.C. has workers' compensation coverage, or is otherwise in
12 compliance with this chapter.

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

16 * * *

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

1 (i) whether the person is free from the direction and control of the
2 employing unit with respect to the means and manner of the services
3 performed, both under the person’s contract of service and in fact;

4 (ii) whether the person operates a separate and distinct business
5 from that of the employing unit and the extent to which the person is
6 performing work that is not a substantial, essential, and recurring part of the
7 core services, functions, or activities of the employing unit;

8 (iii) whether the person’s contract of service provides for the
9 performance of specific services for specified amounts of compensation and
10 does not provide that the services will be performed on an ongoing or
11 indefinite basis, and whether the person may realize a profit or suffer a loss
12 under the contract of service;

13 (iv) the extent of the person’s investment in the resources, assets,
14 or equipment necessary to perform the services contracted for; whether the
15 person possesses specialized skills or knowledge necessary to perform the
16 services contracted for; and whether the person has continuing and recurring
17 business liabilities and obligations;

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

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

4 (I) holds or has applied for a federal employer identification
5 number; or

6 (II) has filed business or self-employment tax returns with the
7 federal Internal Revenue Service within the past year or will file business or
8 self-employment tax returns with the federal Internal Revenue Service for the
9 current year.

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

13 (C) If multiple persons are performing the same work on a project or
14 jobsite, the determination of whether the person is economically independent
15 of the employing unit shall take into account **the relationship between the**
16 **specific services performed by the person and the circumstances of the project**
17 **or job in relation to which the person is providing services.**

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

1 Sec. 3. 21 V.S.A. § 1301 is amended to read:

2 § 1301. DEFINITIONS

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

5 * * *

6 (6)(A)(i) “Employment,” subject to the other provisions of this
7 subdivision (6), means service within the jurisdiction of this State, performed
8 prior to January 1, 1978, which was employment as defined in this subdivision
9 prior to such date and, subject to the other provisions of this subdivision,
10 service performed after December 31, 1977, by an employee, as defined in
11 subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including
12 service in interstate commerce, performed for wages or under any contract of
13 hire, written or oral, expressed or implied. Services partly within and partly
14 without this State may by election as hereinbefore provided be treated as if
15 wholly within the jurisdiction of this State. And whenever an employing unit
16 shall have elected to come under the provisions of a similar act of a state where
17 a part of the services of an employee are performed, the Commissioner, upon
18 his or her approval of said election as to any such employee, may treat the
19 services covered by said approved election as having been performed wholly
20 without the jurisdiction of this State.

21 * * *

1 (B)(i) Services performed by an individual for wages shall be deemed
2 to be employment subject to this chapter unless and until it is shown to the
3 satisfaction of the Commissioner that the individual is economically
4 independent of his or her employing unit under the totality of the
5 circumstances in light of the following factors:

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

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

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

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

18 (II) whether the person operates a separate and distinct business
19 from that of the employing unit and the extent to which the person is
20 performing work that is not a substantial, essential, and recurring part of the
21 core services, functions, or activities of the employing unit;

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

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

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

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

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

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

1 (3) the Secretary of Transportation or designee;

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

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

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

5 (7) the Commissioner of Taxes or designee;

6 (8) the Attorney General or designee; and

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

8 (c) Meetings.

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

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

11 (3) A majority of the membership of the Task Force shall constitute a
12 quorum.

13 (d) Duties.

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

15 (A) to develop and implement an ongoing outreach program to
16 educate and inform employers, workers, and the general public about the
17 proper classification of employees and independent contractors;

18 (B) to examine and evaluate existing misclassification enforcement
19 by State agencies and departments;

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

4 (D) to review and establish reasonable mechanisms to accept
5 complaints and reports of noncompliance;

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

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

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

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

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

19 (2) The Task Force shall consult and collaborate with businesses, labor,
20 and other interested stakeholders to accomplish the duties set forth in
21 subdivision (1) of this subsection, and may appoint representatives of business,

1 labor, and other interested stakeholders to subcommittees as the Task Force
2 deems appropriate.

3 (e) Reports.

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

15 (2) The Task Force shall examine the issue of comprehensive
16 enforcement of employee misclassification within Vermont’s workers’
17 compensation system and potential measures to improve the efficacy of the
18 State’s misclassification enforcement mechanisms, including by transferring
19 the responsibility for the investigation and enforcement of misclassification to
20 the Office of the Attorney General. The Task Force shall develop and
21 establish performance measures to evaluate the efficacy of efforts to enforce

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

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

17 (4) The Task Force shall examine the issue of whether all workers in
18 certain industries should be required to be covered by workers’ compensation
19 insurance. On or before February 15, 2017, the Task Force shall submit a
20 written report to the General Assembly with its findings and any
21 recommendations for legislative action.

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

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

4 § 398. NOTICE TO PERSONS RECEIVING COMPENSATION AS AN
5 INDEPENDENT CONTRACTOR

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

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

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

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

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

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

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

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

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

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

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

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

14 (a) So far as it is necessary in his or her examinations; and investigations
15 and in the determination of matters within his or her jurisdiction, the
16 ~~commissioner~~ Commissioner shall have power to subpoena witnesses,
17 administer oaths, and ~~to~~ demand the production of books, papers, records, and
18 documents for his or her examination. In addition, the Commissioner or his or
19 her designee may, upon presenting appropriate credentials, at reasonable times
20 and without unduly disrupting business operations enter and inspect any place
21 of business or employment, question any employees, and investigate any facts,

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

10 * * *

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

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

13 * * *

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

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

17 (c) Debarment. An employer ~~against whom a stop-work order has been~~
18 ~~issued~~ who has not been in compliance with section 687 of this chapter, unless
19 the Commissioner determines that the failure to comply was inadvertent or
20 excusable, is prohibited from ~~contracting~~ entering into subsequent contracts,
21 directly or indirectly, with the State or any of its subdivisions for a period of up

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

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

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

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

1 Sec. 8. 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. 9. 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. 10. 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. 11. 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 establishment of
8 an independent business, including the registration of an unincorporated
9 business with the Vermont Secretary of State, the establishment of a
10 corporation or LLC, or the acquisition of a federal Employer Identification
11 Number, may, after notice and an opportunity for a hearing, be assessed an
12 administrative penalty of not more than \$5,000.00. As used in this subsection,
13 “substantial and material assistance” does not include:

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

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

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

1 Sec. 12. 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. 13. 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 * * *

4 Sec. 14. 21 V.S.A. § 708 is amended to read:

5 § 708. PENALTY FOR FALSE REPRESENTATION

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

1 ~~Commissioner, as appropriate, shall be consulted in any contest relating to the~~
2 ~~prohibition of the employer from contracting with the State or its subdivisions~~
3 Secretary of Administration. The consultation may be informal and shall occur
4 within five business days of the notification by the Commissioner. The
5 outcome of the consultation shall be documented.

6 (b) ~~When~~ In addition to any penalties assessed pursuant to subsection (a) of
7 this section, when the Department of Labor has sufficient reason to believe that
8 an employer has purposefully made a false statement or representation ~~for the~~
9 ~~purpose of obtaining~~ to obtain a lower workers' compensation premium, the
10 Department shall refer the alleged violation to the Commissioner of Financial
11 Regulation for the Commissioner's consideration of enforcement pursuant to
12 8 V.S.A. § 3661(c).

13 * * *

14 Sec. 15. 21 V.S.A. § 1307 is amended to read:

15 § 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

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

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

16 **Sec. 16. DEPARTMENT OF FINANCIAL REGULATION AND**

17 **DEPARTMENT OF LABOR; EDUCATION; OUTREACH**

18 On or before October 1, 2016, the Commissioners of Financial Regulation
19 and of Labor shall develop an education and outreach program for workers’
20 compensation insurance companies, agents, auditors, and adjusters, as well as
21 employers, workers, attorneys, and tax professionals, regarding:

- 1 (1) the definition of “independent contractor” that is added to 21 V.S.A.
2 §§ 601 and 1301 by this act; and
3 (2) how to determine whether a person should be classified as an
4 independent contractor under “the totality of the circumstances” pursuant to
5 those definitions.

6 Sec. 17. EFFECTIVE DATES

- 7 (a) This section and Secs. 1, 4, and 16 shall take effect on July 1, 2016.
8 (b) The remaining sections shall take effect on October 1, 2016.

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE