

COMPARISON OF PROPOSED LANGUAGE RELATING TO INDEPENDENT CONTRACTORS IN H.867 AS INTRODUCED AND AS PROPOSED FOR AMENDMENT BY REP. HOOPER

Prepared By: Damien Leonard, Esq.

Office of Legislative Council

May 2, 2016

Statutory Provision	As Proposed by H.867	As Proposed by Rep. Hooper Amendment
21 V.S.A. § 601(31)	<p><u>(31)(A) “Independent contractor” means a person who meets all of the following:</u></p> <p><u>(i) is free from the direction and control of the employing unit, both under the person’s contract of service and in fact;</u></p> <p><u>(ii) controls the means and manner of the work performed;</u></p> <p><u>(iii) operates a separate and distinct business from that of the person with whom it contracts;</u></p> <p><u>(iv) holds itself out as in business for itself;</u></p> <p><u>(v) offers its services to the general public; and</u></p> <p><u>(vi) is not treated as an employee for purposes of income or employment taxation with regard to the work performed.</u></p> <p><u>(B) An independent contractor shall purchase workers’ compensation coverage for its employees as provided in this chapter.</u></p>	<p><u>(31)(A) “Independent contractor” means a person that is economically independent of the person’s employing unit under the totality of the circumstances based on an assessment of the following factors:</u></p> <p><u>(i) whether the person is free from the direction and control of the employing unit with respect to the means and manner of the services performed, both under the person’s contract of service and in fact;</u></p> <p><u>(ii) whether the person operates a separate and distinct business from that of the employing unit and the extent to which the person is performing work that is not a substantial, essential, and recurring part of the core services, functions, or activities of the employing unit;</u></p> <p><u>(iii) whether the person’s contract of service provides for the performance of specific services for specified amounts of compensation and does not provide that the services will be performed on an ongoing or indefinite basis, and whether the person may realize a profit or suffer a loss under the contract of service;</u></p> <p><u>(iv) the extent of the person’s investment in the resources, assets, or equipment necessary to perform the services contracted for; whether the person possesses specialized skills or knowledge necessary to perform the services contracted for; and whether the person has continuing and recurring business liabilities and obligations;</u></p> <p><u>(v) whether the person holds itself out as in business for itself and offers its services to the general public; and</u></p> <p><u>(vi) whether the person is not treated as an employee for purposes of income or employment taxation with regard to the work performed and either:</u></p> <p><u>(I) holds or has applied for a federal employer identification number; or</u></p> <p><u>(II) has filed business or self-employment tax returns with the federal Internal Revenue Service within the past year or will file business or self-employment tax returns with the federal Internal Revenue Service for the current year.</u></p> <p><u>(B) In considering whether a person is economically independent pursuant to subdivision (A) of this subdivision (31), no single factor in and of itself shall be dispositive.</u></p> <p><u>(C) If multiple persons are performing the same work on a project or jobsite, the determination of whether the person is economically independent of the employing unit shall take into account the relationship between the specific services performed by the person and the circumstances of the project or job in relation to which the person is providing services.</u></p> <p><u>(D) An independent contractor shall purchase workers’ compensation coverage for its employees as provided in this chapter.</u></p>
21 V.S.A. § 1301(6)(B)	<p><u>(B) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Commissioner that <u>the individual:</u></u></p> <p><u>(i) Such individual has been and will continue to be free from control or direction over</u></p>	<p><u>(B)(i) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Commissioner that <u>the individual is economically independent of his or her employing unit under the totality of the circumstances in light of the following factors:</u></u></p>

COMPARISON OF PROPOSED LANGUAGE RELATING TO INDEPENDENT CONTRACTORS IN H.867 AS INTRODUCED AND AS PROPOSED FOR AMENDMENT BY REP. HOOPER

Prepared By: Damien Leonard, Esq.

Office of Legislative Council

May 2, 2016

the performance of such services, both under his or her contract of service and in fact; and

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

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

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

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

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

(iv) holds him- or herself out as in business for him- or herself;

(v) offers his or her services to the general public; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) If multiple individuals are performing the same work on a project or jobsite, the determination of whether an individual is economically independent of the employing unit shall take into account the relationship between the specific services performed by the individual and the circumstances of the project or job in relation to which he or she is providing services.

* * *