

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) embrace, strengthen, and build upon the emerging independent and
21 collaborative sectors of Vermont’s workforce and economy;

1 (4) recognize that, unless it clearly provides otherwise, Vermont’s
2 workers’ compensation statute remains a remedial statute intended to be
3 construed liberally to provide injured employees with benefits;

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

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

9 (7) reduce the frequency of misclassification of employees and
10 independent contractors, and the related harmful effects of misclassification to
11 individuals, businesses, and society;

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

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

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

17 § 601. DEFINITIONS

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

20 * * *

1 ~~“worker” or “employee” does not include~~ A person who performs services for
2 compensation is presumed to be an employee unless the person is one of the
3 following:

4 * * *

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

8 * * *

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

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

14 (bb) the individual or partner owner is an independent
15 contractor and is either actively registered as a business with the Vermont
16 Secretary of State or actively registered as a business in the state or country of
17 domicile.

18 ~~(ii) The individual controls the means and manner of the work~~
19 ~~performed.~~

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

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

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

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

19 (ii)(I) An individual or partner owner that meets the conditions of
20 subdivision (i) of this subdivision (14)(F) may elect to file with the
21 Commissioner a notice to waive the right to make a claim for workers'

1 compensation against the person with whom the individual or partner owner
2 contracts.

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

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

20 * * *

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

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

19 (I) The corporate executive officers or L.L.C. managers or
20 members operate a separate and distinct business that is an independent
21 contractor, is actively registered with the Vermont Secretary of State, and

1 elects to file a corporate officer or L.L.C. member exclusion from the
2 provisions of this chapter.

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

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

1 workers' compensation benefits under this chapter from the corporation or
2 L.L.C. or from a statutory employer.

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

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

11 * * *

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

15 (i) whether the person is free from the direction and control of the
16 employing unit with respect to the means and manner of the services
17 performed, both under the person's 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 person’s contract of service provides for the
2 performance of specific services for specified amounts of compensation and
3 does not provide that the services will be performed on an ongoing or
4 indefinite basis, and whether the person may realize a profit or suffer a loss
5 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 service in interstate commerce, performed for wages or under any contract of
2 hire, written or oral, expressed or implied. Services partly within and partly
3 without this State may by election as hereinbefore provided be treated as if
4 wholly within the jurisdiction of this State. And whenever an employing unit
5 shall have elected to come under the provisions of a similar act of a state where
6 a part of the services of an employee are performed, the Commissioner, upon
7 his or her approval of said election as to any such employee, may treat the
8 services covered by said approved election as having been performed wholly
9 without the jurisdiction of this State.

10 * * *

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

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

19 ~~(ii) Such service is either outside the usual course of the business~~
20 ~~for which such service is performed, or that such service is performed outside~~

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

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

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

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

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

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

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

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

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

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

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Sec. 4. 3 V.S.A. § 2222d is added to read:

§ 2222d. VERMONT EMPLOYEE CLASSIFICATION TASK FORCE

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

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

- (1) the Secretary of Administration or designee;
- (2) the Commissioner of Labor or designee;
- (3) the Secretary of Transportation or designee;
- (4) the Commissioner of Buildings and General Services or designee;
- (5) the Commissioner of Financial Regulation or designee;
- (6) the Secretary of Human Services or designee;
- (7) the Commissioner of Taxes or designee;
- (8) the Attorney General or designee; and
- (9) the Commissioner of Liquor Control or designee.

(c) Meetings.

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

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

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

4 (d) Duties.

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

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

9 (B) to examine and evaluate existing misclassification enforcement
10 by State agencies and departments;

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

14 (D) to review and establish reasonable mechanisms to accept
15 complaints and reports of noncompliance;

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

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

1 (G) to review and recommend additional methods to provide public
2 notice and share information regarding enforcement, penalties, and debarment
3 periods;

4 (H) to develop strategies and programs to assist businesses in
5 complying with Vermont’s requirements for the proper classification of
6 employees and independent contractors, and to reduce the frequency of
7 employee misclassification; and

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

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

15 (e) Reports.

16 (1) The Task Force shall report annually on or before January 15 to the
17 House Committee on Commerce and Economic Development and the Senate
18 Committee on Finance regarding the activities that it has undertaken pursuant
19 to this section, the progress of the Task Force’s ongoing education and
20 outreach programs, the number and results of the employer audits conducted
21 during the previous calendar year, and any barriers or impediments to the

1 proper classification of employees and independent contractors that the Task
2 Force has identified. The report may recommend legislative, regulatory, and
3 administrative measures to reduce the frequency of employee misclassification.
4 The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not
5 apply to the report to be made under this subsection.

6 (2) The Task Force shall examine the issue of comprehensive
7 enforcement of employee misclassification within Vermont’s workers’
8 compensation system and potential measures to improve the efficacy of the
9 State’s misclassification enforcement mechanisms, including by transferring
10 the responsibility for the investigation and enforcement of misclassification to
11 the Office of the Attorney General. The Task Force shall develop and
12 establish performance measures to evaluate the efficacy of efforts to enforce
13 the requirements for classification of employees and independent contractors,
14 and any improvement in the outcomes of the State’s enforcement efforts over
15 time. On or before February 15, 2017, the Task Force shall report to the House
16 Committee on Commerce and Economic Development and the Senate
17 Committee on Finance with a recommendation for a comprehensive plan to
18 improve the State’s misclassification enforcement mechanisms and any
19 legislative, regulatory, or administrative measures necessary to implement
20 the plan.

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

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

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

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

17 § 398. NOTICE TO PERSONS RECEIVING COMPENSATION AS AN

18 INDEPENDENT CONTRACTOR

19 (a)(1) Every employer shall post in a prominent and accessible place on a
20 site where work is performed a poster provided by the Department that shall
21 explain the differences between an “employee” and an “independent

1 contractor” pursuant to the applicable provisions of chapters 9 and 17 of this
2 title. The poster shall also include information regarding:

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

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

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

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

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

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

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

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

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

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

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

5 (a) So far as it is necessary in his or her examinations; and investigations
6 and in the determination of matters within his or her jurisdiction, the
7 ~~commissioner~~ Commissioner shall have power to subpoena witnesses,
8 administer oaths, and to demand the production of books, papers, records, and
9 documents for his or her examination. In addition, the Commissioner or his or
10 her designee may, upon presenting appropriate credentials, at reasonable times
11 and without unduly disrupting business operations enter and inspect any place
12 of business or employment, question any employees, and investigate any facts,
13 conditions, or matters necessary and material to the administration of this
14 chapter. The employer shall, at reasonable times and without unduly
15 disrupting business operations, make its workers available to meet with the
16 Commissioner or designee, as required by the Commissioner. The
17 Commissioner or designee shall inform the employer of his or her rights to
18 refuse entry and to consult with legal counsel, and of the Commissioner's
19 rights under this section. If entry is refused, the Commissioner may apply to
20 the Civil Division of the Superior Court for an order to enforce the rights given
21 to the Commissioner under this section.

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

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

(b) Stop-work orders. If an employer fails to comply with the provisions of section 687 of this title after investigation by the Commissioner, the Commissioner ~~shall~~ may issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the Commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the Commissioner may permit work to continue until the immediate threat to public safety or health is removed. The Commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than \$250.00 for every day that the employer fails to secure workers' compensation coverage after the Commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than \$250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. When a stop-work order is issued, the Commissioner shall post a notice at a conspicuous place on the work site of the employer informing the employees that their employer failed to comply with

1 the provisions of section 687 of this title and that work at the work site has
2 been ordered to cease until workers' compensation insurance is secured. If an
3 employer fails to comply with a stop-work order, the Commissioner may seek
4 an order from the Civil Division of the Superior Court to enjoin the employer
5 from employing any individual. The stop-work order shall be rescinded as
6 soon as the Commissioner determines that the employer is in compliance with
7 section 687 of this title.

8 (c) Debarment. An employer ~~against whom a stop work order has been~~
9 ~~issued~~ who has not been in compliance with section 687 of this chapter, unless
10 the Commissioner determines that the failure to comply was inadvertent or
11 excusable, is prohibited from ~~contracting~~ entering into subsequent contracts,
12 directly or indirectly, with the State or any of its subdivisions for a period of up
13 to three years following the date of the issuance of ~~the stop work order~~ an
14 administrative citation, as determined by the Commissioner in consultation
15 with the ~~Commissioner of Buildings and General Services or the Secretary of~~
16 ~~Transportation, as appropriate. Either the Secretary or the Commissioner, as~~
17 ~~appropriate, shall be consulted in any contest of the prohibition of the~~
18 ~~employer from contracting with the State or its subdivisions~~ Secretary of
19 Administration. The consultation shall be informal and shall occur within five
20 business days of the notification by the Commissioner. The results of the
21 consultation shall be documented.

1 Sec. 10. 21 V.S.A. § 690 is amended to read:

2 § 690. CERTIFICATE, FORM; COPY OF POLICY

3 * * *

4 (b)(1) In addition to any other authority provided to the ~~commissioner~~
5 Commissioner pursuant to this chapter, the ~~commissioner~~ Commissioner may
6 issue a written request to an employer subject to the provisions of this chapter
7 to provide a workers' compensation compliance statement on a form provided
8 by the ~~commissioner~~ Commissioner. The employer shall provide the
9 compliance statement to the Commissioner within 30 days of the request. For
10 the purposes of this subsection, an employer includes subcontractors and
11 independent contractors. The form shall require all the following information
12 sorted by job site:

13 * * *

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

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

2 § 625. CONTRACTING OUT FORBIDDEN; PROHIBITED ACTS;

3 PENALTIES

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

8 (b) The Commissioner may investigate complaints and determine whether
9 the requirements to be an independent contractor set forth in subdivision
10 601(31) of this title are met. Unless the Commissioner determines that the
11 improper classification was inadvertent or excusable, any person that, for the
12 purpose of avoiding its obligations under this title, improperly classifies an
13 employee as an independent contractor, may, after notice and an opportunity
14 for a hearing, be assessed an administrative penalty of not more than
15 \$5,000.00.

16 (c) A person who, for the purpose of avoiding its obligations under this
17 chapter, provides an individual that is or will be performing services for the
18 person with substantial and material assistance related to **the establishment of**
19 **an independent business, including the registration of an unincorporated**
20 **business with the Vermont Secretary of State, the establishment of a**
21 **corporation or LLC, or the acquisition of a federal Employer Identification**

1 Number, may, after notice and an opportunity for a hearing, be assessed an
2 administrative penalty of not more than \$5,000.00. As used in this subsection,
3 “substantial and material assistance” does not include:

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

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

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

11 Sec. 12. 8 V.S.A. § 3661 is amended to read:

12 § 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND
13 PENALTIES

14 * * *

15 (c) An employer who purposefully makes a false statement or
16 representation that results in a lower workers’ compensation premium, after
17 notice and opportunity for hearing before the Commissioner, may be assessed
18 an administrative penalty of not more than \$20,000.00 in addition to any other
19 appropriate penalty. In addition, an employer found to have violated this
20 section is prohibited from ~~contracting~~ entering into subsequent contracts,
21 directly or indirectly, with the State or any of its subdivisions for up to three

1 years following the date the employer was found to have made a false
2 statement or misrepresentation, as determined by the Commissioner in
3 consultation with the ~~Commissioner of Buildings and General Services or the~~
4 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~
5 ~~Commissioner, as appropriate, shall be consulted in any appeal relating to~~
6 ~~prohibiting the employer from contracting with the State or its subdivisions~~
7 Secretary of Administration. The consultation may be informal and shall occur
8 within five business days of the notification by the Commissioner. The
9 outcome of the consultation shall be documented.

10 * * *

11 Sec. 13. 21 V.S.A. § 1314a is amended to read:

12 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;
13 PENALTIES

14 * * *

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

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

19 (B) Properly classify an individual regarding the status of
20 employment is subject to a an administrative penalty of not more than
21 \$5,000.00 for each improperly classified employee. In addition, an employer

1 found to have violated this section is prohibited from ~~contracting~~ entering into
2 subsequent contracts, directly or indirectly, with the State or any of its
3 subdivisions for up to three years following the date the employer was found to
4 have failed to properly classify, as determined by the Commissioner in
5 consultation with the ~~Commissioner of Buildings and General Services or the~~
6 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~
7 ~~Commissioner, as appropriate, shall be consulted in any appeal relating to~~
8 ~~prohibiting the employer from contracting with the State or its subdivisions~~
9 Secretary of Administration. The consultation may be informal and shall occur
10 within five business days of the notification by the Commissioner. The
11 outcome of the consultation shall be documented.

12 * * *

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

14 § 708. PENALTY FOR FALSE REPRESENTATION

15 (a) Action by the Commissioner of Labor. A person who ~~willfully~~
16 purposefully makes a false statement or representation, ~~for the purpose of~~
17 ~~obtaining to obtain~~ any benefit or payment under the provisions of this chapter,
18 either for herself or himself or for any other person, after notice and
19 opportunity for hearing, may be assessed an administrative penalty of not more
20 than \$20,000.00, and shall forfeit all or a portion of any right to compensation
21 under the provisions of this chapter, as determined to be appropriate by the

1 Commissioner after a determination by the Commissioner that the person has
2 ~~willfully~~ purposefully made a false statement or representation of a material
3 fact. In addition, an employer found to have violated this section is prohibited
4 from ~~contracting~~ entering into subsequent contracts, directly or indirectly, with
5 the State or any of its subdivisions for up to three years following the date the
6 employer was found to have made a purposeful false statement or
7 misrepresentation of a material fact, as determined by the Commissioner in
8 consultation with the ~~Commissioner of Buildings and General Services or the~~
9 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~
10 ~~Commissioner, as appropriate, shall be consulted in any contest relating to the~~
11 ~~prohibition of the employer from contracting with the State or its subdivisions~~
12 Secretary of Administration. The consultation may be informal and shall occur
13 within five business days of the notification by the Commissioner. The
14 outcome of the consultation shall be documented.

15 (b) ~~When~~ In addition to any penalties assessed pursuant to subsection (a) of
16 this section, when the Department of Labor has sufficient reason to believe that
17 an employer has purposefully made a false statement or representation ~~for the~~
18 ~~purpose of obtaining~~ to obtain a lower workers' compensation premium, the
19 Department shall refer the alleged violation to the Commissioner of Financial
20 Regulation for the Commissioner's consideration of enforcement pursuant to
21 8 V.S.A. § 3661(c).

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

§ 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

The ~~commissioner of labor~~ Commissioner of Labor shall administer this chapter. The ~~commissioner~~ Commissioner may employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he or she considers necessary or suitable to that end. In the discharge of his or her duties imposed by this chapter, the ~~commissioner~~ Commissioner may administer oaths, take depositions, certify to official acts, and subpoena witnesses and compel the production of books, papers, correspondence, memoranda, and other records necessary and material to the administration of this chapter. In addition, the Commissioner or his or her designee may, upon presenting appropriate credentials, at reasonable times and without unduly disrupting business operations, enter and inspect any place of business or employment, question any employee, and investigate any fact, condition, or matter necessary and material to the administration of this chapter. The employer shall, at reasonable times and without unduly disrupting business operations, make its workers available to meet with the Commissioner or his or her designee, as required by the Commissioner. The Commissioner or his or her designee shall inform the employer of his or her rights to refuse entry and to consult with legal counsel, and of the

1 Commissioner’s rights under this section. If entry is refused, the
2 Commissioner may apply to the Civil Division of the Superior Court for an
3 order to enforce the rights given to the Commissioner under this section.

4 **Sec. 16. DEPARTMENT OF FINANCIAL REGULATION; EDUCATION;**

5 **OUTREACH**

6 On or before October 1, 2016, the Commissioner of Financial Regulation
7 shall develop an education and outreach program for workers’ compensation
8 insurance companies, agents, auditors, and adjusters regarding the definition of
9 “independent contractor” that is added to 21 V.S.A. § 601 by this act, and how
10 to determine whether a person is an independent contractor under “the totality
11 of the circumstances” as required by that definition.

12 **Sec. 17. EFFECTIVE DATES**

13 (a) This section and Secs. 1, 4, and 16 shall take effect on July 1, 2016.

14 (b) The remaining sections shall take effect on October 1, 2016.

15
16
17 (Committee vote: _____)

18 _____

19 Representative _____

20 FOR THE COMMITTEE