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H.867

Representative Hooper of Montpelier moves that the bill be amended as follows:

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

(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:

(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;

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

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

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

(iii) whether the person’s contract of service provides that the person will receive a specified amount of compensation for the performance of specific services and does not provide that the services will be performed on an

1 ongoing or indefinite basis, and whether the person may realize a profit or  
2 suffer a loss under the contract of service;

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

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

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

13 (I) holds or has applied for a federal employer identification  
14 number; or

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

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

1           (C) [Reserved.]

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

4           Second: In Sec. 2, 21 V.S.A. § 1301, by striking out subdivision (6)(B) in  
5 its entirety and inserting in lieu thereof a new subdivision (6)(B) to read as  
6 follows:

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

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

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

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

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

4                   (II) whether the individual operates a separate and distinct  
5                   business from that of the employing unit and the extent to which the individual  
6                   is either:

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

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

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

16                  (IV) the extent of the individual's investment in the resources,  
17                  assets, and equipment, as well as the specialized skills or knowledge necessary  
18                  to perform the services contracted for, and whether he or she has continuing  
19                  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) [Reserved.]