

Summary of H.867 as Proposed for Amendment by Rep. Hooper
(Differences from Underlying Bill)

Sec.1. Purpose

- Adds a purpose section, and renumbers remaining sections accordingly.

Sec. 2. 21 V.S.A. § 601. Definitions

- Corrects cross-reference in § 601(14)(F)(iii).
- Amends definition of “independent contractor” in subdivision (31).
 - An “independent contractor” is a person that is economically independent of its employing unit under the totality of the circumstances. Requires an assessment of the following:
 - 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.
 - Whether the person operates a separate and distinct business 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.
 - Whether the contract provides for the performance of specific services for specific compensation and does not provide for their performance on an ongoing/indefinite basis, and whether the person may realize a profit or suffer a loss under the contract.
 - The extent of the person’s investment in the resources, assets, or equipment necessary to perform the services, whether the person possesses specialized skills/knowledge necessary to perform the services, and whether the person has recurring business liabilities and obligations.
 - Whether the person holds itself as in business for itself and offers its services to the general public.
 - Whether the person is treated as an employee for income or employment tax purposes, and either holds a federal employer ID number or has filed business/self-employment tax returns in the last year or will do so in the current year.
 - When determining a person’s economic independence, no single one of the above factors will be dispositive in and of itself.
 - If multiple persons are performing the same work on a project/jobsite, the determination of a person’s economic independence must consider the relationship between the services performed by the person and the circumstances of the project or job.

Sec. 3. 21 V.S.A. § 1301. Definitions

- Amends the definition of “employment” to replace the existing “ABC” test for work that is not considered employment with a test that is essentially identical to the totality of the circumstances test for an “independent contractor” that is set forth in Sec. 2 above.

Sec. 4. 3 V.S.A. § 2222d. Vermont Employee Classification Task Force

- No substantive changes, corrects a stylistic error in subdivision (d)(1)(F).

Sec. 5. 21 V.S.A. § 398. Notice to Persons Receiving Compensation as an Independent Contractor

- No changes.

Sec. 6. 21 V.S.A. § 603. Witnesses, oaths, books, papers, records

- Non-substantive stylistic changes for clarity/consistency in subsection (a).

Sec. 7. 21 V.S.A. § 692. Penalties; Failure to Insure; Stop Work Orders

- No changes.

Sec. 8. 21 V.S.A. § 7. Collection of Administrative Penalties

- No changes.

Sec. 9. 4 V.S.A. § 1102. Judicial Bureau; Jurisdiction

- No changes.

Sec. 10. 21 V.S.A. § 690. Certificate, Form; Copy of Policy

- No changes.

Sec. 11. 21 V.S.A. § 625. Contracting Out Forbidden; Prohibited Acts; Penalties

- Amends section title.
- Adds subsection (c), which provides an administrative penalty of up to \$5,000 for a person that provides a person that will be performing services for it with substantial and material assistance related to establishing a business.
 - Substantial and material assistance does not include inquiries about active business registration with the Secretary of State; inquiries about whether the person operates an unincorporated business, corporation, or LLC; or referrals to a State agency, department, or website related to the establishment of an unincorporated business, corporation, or LLC.

Sec. 12. 8 V.S.A. § 3661. Cease and Desist Powers; Prosecutions and Penalties

- No changes.

Sec. 13. 21 V.S.A. § 1314a. Quarterly Wage Reporting; Misclassification; Penalties

- Corrects drafting error in underlying bill by adding an omitted ellipsis.

Sec. 14. 21 V.S.A. § 708. Penalty for False Representation

- Corrects drafting error in underlying bill by adding an omitted ellipsis.

Sec. 15. 21 V.S.A. § 1307. Commissioner of Labor; Duties and Powers of

- Non-substantive stylistic changes for clarity/consistency.

Sec. 16. Dept. of Financial Regulation and Dept. of Labor; Education; Outreach

- Requires Commissioners of Financial Regulation and of Labor to develop, on or before October 1, 2016, an education and outreach program regarding the new definition of “independent contractor” and how to determine if a person is an employee or independent contractor under “the totality of the circumstance.”

Sec. 17. Effective Date

- Makes effective date and Sections 1 (purpose), 4 (task force), and 16 (education and outreach program) effective on July 1, 2016.
- Remaining sections take effect on October 1, 2016.