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H.867

Representative Davis of Washington moves that the bill be amended as follows:

First: After Sec. 6, 21 V.S.A. § 692, by inserting a Sec. 6a to read as follows:

Sec. 6a. 21 V.S.A. § 692 is amended to read:

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

(a) Failure to insure. ~~If after a hearing under section 688 of this title, the Commissioner determines that an employer has failed to comply with the provisions of section 687 of this title, the employer shall be assessed an administrative~~ subject to a civil penalty of not more than \$100.00 for every day for the first seven days the employer neglected to secure liability and not more than \$150.00 for every day thereafter.

(b) Stop-work orders. If an employer fails to comply with the provisions of section 687 of this title after investigation by the ~~Commissioner~~ Attorney General, the ~~Commissioner~~ Attorney General may issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the ~~Commissioner~~ Attorney General determines that issuing a stop-work order would immediately threaten the safety or health of the public, the ~~Commissioner~~ Attorney General may permit work to continue until the immediate threat to public safety or health is removed. The

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

20 (c) Debarment. An employer who has not been in compliance with section
21 687 of this chapter, unless the ~~Commissioner~~ Attorney General determines that

1 the failure to comply was inadvertent or excusable, is prohibited from entering
2 into subsequent contracts, directly or indirectly, with the State or any of its
3 subdivisions for a period of up to three years following the date of the issuance
4 of ~~an administrative~~ a citation, as determined by the ~~Commissioner~~ Attorney
5 General in consultation with the Secretary of Administration. The consultation
6 shall be informal and shall occur within five business days of the notification
7 by the ~~Commissioner~~ Attorney General. The results of the consultation shall
8 be documented.

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

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

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

17 (e) The Attorney General may enforce the provisions of this section by
18 restraining prohibited acts, seeking civil penalties, obtaining assurances of
19 discontinuance, and conducting civil investigations in accordance with the
20 procedures established in 9 V.S.A. §§ 2458–2461 as though the failure to

1 comply with the provisions of section 687 of this title were an unfair act in
2 commerce.

3 Second: After Sec. 9, 21 V.S.A. § 690, by inserting a Sec. 9a to read as
4 follows:

5 Sec. 9a. 21 V.S.A. § 690 is amended to read:

6 § 690. CERTIFICATE, FORM; COPY OF POLICY

7 * * *

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

17 * * *

18 (2)(A) Any If an employer ~~who~~ fails to comply with this subsection or
19 falsifies information on the compliance statement:

20 (i) the Commissioner may ~~be assessed~~ assess an administrative
21 penalty of not more than \$5,000.00 for each week during which the

1 noncompliance or falsification occurred and any costs and ~~attorney~~ attorney's
2 fees required to enforce this subsection against the employer; or

3 (ii) the Attorney General may seek a civil penalty of not more than
4 \$5,000.00 for each week during which the noncompliance or falsification
5 occurred and any costs and attorney's fees required to enforce this subsection
6 against the employer.

7 (B) The ~~commissioner~~ Commissioner or Attorney General may also
8 seek injunctive relief in the Superior Court in Washington ~~superior court~~
9 County.

10 (3) A compliance statement shall be a public record, and the
11 ~~commissioner~~ Commissioner or Attorney General shall provide a copy of a
12 compliance statement to any person on request. An insurance company
13 provided with a compliance statement may investigate the information in the
14 statement. Based on evidence that an employer is not in compliance with this
15 chapter, the ~~commissioner~~ Commissioner or Attorney General shall request a
16 compliance statement or an amended compliance statement from the employer,
17 investigate further, and take appropriate enforcement action.

18 (4) In the event the ~~commissioner~~ Commissioner or Attorney General
19 receives a request for an employer to provide a compliance statement but finds
20 no evidence of noncompliance with this chapter, the ~~commissioner~~

1 Commissioner or Attorney General shall provide timely notification of the
2 findings to the requesting party.

3 (c) Upon receiving written authorization from an employer to release
4 information to the Commissioner or Attorney General, the employer's agent or
5 broker or the authorized representative of an insurance or guarantee company
6 shall provide within five business days any contract or policy information,
7 including an insurance application, binder, or reported payroll, that is requested
8 by the Commissioner or Attorney General pursuant to this section.

9 Third: After Sec. 10, 21 V.S.A. § 625, by inserting a Sec. 10a to read as
10 follows:

11 Sec. 10a. 21 V.S.A. § 625 is amended to read:

12 § 625. CONTRACTING OUT FORBIDDEN

13 * * *

14 (b)(1) ~~The Commissioner~~ Attorney General may investigate complaints ~~and~~
15 ~~determine whether the requirements to be an independent contractor set forth~~
16 ~~in subdivision 601(31) of this title are met~~ that an employee has been
17 improperly classified and determine whether a person meets the requirements
18 to be an independent contractor as set forth in subdivision 601(31) of this title.

19 (2) The Attorney General may enforce the provisions of this chapter
20 relating to the proper classification of employees by restraining prohibited acts,
21 seeking civil penalties, obtaining assurances of discontinuance, and conducting

1 civil investigations in accordance with the procedures established in 9 V.S.A.
2 §§ 2458–2461 as though the misclassification of an employee as an
3 independent contractor were an unfair act in commerce. An employer subject
4 to a complaint shall have the rights and remedies specified in 9 V.S.A.
5 §§ 2458–2461. In addition to any penalties, costs, or other relief permitted
6 pursuant to 9 V.S.A. §§ 2458–2461, the Civil Division of the Superior Court
7 may order restitution of wages or benefits, reinstatement, and other appropriate
8 relief on behalf of an employee.

9 (c) Unless the Commissioner determines that the improper classification
10 was inadvertent or excusable due to excusable neglect, any person that, for the
11 purpose of avoiding its obligations under this title, improperly classifies an
12 employee as an independent contractor may, after notice and an opportunity
13 for a hearing, be assessed an administrative shall be subject to a civil penalty of
14 not more than \$5,000.00.

15 (d)(1) If, following an investigation, the Attorney General determines that a
16 person has improperly classified an employee as an independent contractor, the
17 Attorney General shall notify the Commissioners of Labor, of Financial
18 Regulation, and of Taxes of the determination.

19 (2) Upon receiving notification of the determination, the Commissioners
20 of Labor, of Financial Regulation, and of Taxes shall conduct an investigation

1 to determine whether the person has also misclassified the employee pursuant
2 to the applicable provisions of law under his or her jurisdiction.

3 Fourth: After Sec. 13, 21 V.S.A. § 708, by inserting a Sec. 13a to read as
4 follows:

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

6 § 708. PENALTY FOR FALSE REPRESENTATION

7 (a)(1)(A) ~~Action by the Commissioner of Labor. A person who~~ If a person
8 purposefully makes a false statement or representation to obtain any benefit or
9 payment under the provisions of this chapter, either for herself or himself or
10 for any other person;

11 (i) the Commissioner may, after notice and opportunity for
12 hearing, may be assessed assess an administrative penalty of not more than
13 \$20,000.00, and against the person; or

14 (ii) the Attorney General may seek a civil penalty of not more than
15 \$20,000.00 against the person.

16 (B) In addition to any penalty imposed pursuant to subdivision (1)(A)
17 of this subsection (a), the person shall forfeit all or a portion of any right to
18 compensation under the provisions of this chapter, as determined to be
19 appropriate by the Commissioner or Attorney General after a determination by
20 the Commissioner or Attorney General that the person has purposefully made a
21 false statement or representation of a material fact.

1 (2) In addition, an employer found to have violated this section is
2 prohibited from entering into subsequent contracts, directly or indirectly, with
3 the State or any of its subdivisions for up to three years following the date the
4 employer was found to have made a purposeful false statement or
5 misrepresentation of a material fact, as determined by the Commissioner or
6 Attorney General in consultation with the Secretary of Administration. The
7 consultation may be informal and shall occur within five business days of the
8 notification by the Commissioner or Attorney General. The outcome of the
9 consultation shall be documented.

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

17 * * *

18 Fifth: By striking out Sec. 15 in its entirety and by inserting in lieu thereof
19 Secs. 15, 16, and 17 to read as follows:

1 Sec. 15. TRANSFER OF POSITIONS AND ASSOCIATED
2 APPROPRIATIONS FROM THE DEPARTMENT OF LABOR TO
3 THE OFFICE OF ATTORNEY GENERAL

4 On September 1, 2016, five full-time workers' compensation investigator
5 positions and the balance of all appropriated amounts related to those positions
6 and \$115,000.00 from the Workers' Compensation Administration Fund shall
7 be transferred from the Department of Labor to the Office of the Attorney
8 General.

9 Sec. 16. 2010 Acts and Resolves No. 142, Sec. 7 is amended to read:

10 Sec. 7. DEPARTMENT OF LABOR; EMPLOYEE

11 MISCLASSIFICATION REPORTING SYSTEM

12 The ~~department of labor~~ Department of Labor shall create and maintain an
13 online employee misclassification reporting system. The system shall be
14 designed to allow individuals to report suspected cases of employee
15 misclassification, failure to have appropriate insurance coverage, and claimant
16 fraud to the ~~department~~ Department to ensure that this information is
17 distributed to appropriate departments and agencies, including the Office of the
18 Attorney General. The ~~department~~ Department and any agency or department
19 that the information is distributed to, including the Office of the Attorney
20 General, shall keep the name of the complainant confidential.

1 Sec. 17. EFFECTIVE DATES

2 (a) Secs 6a, 9a, 10a, and 13a shall take effect on September 1, 2016.

3 (b) This section and the remaining sections shall take effect on
4 July 1, 2016.

DRAFT