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H.867

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

First: In Sec. 6, 21 V.S.A. § 692, by striking out the section in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

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

(a) Failure to insure. If after notice and a hearing ~~under section 688 of this title~~, the ~~Commissioner~~ Attorney General 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 shall~~ 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 ~~Commissioner~~ Attorney General shall document the reasons for permitting

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 The stop-work order shall be rescinded as soon as the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

19 (c) Debarment. An employer ~~against whom a stop-work order has been~~
20 ~~issued~~ who has not been in compliance with section 687 of this chapter, unless
21 the Attorney General determines that the failure to comply was inadvertent or

1 excusable, is prohibited from ~~contracting~~ entering into subsequent contracts,
2 directly or indirectly, with the State or any of its subdivisions for a period of up
3 to three years following the date of the issuance of ~~the stop-work order~~ a
4 citation, as determined by the ~~Commissioner~~ Attorney General in consultation
5 with ~~Commissioner of Buildings and General Services or the Secretary of~~
6 ~~Transportation~~, as appropriate. ~~Either the Secretary or the Commissioner, as~~
7 ~~appropriate, shall be consulted in any contest of the prohibition of the~~
8 ~~employer from contracting with the State or its subdivisions~~ the Secretary of
9 Administration. The consultation shall be informal and shall occur within five
10 business days of the notification by the Attorney General. The results of the
11 consultation shall be documented.

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

15 (1) a civil penalty of not more than \$5,000.00 for the first violation and
16 a civil penalty of not more than \$10,000.00 for a second or subsequent
17 violation; or

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

20 (e) The Attorney General may enforce the provisions of this section by
21 restraining prohibited acts, seeking civil penalties, obtaining assurances of

1 discontinuance, and conducting civil investigations in accordance with the
2 procedures established in 9 V.S.A. §§ 2458–2461 as though the failure to
3 comply with the provisions of section 687 of this title were an unfair act in
4 commerce.

5 Second: In Sec. 9, 21 V.S.A. § 690, by striking out the section in its
6 entirety and inserting in lieu thereof a new Sec. 9 to read as follows:

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

8 § 690. CERTIFICATE, FORM; COPY OF POLICY

9 * * *

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

20 * * *

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

3 (i) ~~the Commissioner may be assessed~~ assess an administrative
4 penalty of not more than \$5,000.00 for each week during which the
5 noncompliance or falsification occurred and any costs and ~~attorney~~ attorney's
6 fees required to enforce this subsection against the employer; or

7 (ii) the Attorney General may seek a civil penalty of not more than
8 \$5,000.00 for each week during which the noncompliance or falsification
9 occurred and any costs and attorney's fees required to enforce this subsection
10 against the employer.

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

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

1 (4) In the event the ~~commissioner~~ Commissioner or Attorney General
2 receives a request for an employer to provide a compliance statement but finds
3 no evidence of noncompliance with this chapter, the ~~commissioner~~
4 Commissioner or Attorney General shall provide timely notification of the
5 findings to the requesting party.

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

12 Third: In Sec. 10, 21 V.S.A. § 625, by striking out the section in its entirety
13 and inserting in lieu thereof a new Sec. 10 to read as follows:

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

15 § 625. CONTRACTING OUT FORBIDDEN

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

20 (b)(1) The Attorney General may investigate complaints that an employee
21 has been improperly classified and determine whether a person meets the

1 requirements to be an independent contractor set forth in subdivision 601(31)
2 of this title.

3 (2) The Attorney General may enforce the provisions of this chapter
4 relating to the proper classification of employees by restraining prohibited acts,
5 seeking civil penalties, obtaining assurances of discontinuance, and conducting
6 civil investigations in accordance with the procedures established in 9 V.S.A.
7 §§ 2458–2461 as though the misclassification of an employee as an
8 independent contractor were an unfair act in commerce. An employer subject
9 to a complaint shall have the rights and remedies specified in 9 V.S.A.
10 §§ 2458–2461. An investigation against an employer shall not be a
11 prerequisite for bringing an action. In addition to any penalties, costs, or other
12 relief permitted pursuant to 9 V.S.A. §§ 2458–2461, the Civil Division of the
13 Superior Court may order restitution of wages or benefits, reinstatement, and
14 other appropriate relief on behalf of an employee.

15 (c) Unless the improper classification was inadvertent or due to excusable
16 neglect, any person that, for the purpose of avoiding its obligations under this
17 title, improperly classifies an employee as an independent contractor shall be
18 subject to a civil penalty of not more than \$5,000.00.

19 (d)(1) If, following an investigation, the Attorney General determines that a
20 person has improperly classified an employee as an independent contractor, the

1 Attorney General shall notify the Commissioners of Labor, of Financial
2 Regulation, and of Taxes of the determination.

3 (2) Upon receiving notification of the determination, the Commissioners
4 of Labor, of Financial Regulation, and of Taxes shall conduct an investigation
5 to determine whether the person has also misclassified the employee pursuant
6 to the applicable provisions of law under his or her jurisdiction.

7 Fourth: In Sec. 13, 21 V.S.A. § 708, by striking out the section in its
8 entirety and inserting in lieu thereof a new Sec. 13 to read as follows:

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

10 § 708. PENALTY FOR FALSE REPRESENTATION

11 ~~(a)(1)(A) Action by the Commissioner of Labor. A person who willfully~~ If
12 a person purposefully makes a false statement or representation, ~~for the~~
13 ~~purpose of obtaining~~ to obtain any benefit or payment under the provisions of
14 this chapter, either for herself or himself or for any other person;

15 (i) the Commissioner may, after notice and opportunity for
16 hearing, ~~may be assessed~~ assess an administrative penalty of not more than
17 \$20,000.00, ~~and~~ against the person; or

18 (ii) the Attorney General may seek a civil penalty of not more than
19 \$20,000.00 against the person.

20 (B) In addition to any penalty imposed pursuant to subdivision (1)(A)
21 of this subsection (a), the person shall forfeit all or a portion of any right to

1 compensation under the provisions of this chapter, as determined to be
2 appropriate by the Commissioner or Attorney General after a determination by
3 the Commissioner or Attorney General that the person has ~~willfully~~
4 purposefully made a false statement or representation of a material fact.

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

18 (b) ~~When~~ In addition to any penalties imposed pursuant to subsection (a) of
19 this section, when the Department of Labor or Attorney General has sufficient
20 reason to believe that an employer has purposefully made a false statement or
21 representation ~~for the purpose of obtaining~~ to obtain a lower workers’

1 compensation premium, the Department or the Attorney General shall refer the
2 alleged violation to the Commissioner of Financial Regulation for the
3 Commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).

4 * * *

5 Fifth: After Sec. 14, by inserting two new sections to be Secs. 15 and 16 to
6 read as follows:

7 Sec. 15. TRANSFER OF POSITIONS AND ASSOCIATED

8 APPROPRIATIONS FROM THE DEPARTMENT OF LABOR TO
9 THE OFFICE OF ATTORNEY GENERAL

10 On or before August 1, 2016, five full-time workers' compensation
11 investigator positions and the balance of all appropriated amounts related to
12 those positions and \$115,000.00 from the Workers' Compensation
13 Administration Fund shall be transferred from the Department of Labor to the
14 Office of the Attorney General.

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

16 Sec. 7. DEPARTMENT OF LABOR; EMPLOYEE

17 MISCLASSIFICATION REPORTING SYSTEM

18 The ~~department of labor~~ Department of Labor shall create and maintain an
19 online employee misclassification reporting system. The system shall be
20 designed to allow individuals to report suspected cases of employee
21 misclassification, failure to have appropriate insurance coverage, and claimant

1 fraud to the ~~department~~ Department to ensure that this information is
2 distributed to appropriate departments and agencies, including the Office of the
3 Attorney General. The ~~department~~ Department and any agency or department
4 that the information is distributed to, including the Office of the Attorney
5 General, shall keep the name of the complainant confidential.
6 and by renumbering the remaining section to be numerically correct

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