

1 Introduced by Committee on Commerce and Economic Development

2 Date:

3 Subject: Labor; workers' compensation; unemployment insurance;
4 independent contractors

5 Statement of purpose of bill as introduced: This bill proposes to amend
6 definitions related to independent contractors in the workers' compensation
7 and unemployment compensation statutes, to provide for notice of the
8 requirements regarding employee classification at worksites, to permit the
9 Department of Labor to enter an employer's premises for the purposes of
10 investigating compliance with the workers' compensation and unemployment
11 compensation statutes, to permit the Department to obtain an injunction to
12 enforce a stop-work order related to a violation of the workers' compensation
13 statute, to clarify the requirements for consultation regarding debarment of
14 employers that have violated the wage and hour, workers' compensation, and
15 unemployment compensation statutes, and to create an Employee
16 Classification Task Force.

17 An act relating to classification of employees and independent contractors

18 It is hereby enacted by the General Assembly of the State of Vermont:

19 **Sec. 1.** 21 V.S.A. § 601 is amended to read:

20 § 601. DEFINITIONS

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

3 * * *

4 (3) “Employer” includes any body of persons, corporate or
5 unincorporated, public or private, and the legal representative of a deceased
6 employer, and includes the owner or lessee of premises or other person who is
7 virtually the proprietor or operator of the business there carried on, but who, by
8 reason of there being an independent contractor or for any other reason, is not
9 the direct employer of the workers there employed. If the employer is insured,
10 the term “employer” includes the employer’s insurer so far as applicable. A
11 person is not deemed to be an “employer” for the purposes of this chapter as
12 the result of entering into a contract for services or labor with ~~an individual~~
13 a sole proprietor or partner owner who has knowingly and voluntarily waived
14 coverage of this chapter pursuant to subdivision (14)(F) of this section, or an
15 individual who is a corporate officer or L.L.C. member or manager that has
16 filed, and had approved, an exclusion pursuant to subdivision 14(H) of this
17 section and who meets the criteria set forth in that subdivision.

18 * * *

19 (14) “Worker” and “employee” means ~~an individual~~ a person who has
20 entered into the employment of, or works under contract of service or
21 apprenticeship with, an employer. Any reference to a worker who has died as

1 the result of a work injury shall include a reference to the worker’s dependents,
2 and any reference to a worker who is a minor or incompetent shall include a
3 reference to the minor’s committee, guardian, or next friend. ~~The term~~
4 “worker” or “employee” does not include A person who performs services for
5 compensation is presumed to be an employee unless the person is one of the
6 following:

7 * * *

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

11 * * *

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

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

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

1 ~~(ii) The individual controls the means and manner of the work~~
2 ~~performed.~~

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

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

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

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

1 is found to have employees, those employees may file a claim for benefits
2 under this chapter against either or both parties to the agreement.

3 (ii)(I) In individual or partner owner that meets the conditions of
4 subdivision (i) of this subdivision (14)(F), may elect to file with the
5 Commissioner a notice to waive the right to make a claim for workers'
6 compensation against the person with whom the individual or partner owner
7 contracts.

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

19 (iii) An individual or partner owner that makes an election under
20 subdivision (i) of this subdivision (14)(F) shall collect and maintain
21 documentation that any other person hired to perform services for the sole

1 proprietor or partner owner’s unincorporated business has workers’
2 compensation coverage, or is otherwise in compliance with the provisions of
3 this chapter.

4 * * *

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

19 (i) A person shall not be deemed to be an “employer” for purposes
20 of this chapter of corporate executive officers or L.L.C. managers or members

1 that are excluded under this subdivision (14) if the following conditions
2 are met:

3 (I) The corporate executive officers or L.L.C. managers or
4 members operate a separate and distinct business that is an independent
5 contractor, is actively registered with the Vermont Secretary of State, and
6 elects to file a corporate officer or L.L.C. member exclusion from the
7 provisions of this chapter.

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

18 (ii) If, after making an election under this subdivision (14), the
19 corporate officer or L.L.C. manager or member suffers a personal injury
20 arising out of and in the course of his or her employment, he or she may bring
21 an action to recover damages for personal injury against the person who is

1 providing compensation for the services, and in such action the person who is
2 providing compensation for the services shall have all of the defenses available
3 in a personal injury claim. However, this election shall not prevent any other
4 individual, other than the individual excluded pursuant to this subdivision, who
5 is determined to be an employee of the corporation or L.L.C. from claiming
6 workers' compensation benefits under this chapter from the corporation or
7 L.L.C. or from a statutory employer.

8 (iii) A corporation or L.L.C. whose executive officers, members,
9 or managers make an election under subdivision (H)(i) of this subdivision (14)
10 shall collect and maintain documentation that any other person hired to
11 perform services for the corporation or L.L.C. has workers' compensation
12 coverage, or is otherwise in compliance with this chapter.

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

16 * * *

17 (31)(A) "Independent contractor" means a person who meets all of the
18 following:

19 (i) is free from the direction and control of the employing unit,
20 both under the person's contract of service and in fact;

21 (ii) controls the means and manner of the work performed;

1 (iii) operates a separate and distinct business from that of the
2 person with whom it contracts;

3 (iv) holds itself out as in business for itself;

4 (v) offers its services to the general public; and

5 (vi) is not treated as an employee for purposes of income or
6 employment taxation with regard to the work performed.

7 (B) An independent contractor shall purchase workers’ compensation
8 coverage for its employees as provided in this chapter.

9 **Sec. 2.** 21 V.S.A. § 1301 is amended to read:

10 § 1301. DEFINITIONS

11 The following words and phrases, as used in this chapter, shall have the
12 following meanings unless the context clearly requires otherwise:

13 * * *

14 (6)(A)(i) “Employment,” subject to the other provisions of this
15 subdivision (6), means service within the jurisdiction of this State, performed
16 prior to January 1, 1978, which was employment as defined in this subdivision
17 prior to such date and, subject to the other provisions of this subdivision,
18 service performed after December 31, 1977, by an employee, as defined in
19 subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including
20 service in interstate commerce, performed for wages or under any contract of
21 hire, written or oral, expressed or implied. Services partly within and partly

1 without this State may by election as hereinbefore provided be treated as if
2 wholly within the jurisdiction of this State. And whenever an employing unit
3 shall have elected to come under the provisions of a similar act of a state where
4 a part of the services of an employee are performed, the Commissioner, upon
5 his or her approval of said election as to any such employee, may treat the
6 services covered by said approved election as having been performed wholly
7 without the jurisdiction of this State.

8 * * *

9 (B) Services performed by an individual for wages shall be deemed
10 to be employment subject to this chapter unless and until it is shown to the
11 satisfaction of the Commissioner that the individual:

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 is free from the direction and control of the employing unit, both under the
2 individual’s contract of service and in fact;

3 (ii) controls the means and manner of the services performed;

4 (iii) operates a separate and distinct business from that of the
5 person with whom he or she contracts;

6 (iv) holds him- or herself out as in business for him- or herself;

7 (v) offers his or her services to the general public; and

8 (vi) is not treated as an employee for purposes of income or
9 employment taxation with regard to the services performed.

10 * * *

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

12 **§ 2222d. VERMONT EMPLOYEE CLASSIFICATION TASK FORCE**

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

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

20 (1) the Secretary of Administration or designee;

21 (2) the Commissioner of Labor or designee;

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

8 (c) Meetings.

- 9 (1) The Task Force shall meet at least six times per year.
- 10 (2) The Secretary of Administration or designee shall be the Chair.
- 11 (3) A majority of the membership of the Task Force shall constitute a
- 12 quorum.

13 (d) Duties.

- 14 (1) The Task Force shall have the following duties:
- 15 (A) to develop and implement an ongoing outreach program to
- 16 educate and inform employers, workers, and the general public about the
- 17 proper classification of employees and independent contractors;
- 18 (B) to examine and evaluate existing misclassification enforcement
- 19 by State agencies and departments;

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

4 (D) to review and establish reasonable mechanisms to accept
5 complaints and reports of noncompliance;

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

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

10 (G) to review and recommend additional methods to provide public
11 notice and share information regarding enforcement, penalties, and debarment
12 periods;

13 (H) to develop strategies and programs to assist businesses in
14 complying with Vermont’s requirements for the proper classification of
15 employees and independent contractors, and to reduce the frequency of
16 employee misclassification; and

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

19 (2) The Task Force shall consult and collaborate with businesses, labor,
20 and other interested stakeholders to accomplish the duties set forth in
21 subdivision (1) of this subsection, and may appoint representatives of business,

1 labor, and other interested stakeholders to subcommittees as the Task Force
2 deems appropriate.

3 (e) Report. The Task Force shall report annually on or before January 15
4 of each year to the House Committee on Commerce and Economic
5 Development and the Senate Committee on Finance regarding the activities
6 that it has undertaken pursuant to this section, the progress of the Task Force’s
7 ongoing education and outreach programs, the number and results of the
8 employer audits conducted during the previous calendar year, and any barriers
9 or impediments to the proper classification of employees and independent
10 contractors that the Task Force has identified. The report may recommend
11 legislative, regulatory, and administrative measures to reduce the frequency of
12 employee misclassification. The provisions of 2 V.S.A. § 20(d) (expiration of
13 required reports) shall not apply to the report to be made under this subsection.

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

16 **Sec. 4.** 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. 5.** 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. 6. 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. 9.** 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. 10.** 21 V.S.A. § 625 is amended to read:

2 § 625. CONTRACTING OUT FORBIDDEN

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

7 (b) The Commissioner may investigate complaints and determine whether
8 the requirements to be an independent contractor set forth in
9 21 V.S.A. § 601(31) are met. Unless the Commissioner determines that the
10 improper classification was inadvertent or excusable, 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 penalty of not more than
14 \$5,000.00.

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

16 § 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND
17 PENALTIES

18 * * *

19 (c) An employer who purposefully makes a false statement or
20 representation that results in a lower workers' compensation premium, after
21 notice and opportunity for hearing before the Commissioner, may be assessed

1 an administrative penalty of not more than \$20,000.00 in addition to any other
2 appropriate penalty. In addition, an employer found to have violated this
3 section is prohibited from **contracting entering into subsequent contracts**,
4 directly or indirectly, with the State or any of its subdivisions for up to three
5 years following the date the employer was found to have made a false
6 statement or misrepresentation, as determined by the Commissioner in
7 consultation with the ~~Commissioner of Buildings and General Services or the~~
8 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~
9 ~~Commissioner, as appropriate, shall be consulted in any appeal relating to~~
10 ~~prohibiting the employer from contracting with the State or its subdivisions~~
11 Secretary of Administration. The consultation may be informal and shall occur
12 within five business days of the notification by the Commissioner. The
13 outcome of the consultation shall be documented.

14 * * *

15 **Sec. 12.** 21 V.S.A. § 1314a is amended to read:

16 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;
17 PENALTIES

18 * * *

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

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

4 (B) Properly classify an individual regarding the status of
5 employment is subject to a an administrative penalty of not more than
6 \$5,000.00 for each improperly classified employee. In addition, an employer
7 found to have violated this section is prohibited from contracting entering into
8 subsequent contracts, directly or indirectly, with the State or any of its
9 subdivisions for up to three years following the date the employer was found to
10 have failed to properly classify, as determined by the Commissioner in
11 consultation with the ~~Commissioner of Buildings and General Services or the~~
12 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~
13 ~~Commissioner, as appropriate, shall be consulted in any appeal relating to~~
14 ~~prohibiting the employer from contracting with the State or its subdivisions~~
15 Secretary of Administration. The consultation may be informal and shall occur
16 within five business days of the notification by the Commissioner. The
17 outcome of the consultation shall be documented.

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

19 § 708. PENALTY FOR FALSE REPRESENTATION

20 (a) Action by the Commissioner of Labor. A person who ~~willfully~~
21 purposefully makes a false statement or representation, ~~for the purpose of~~

1 ~~obtaining~~ to obtain any benefit or payment under the provisions of this chapter,
2 either for herself or himself or for any other person, after notice and
3 opportunity for hearing, may be assessed an administrative penalty of not more
4 than \$20,000.00, and shall forfeit all or a portion of any right to compensation
5 under the provisions of this chapter, as determined to be appropriate by the
6 Commissioner after a determination by the Commissioner that the person has
7 ~~willfully~~ purposefully made a false statement or representation of a material
8 fact. In addition, an employer found to have violated this section is prohibited
9 from ~~contracting~~ entering into subsequent contracts, directly or indirectly, with
10 the State or any of its subdivisions for up to three years following the date the
11 employer was found to have made a purposeful false statement or
12 misrepresentation of a material fact, as determined by the Commissioner in
13 consultation with the ~~Commissioner of Buildings and General Services or the~~
14 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~
15 ~~Commissioner, as appropriate, shall be consulted in any contest relating to the~~
16 ~~prohibition of the employer from contracting with the State or its subdivisions~~
17 Secretary of Administration. The consultation may be informal and shall occur
18 within five business days of the notification by the Commissioner. The
19 outcome of the consultation shall be documented.

20 (b) ~~When~~ In addition to any penalties assessed pursuant to subsection (a) of
21 this section, when the Department of Labor has sufficient reason to believe that

1 an employer has purposefully made a false statement or representation ~~for the~~
2 ~~purpose of obtaining~~ to obtain a lower workers' compensation premium, the
3 Department shall refer the alleged violation to the Commissioner of Financial
4 Regulation for the Commissioner's consideration of enforcement pursuant to
5 8 V.S.A. § 3661(c).

6 **Sec. 14.** 21 V.S.A. § 1307 is amended to read:

7 § 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

8 The ~~commissioner of labor~~ Commissioner of Labor shall administer this
9 chapter. The ~~commissioner~~ Commissioner may employ such persons, make
10 such expenditures, require such reports, make such investigations, and take
11 such other action as he or she considers necessary or suitable to that end. In
12 the discharge of his or her duties imposed by this chapter, the ~~commissioner~~
13 Commissioner may administer oaths, take depositions, certify to official acts,
14 and subpoena witnesses and compel the production of books, papers,
15 correspondence, memoranda, and other records necessary and material to the
16 administration of this chapter. In addition, the Commissioner or his or her
17 designee may, upon presenting appropriate credentials, at reasonable times and
18 without unduly disrupting business operations, enter and inspect any place of
19 business or employment, question any employee, and investigate any fact,
20 condition, or matter necessary and material to the administration of this
21 chapter. The employer shall, at reasonable times and without unduly

1 disrupting business operations, make its workers available to meet with the
2 Commissioner or his or her designee, as required by the Commissioner. The
3 Commissioner or his or her designee shall inform the employer of his or her
4 rights to refuse entry and to consult with legal counsel, and of the
5 Commissioner’s rights under this section. If entry is refused, the
6 Commissioner may apply to the Civil Division of the Superior Court for an
7 order to enforce the rights given to the Commissioner under this section.

8 Sec. 15. EFFECTIVE DATE

9 This act shall take effect on July 1, 2016.