

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

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

2 Sec. 1. 21 V.S.A. § 398 is added to read:

3 § 398. NOTICE TO PERSONS RECEIVING COMPENSATION AS AN
4 INDEPENDENT CONTRACTOR

5 (a)(1) Every employer shall post in a prominent and accessible place on a
6 site where work is performed a poster provided by the Department that shall
7 explain the differences between an “employee” and an “independent
8 contractor” pursuant to the applicable provisions of chapters 9 and 17 of this
9 title. The poster shall also include information regarding:

10 (A) the protections against retaliation provided by this title;

11 (B) the penalties provided pursuant to this title for failure to classify
12 an individual properly as an employee; and

13 (C) how an individual may file a complaint or inquiry with the
14 Commissioner about his or her employment classification status.

15 (2)(A) The information set forth on the poster shall be in English or
16 other languages as required by the Commissioner.

17 (B) If the poster is located outdoors, it shall be constructed of
18 materials capable of withstanding adverse weather conditions.

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. 2. 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. 3. 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, directly or indirectly, with the State
12 or any of its subdivisions for a period of up to three years following the date of
13 the issuance of ~~the stop work order~~ an administrative citation, as determined
14 by the Commissioner in consultation with the ~~Commissioner of Buildings and~~
15 ~~General Services or the Secretary of Transportation,~~ as appropriate. ~~Either the~~
16 ~~Secretary or the Commissioner, as appropriate, shall be consulted in any~~
17 ~~contest of the prohibition of the employer from contracting with the State or its~~
18 ~~subdivisions~~ Secretary of Administration. The consultation shall be informal
19 and shall occur within five business days of the notification by the
20 Commissioner. The results of the consultation shall be documented.

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

4 (1) ~~a civil~~ an administrative penalty of not more than \$5,000.00 for the
5 first violation and ~~a civil~~ an administrative penalty of not more than
6 \$10,000.00 for a second or subsequent violation; or

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

9 Sec. 4. 21 V.S.A. § 7 is added to read:

10 § 7. COLLECTION OF ADMINISTRATIVE PENALTIES

11 The Commissioner may collect any unpaid administrative penalty assessed
12 pursuant to this title by filing an action in Superior Court, or through any other
13 means available to State agencies.

14 Sec. 5. 4 V.S.A. § 1102 is amended to read:

15 § 1102. JUDICIAL BUREAU; JURISDICTION

16 * * *

17 (b) The Judicial Bureau shall have jurisdiction of the following matters:

18 * * *

19 (20) ~~Violations of 21 V.S.A. § 692(e)(1).~~ [Repealed.]

20 * * *

1 Sec. 6. 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) An employer's agent or broker or the authorized representative of an
15 insurance or guarantee company shall provide any contract or policy
16 information requested by the Commissioner pursuant to this section within five
17 business days after receiving the request.

18 Sec. 7. 21 V.S.A. § 625 is amended to read:

19 § 625. CONTRACTING OUT FORBIDDEN

20 (a) An Except as provided in subdivisions 601(3) and (14) of this chapter,
21 an employer shall not be relieved in whole or in part from liability created by

1 the provisions of this chapter by any contract, rule, regulation, or device
2 whatsoever.

3 (b) Any person who, for the purpose of avoiding its obligations under this
4 title, coerces an employee or prospective employee into becoming an
5 independent contractor, after notice and an opportunity for a hearing, may be
6 assessed an administrative penalty of not more than \$5,000.00.

7 (c) Any administrative penalty imposed pursuant to this section may be in
8 addition to other penalties authorized pursuant to chapters 9 and 17 of this title.

9 Sec. 8. 8 V.S.A. § 3661 is amended to read:

10 § 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND

11 PENALTIES

12 * * *

13 (c) An employer who purposefully makes a false statement or
14 representation that results in a lower workers' compensation premium, after
15 notice and opportunity for hearing before the Commissioner, may be assessed
16 an administrative penalty of not more than \$20,000.00 in addition to any other
17 appropriate penalty. In addition, an employer found to have violated this
18 section is prohibited from contracting, directly or indirectly, with the State or
19 any of its subdivisions for up to three years following the date the employer
20 was found to have made a false statement or misrepresentation, as determined
21 by the Commissioner in consultation with the ~~Commissioner of Buildings and~~

1 ~~General Services or the Secretary of Transportation, as appropriate. Either the~~
2 ~~Secretary or the Commissioner, as appropriate, shall be consulted in any appeal~~
3 ~~relating to prohibiting the employer from contracting with the State or its~~
4 ~~subdivisions~~ Secretary of Administration. The consultation may be informal
5 and shall occur within five business days of the notification by the
6 Commissioner. The outcome of the consultation shall be documented.

7 * * *

8 Sec. 9. 21 V.S.A. § 1314a is amended to read:

9 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;

10 PENALTIES

11 * * *

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

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

16 (B) Properly classify an individual regarding the status of
17 employment is subject to ~~a~~ an administrative penalty of not more than
18 \$5,000.00 for each improperly classified employee. In addition, an employer
19 found to have violated this section is prohibited from contracting, directly or
20 indirectly, with the State or any of its subdivisions for up to three years
21 following the date the employer was found to have failed to properly classify,

1 as determined by the Commissioner in consultation with the Commissioner of
2 Buildings and General Services or the Secretary of Transportation, ~~as~~
3 ~~appropriate. Either the Secretary or the Commissioner, as appropriate, shall be~~
4 ~~consulted in any appeal relating to prohibiting the employer from contracting~~
5 ~~with the State or its subdivisions. The consultation may be informal and shall~~
6 ~~occur within five business days of the notification by the Commissioner. The~~
7 ~~outcome of the consultation shall be documented.~~

8 Sec. 10. 21 V.S.A. § 708 is amended to read:

9 § 708. PENALTY FOR FALSE REPRESENTATION

10 (a) Action by the Commissioner of Labor. A person who ~~willfully~~
11 ~~purposefully~~ makes a false statement or representation, ~~for the purpose of~~
12 ~~obtaining to obtain~~ any benefit or payment under the provisions of this chapter,
13 either for herself or himself or for any other person, after notice and
14 opportunity for hearing, may be assessed an administrative penalty of not more
15 than \$20,000.00, and shall forfeit all or a portion of any right to compensation
16 under the provisions of this chapter, as determined to be appropriate by the
17 Commissioner after a determination by the Commissioner that the person has
18 ~~willfully~~ purposefully made a false statement or representation of a material
19 fact. In addition, an employer found to have violated this section is prohibited
20 from contracting, directly or indirectly, with the State or any of its subdivisions
21 for up to three years following the date the employer was found to have made a

1 purposeful false statement or misrepresentation of a material fact, as
2 determined by the Commissioner in consultation with the ~~Commissioner of~~
3 ~~Buildings and General Services or the Secretary of Transportation~~, as
4 appropriate. ~~Either the Secretary or the Commissioner, as appropriate, shall be~~
5 ~~consulted in any contest relating to the prohibition of the employer from~~
6 ~~contracting with the State or its subdivisions~~ Secretary of Administration. The
7 consultation may be informal and shall occur within five business days of the
8 notification by the Commissioner. The outcome of the consultation shall be
9 documented.

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

17 Sec. 11. 21 V.S.A. § 1307 is amended to read:

18 § 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

19 ~~The commissioner of labor~~ Commissioner of Labor shall administer this
20 chapter. ~~The commissioner~~ Commissioner may employ such persons, make
21 such expenditures, require such reports, make such investigations, and take

1 such other action as he or she considers necessary or suitable to that end. In
2 the discharge of his or her duties imposed by this chapter, the ~~commissioner~~
3 Commissioner may administer oaths, take depositions, certify to official acts,
4 and subpoena witnesses and compel the production of books, papers,
5 correspondence, memoranda, and other records necessary and material to the
6 administration of this chapter. In addition, the Commissioner or his or her
7 designee may, upon presenting appropriate credentials, at reasonable times and
8 without unduly disrupting business operations, enter and inspect any place of
9 business or employment, question any employee, and investigate any fact,
10 condition, or matter necessary and material to the administration of this
11 chapter. The employer shall, at reasonable times and without unduly
12 disrupting business operations, make its workers available to meet with the
13 Commissioner or his or her designee, as required by the Commissioner. The
14 Commissioner or his or her designee shall inform the employer of his or her
15 rights to refuse entry and to consult with legal counsel, and of the
16 Commissioner's rights under this section. If entry is refused, the
17 Commissioner may apply to the Civil Division of the Superior Court for an
18 order to enforce the rights given to the Commissioner under this section.

1 Sec. 12. 21 V.S.A. § 601 is amended to read:

2 § 601. DEFINITIONS

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

5 * * *

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

19 * * *

20 (14) “Worker” and “employee” means ~~an individual~~ a person who has
21 entered into the employment of, or works under contract of service or

1 apprenticeship with, an employer. Any reference to a worker who has died as
2 the result of a work injury shall include a reference to the worker's dependents,
3 and any reference to a worker who is a minor or incompetent shall include a
4 reference to the minor's committee, guardian, or next friend. The term
5 "worker" or "employee" does not include A person who performs services for
6 compensation is presumed to be an employee unless the employing unit
7 demonstrates that the person is one of the following:

8 * * *

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

12 * * *

13 (F)(i) The sole proprietor or partner owner or partner owners of an
14 unincorporated business provided all of the following are met:

15 (i)(I)(aa) The individual or partner owner performs work that is
16 distinct and separate from that of the person with whom the individual
17 ~~contracts~~ or partner owner contracts; or

18 (bb) the individual or partner owner operates a separate and
19 distinct business from that of the person with whom he or she contracts and is
20 actively registered with the Vermont Secretary of State.

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

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

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

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

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

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

3 (VII) The person with whom the individual or partner owner
4 has contracted has not hired multiple sole proprietors, partnerships, or single
5 member corporations or L.L.C.s to perform the same work on a project or
6 jobsite.

7 (ii)(I) With the approval of the Commissioner, a sole proprietor or
8 partner owner of an unincorporated business that meets the requirements of
9 subdivision (14)(F)(i) of this section may elect to file an exclusion from the
10 coverage requirements of this chapter.

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

1 (iii) A sole proprietor or partner owner that makes an election
2 under subdivision (14)(F)(ii)(I) of this section shall ensure that any other
3 individual hired to perform services for the sole proprietor or partner owner’s
4 unincorporated business has workers’ compensation coverage.

5 * * *

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

1 (i) A person shall not be deemed to be an “employer” for purposes
2 of this chapter of corporate executive officers or L.L.C. managers or members
3 that are excluded under this subdivision if all of the following are met:

4 (I) The corporate executive officers or L.L.C. managers or
5 members operate a separate and distinct business from that of the person with
6 whom the corporation or L.L.C. contracts, and the corporation or L.L.C. is
7 actively registered with the Vermont Secretary of State.

8 (II) The corporation or L.L.C. controls the means and manner
9 of the work performed.

10 (III) The corporation or L.L.C. holds itself out as in business
11 for itself, performs work for the general public, and does not work exclusively
12 for or with another person.

13 (IV) The person that the corporation of L.L.C. contracts with
14 does not treat the corporate executive officers or L.L.C. managers or members
15 as employees for purposes of income or employment taxation in relation to the
16 work performed.

17 (V) The services are performed pursuant to a written agreement
18 or contract between the corporation or L.L.C. and another person, and the
19 written agreement or contract explicitly states that the corporate executive
20 officers or L.L.C. managers or members are not considered to be employees
21 under this chapter and are working independently. The written contract or

1 agreement shall also include information regarding the right of the corporation
2 or L.L.C. to purchase workers' compensation insurance coverage and of the
3 corporate executive officers or the L.L.C. managers or members to elect not to
4 exclude themselves from coverage.

5 (VI) The person with whom the corporation or L.L.C. has
6 contracted has not hired multiple sole proprietors, partnerships, or single
7 member corporations or L.L.C.s to perform the same work on a project or
8 jobsite.

9 (ii) If after making an election under this subdivision, the
10 corporate officer or L.L.C. manager or member suffers a personal injury
11 arising out of and in the course of his or her employment, he or she may bring
12 an action to recover damages for personal injury against the employer, and in
13 such action the employer shall have all of the defenses available in a personal
14 injury claim. However, this election shall not prevent any other individual,
15 other than the individual excluded pursuant to this subdivision, who is
16 determined to be an employee of the corporation or L.L.C. from claiming
17 workers' compensation benefits under this chapter from the corporation or
18 L.L.C., or from a statutory employer.

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

1 (J) An individual that is a direct seller, provided all of the following
2 are met:

3 (i) The individual is engaged in the trade or business of selling or
4 soliciting the sale of consumer products, including services or other intangibles
5 in the home or a location other than in a permanent retail establishment. For
6 purposes of this subdivision, “the trade or business of selling or soliciting the
7 sale of consumer products” includes the sale or solicitation of a sale to any
8 buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for
9 resale by the buyer or any other person.

10 (ii) Substantially all of the compensation, whether or not received
11 in cash, that the individual receives for the performance of the services
12 described in subdivision (i) of this subdivision (14)(J) is directly related to
13 sales or other output, including the performance of services, rather than to the
14 number of hours worked.

15 (iii) The services performed by the individual are performed
16 pursuant to a written contract between the individual and the person for whom
17 the services are performed, and the contract provides that the individual will
18 not be treated as an employee for federal and State tax purposes.

19 * * *

1 Sec. 13. 21 V.S.A. § 1301 is amended as follows:

2 § 1301. DEFINITIONS

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

5 * * *

6 (6)(A)(i) “Employment,” subject to the other provisions of this
7 subdivision (6), means service within the jurisdiction of this State, performed
8 prior to January 1, 1978, which was employment as defined in this subdivision
9 prior to such date and, subject to the other provisions of this subdivision,
10 service performed after December 31, 1977, by an employee, as defined in
11 subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including
12 service in interstate commerce, performed for wages or under any contract of
13 hire, written or oral, expressed or implied. Services partly within and partly
14 without this State may by election as hereinbefore provided be treated as if
15 wholly within the jurisdiction of this State. And whenever an employing unit
16 shall have elected to come under the provisions of a similar act of a state where
17 a part of the services of an employee are performed, the Commissioner, upon
18 his or her approval of said election as to any such employee, may treat the
19 services covered by said approved election as having been performed wholly
20 without the jurisdiction of this State.

21 * * *

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

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

7 (ii) Such service is ~~either~~ outside the usual course of the business
8 for which such service is performed, ~~or that such service is performed outside~~
9 ~~of all the places of business of the enterprise for which such service is~~
10 ~~performed~~ unless it can be demonstrated that such individual regularly
11 provides such service to multiple businesses and holds himself or herself out to
12 the public as a provider of such service; and

13 (iii) Such individual is customarily engaged in an independently
14 established trade, occupation, profession, or business and that independently
15 established trade, occupation, profession, or business is actively registered with
16 the Vermont Secretary of State.

17 (C) Notwithstanding any provision of subdivision (B) of this
18 subdivision (6), multiple individuals performing the same work on a project or
19 job site shall be deemed to be performing services in employment.

20 (D) The term “employment” shall not include:

21 * * *

1 (6) the Secretary of Human Services or designee;

2 (7) the Commissioner of Taxes or designee;

3 (8) the Attorney General or designee;

4 (9) the Commissioner of Liquor Control or designee;

5 (10) three individuals representing the interests of labor, one of whom

6 shall be appointed by the Speaker of the House, one of whom

7 shall be appointed by the Senate Committee on Committees, and one of whom

8 shall be appointed by the Governor;

9 (11) three individuals representing the interests of businesses, one of

10 whom shall be appointed by the Speaker of the House, one of whom shall be

11 appointed by the Senate Committee on Committees, and one of whom shall be

12 appointed by the Governor; and

13 (12) one individual representing the interests of workers' compensation

14 insurers who shall be appointed by the Governor.

15 (c) Meetings.

16 (1) The Task Force shall meet at least six times per year.

17 (2) The Commissioner of Labor or designee shall be the Chair.

18 (3) A majority of the membership of the Task Force shall constitute a

19 quorum.

20 (d) Duties.

21 (1) The Task Force shall have the following duties:

1 (A) develop and implement an ongoing outreach program to educate
2 and inform employers, workers, and the general public about the proper
3 classification of employees and independent contractors;

4 (B) develop and implement strategies to improve coordination,
5 cooperation, and information sharing among State agencies and departments in
6 relation to the investigation and enforcement of employee misclassification;

7 (C) develop strategies and programs to assist businesses in
8 complying with Vermont’s requirements for the proper classification of
9 employees and independent contractors, and to reduce the frequency of
10 employee misclassification; and

11 (D) recommend legislative, regulatory, and administrative measures
12 to reduce the frequency of employee misclassification.

13 (2) The Task Force shall consult and collaborate with businesses, labor,
14 and other interested stakeholders to accomplish the duties set forth in
15 subdivision (1) of this subsection.

16 (e) Rulemaking. The Task Force may adopt rules and procedures as
17 necessary to carry out this section.

18 (f) Reports.

19 (1) The Task Force shall report annually on or before January 15 of each
20 year to the House Committee on Commerce and Economic Development and
21 the Senate Committee on Finance regarding the activities that it has undertaken

1 pursuant to this section, the progress of the Task Force’s ongoing education
2 and outreach programs, the number and results of the employer audits
3 conducted during the previous calendar year, and any barriers or impediments
4 to the proper classification of employees and independent contractors that the
5 Task Force has identified. The report may recommend legislative, regulatory,
6 and administrative measures to reduce the frequency of employee
7 misclassification. The provisions of 2 V.S.A. § 20(d) (expiration of required
8 reports) shall not apply to the report to be made under this subsection.

9 (2) The Task Force shall examine instances in which a person has hired
10 multiple sole proprietors, partnerships, or single member corporations or LLCs
11 to perform the same work on a project or jobsite to determine how often
12 employee misclassification occurs in such situations and whether legislative
13 changes are necessary to reduce the frequency of those occurrences. On or
14 before January 15, 2017, the Task Force shall submit a written report to the
15 General Assembly with its findings and any recommendations for legislative
16 action.

17 (g) Definition. As used in this section, “employee misclassification” means
18 the improper classification of employees as independent contractors.

19 Sec. 15. EFFECTIVE DATE

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