

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

2 § 398. NOTICE TO PERSONS RECEIVING REMUNERATION AS AN INDEPENDENT
3 CONTRACTOR

4 (a) Every employer shall post in a prominent and accessible place on the site where work
5 is performed a poster(s). The poster provided by the Department shall outline the differences
6 between an “employee” and an “independent contractor,” including provisions of
7 Unemployment Insurance and Workers’ Compensation law that apply. This poster shall outline
8 the protections against retaliation and the penalties in this title if the employer does not properly
9 classify an individual as an employee. This notice shall also contain contact information for
10 individuals to file complaints or inquire with the Commissioner about employment classification
11 status. This information shall be provided in English or other languages required by the
12 Commissioner. If the posted statement is displayed outside it shall be constructed of materials
13 capable of withstanding adverse weather conditions.

14 (b) Within 30 days of the effective date of this section, the Commissioner shall create the notice
15 described in subsection (a) of this section and post the notice on the department’s website for
16 downloading by hiring entities.

17 (c) Employers who violate this section shall be subject to an administrative penalty of up to
18 \$100.00 per violation.

19 Sec. 2. 21 V.S.A. § 603 is amended to read:

20 § 603. WITNESSES, OATHS, BOOKS, PAPERS, RECORDS

21 (a) So far as it is necessary in his or her examinations, or investigations and in the determination
22 of matters within his or her jurisdiction, the Commissioner shall have power to subpoena

1 witnesses, administer oaths, and to demand the production of books, papers, records, and
2 documents for his or her examination. Additionally, the Commissioner or designee may, upon
3 presenting appropriate credentials, at reasonable times and without disrupting critical business
4 operations enter and inspect any place of business or employment, question any employees, and
5 investigate any facts, conditions, or matters necessary and material to the administration of this
6 chapter. The employer shall make its workers available to meet with the Commissioner or
7 designee, as required by the Commissioner of Labor. The Commissioner or designee shall
8 inform the employer of his or her right to refuse entry. If entry is refused, the Commissioner may
9 apply to the civil division of the superior court for an order to enforce the rights given the
10 Commissioner under this section.

11 * * *

12 Sec. 3. 21 V.S.A. § 692 is amended to read:

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

14 * * *

15 (b) Stop-work orders. If an employer fails to comply with the provisions of section 687 of this
16 title after investigation by the Commissioner, the Commissioner shall issue an emergency order
17 to that employer to stop work until the employer has secured workers' compensation insurance.
18 If the Commissioner determines that issuing a stop-work order would immediately threaten the
19 safety or health of the public, the Commissioner may permit work to continue until the
20 immediate threat to public safety or health is removed. The Commissioner shall document the
21 reasons for permitting work to continue, and the document shall be available to the public. In
22 addition, the employer shall be assessed an administrative penalty of not more than \$250.00 for

1 every day that the employer fails to secure workers' compensation coverage after the
2 Commissioner issues an order to obtain insurance and may also be assessed an administrative
3 penalty of not more than \$250.00 for each employee for every day that the employer fails to
4 secure workers' compensation coverage as required in section 687 of this title. When a stop-
5 work order is issued, the Commissioner shall post a notice at a conspicuous place on the work
6 site of the employer informing the employees that their employer failed to comply with the
7 provisions of section 687 of this title and that work at the work site has been ordered to cease
8 until workers' compensation insurance is secured. An employer that fails to comply with a stop-
9 work order may be enjoined from employing individuals in employment as defined in this
10 chapter, upon complaint of the Commissioner in the civil division of the superior court. The
11 stop-work order shall be rescinded as soon as the Commissioner determines that the employer is
12 in compliance with section 687 of this title.

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14 Sec. 4. 21 V.S.A. § 692a. DEBARMENT

15 An employer against whom a stop-work order has been issued, or who has not been in
16 compliance with section 687 of this title, unless the Commissioner determines that the failure to
17 comply was inadvertent or excusable is prohibited from contracting, directly or indirectly, with
18 the state or any of its subdivisions for a period of up to three years following the date of the
19 issuance of ~~the stop-work order,~~ an administrative citation, as determined by the Commissioner
20 in consultation with the Commissioner of buildings and general services or the secretary of
21 transportation, as appropriate. ~~Either the secretary or the Commissioner, as appropriate, shall be~~
22 ~~consulted in any contest of the prohibition of the employer from contracting with the state or its~~

1 ~~subdivisions.~~ The consultation may be informal and shall occur within five days of a referral by
2 the Commissioner. The outcome of the referral shall be documented.

3 Sec. 5. 21 VSA § 690. Certificate, form; copy of policy is amended to read:

4 * * *

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

11 * * *

12 (c) An employer's agent or broker, or the authorized representative of an insurance or
13 guarantee company promptly shall provide any policy information requested by the
14 Commissioner pursuant to this section.

15 * * *

16 Sec. 6. 21 VSA §625 is amended to read:

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

20 (b) Any person or entity who coerces an employee or prospective employee into becoming
21 an independent contractor for the purpose of avoiding its obligations under this title may, after
22 notice and opportunity for hearing, be assessed an administrative penalty of up to \$5,000.00.

1 (c) An administrative penalty issued pursuant to this section may be in addition to other penalties
2 authorized by chapters 9 and 17 of this title.

3 Sec. 7. 8 V.S.A. § 3661 is amended to read:

4 § 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND
5 PENALTIES

6 * * *

7 (c) An employer who makes a false statement or representation that results in a lower workers'
8 compensation premium, after notice and opportunity for hearing before the Commissioner, may
9 be assessed an administrative penalty of not more than \$20,000.00 in addition to any other
10 appropriate penalty. In addition, an employer found to have violated this section is prohibited
11 from contracting, directly or indirectly, with the state or any of its subdivisions for up to three
12 years following the date the employer was found to have made a false statement or
13 misrepresentation, as determined by the Commissioner in consultation with the Commissioner of
14 buildings and general services or the secretary of transportation, ~~as appropriate. Either the~~
15 ~~secretary or the Commissioner, as appropriate, shall be consulted in any appeal relating to~~
16 ~~prohibiting the employer from contracting with the state or its subdivisions.~~ The consultation
17 may be informal and shall occur within five days of a referral by the Commissioner. The
18 outcome of the referral shall be documented.

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

21 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;
22 PENALTIES

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

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

(B) Properly classify an individual regarding the status of employment is subject to a penalty of not more than \$5,000.00 for each improperly classified employee. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the state or any of its subdivisions for up to three years following the date the employer was found to have failed to properly classify, as determined by the Commissioner in consultation with the Commissioner of buildings and general services or the secretary of transportation, ~~as appropriate. Either the secretary or the Commissioner, as appropriate, shall be consulted in any appeal relating to prohibiting the employer from contracting with the state or its subdivisions.~~
The consultation may be informal and shall occur within five days of a referral by the Commissioner. The outcome of the referral shall be documented.

* * *

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

§ 708. PENALTY FOR FALSE REPRESENTATION

(a) Action by the Commissioner of labor. A person who ~~willfully~~ purposefully makes a false statement or representation, ~~for the purpose of obtaining~~ to obtain any benefit or payment under the provisions of this chapter, either for herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$20,000.00, and shall forfeit all or a portion of any right to compensation under the provisions of

1 this chapter, as determined to be appropriate by the Commissioner after a determination by the
2 Commissioner that the person has ~~willfully~~ made a false statement or representation of a material
3 fact. In addition, an employer found to have violated this section is prohibited from contracting,
4 directly or indirectly, with the state or any of its subdivisions for up to three years following the
5 date the employer was found to have made a false statement or misrepresentation of a material
6 fact, as determined by the Commissioner in consultation with the Commissioner of buildings and
7 general services or the secretary of transportation, ~~as appropriate. Either the secretary or the~~
8 ~~Commissioner, as appropriate, shall be consulted in any contest relating to the prohibition of the~~
9 ~~employer from contracting with the state or its subdivisions.~~ The consultation may be informal
10 and shall occur within five days of a referral by the Commissioner. The outcome of the referral
11 shall be documented.

12 (b) ~~When~~ In addition to penalties assessed pursuant to subsection (a) of this section, when the
13 department of labor has sufficient reason to believe that an employer has made a false statement
14 or representation for the purpose of obtaining a lower workers' compensation premium, the
15 department shall refer the alleged violation to the Commissioner of banking, insurance,
16 securities, and health care administration for the Commissioner's consideration of enforcement
17 pursuant to 8 V.S.A. § 3661(c).

18 * * *

19 Sec. 10. 21 V.S.A. § 1307 is amended to read:

20 § 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

21 The Commissioner of labor shall administer this chapter. The Commissioner may employ such
22 persons, make such expenditures, require such reports, make such investigations and take such

1 other action as he or she considers necessary or suitable to that end. In the discharge of his or her
2 duties imposed by this chapter, the Commissioner may administer oaths, take depositions, certify
3 to official acts and subpoena witnesses and compel the production of books, papers,
4 correspondence, memoranda, and other records necessary and material to the administration of
5 this chapter. Additionally, the Commissioner or designee may, upon presenting appropriate
6 credentials, at reasonable times and without disrupting critical business operations, enter and
7 inspect any place of business or employment, speak with workers, and investigate any facts,
8 conditions, or matters necessary and material to the administration of this chapter. The employer
9 shall make its workers available to meet with the Commissioner, or designee, as requested by the
10 Commissioner of Labor. The Commissioner, or designee, shall inform the employer of his or her
11 right to refuse entry. If entry is refused, the Commissioner may apply to the civil division of the
12 superior court for an order to enforce the rights given the Commissioner under this section.

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14 Sec. 11, 21 V.S.A. §601 is amended to read:

15 (3) "Employer" includes any body of persons, corporate or unincorporated, public or private,
16 and the legal representative of a deceased employer, and includes the owner or lessee of premises
17 or other person who is virtually the proprietor or operator of the business there carried on, but
18 who, by reason of there being an independent contractor or for any other reason, is not the direct
19 employer of the workers there employed. If the employer is insured, "employer" includes the
20 employer's insurer so far as applicable. A person is not deemed to be an "employer" for the
21 purposes of this chapter as the result of entering into a contract for services or labor with an
22 individual who has knowingly and voluntarily waived coverage of this chapter pursuant to
23 subdivision (14)(F) of this section, or is a corporate officer or LLC member that has filed, and

1 had approved, an exclusion pursuant to subdivision (14)(H) of this section, and the additional
2 criteria in that subsection are met.

3 ***

4 (14) "Worker" and "employee" means an individual who has entered into the employment of, or
5 works under contract of service or apprenticeship with, an employer. Any reference to a worker
6 who has died as the result of a work injury shall include a reference to the worker's dependents,
7 and any reference to a worker who is a minor or incompetent shall include a reference to the
8 minor's committee, guardian, or next friend. A person who performs services for remuneration is
9 presumed to be an employee unless the employing unit proves that the person is free from the
10 direction and control of the employing unit, both under the person's contract of service and in
11 fact. The term "worker" or "employee" does not include:

12 ***

13 (F) The sole proprietor or partner owner or partner owners of an unincorporated business
14 provided:

15 (i) The individual or partner owner or partner owners perform work that is distinct and separate
16 from that of the person with whom the individual contracts or the individual or partner owner or
17 partner owners operate a separate and distinct business from that of the person with whom they
18 contract, and is actively registered with the Vermont Secretary of State, and;

19 (ii) The individual controls the means and manner of the work performed. and

20 (iii) The individual holds him or herself out as in business for him or herself, and

21 (iv) The individual holds him or herself out for work for the general public and does not

22 perform work exclusively for or with another person ,and

1 (v) The individual is not treated as an employee for purposes of income or employment taxation
2 with regard to the work performed, and

3 (vi) The services are performed pursuant to a written agreement or contract between the
4 individual and another person, and the written agreement or contract explicitly states that the
5 individual is not considered to be an employee under this chapter, is working independently, has
6 no employees, and has not contracted with other independent contractors. The written contract or
7 agreement shall also include information regarding the right of the individual to purchase
8 workers' compensation insurance coverage and the individual's election not to purchase that
9 coverage. However, if the individual who is party to the agreement or contract under this
10 subdivision is found to have employees, those employees may file a claim for benefits under this
11 chapter against either or both parties to the agreement, and

12 (vii) a person shall not hire multiple sole proprietors or partnerships to perform the same work
13 on a project or jobsite

14 ***

15 ~~(H) With the approval of the Commissioner, a corporation or a limited liability company~~
16 ~~(L.L.C.) may elect to file exclusions from the provisions of this chapter. A corporation or an~~
17 ~~L.L.C. may elect to exclude up to four executive officers or managers or members from coverage~~
18 ~~requirements under this chapter. If all officers of the corporation or all managers or members of~~
19 ~~an L.L.C. make such election, receive approval, and the business has no employees, the~~
20 ~~corporation or L.L.C. shall not be required to purchase workers' compensation coverage. If after~~
21 ~~election, the officer, manager, or member experiences a personal injury and files a claim under~~
22 ~~this chapter, the employer shall have all the defenses available in a personal injury claim.~~
23 ~~However, this election shall not prevent any other individual, other than the individual excluded~~

1 ~~under this section, found to be an employee of the corporation or L.L.C. to recover workers'~~
2 ~~compensation from either the corporation, L.L.C., or the statutory employer.~~

3 (H) With the approval of the Commissioner, a corporation or a limited liability company
4 (L.L.C.) may elect to file exclusions from the provisions of this chapter. A corporation or an
5 L.L.C. may elect to exclude up to four corporate executive officers or four L.L.C. managers or
6 members from coverage requirements under this chapter. If all officers of the corporation or all
7 managers or members of an L.L.C. make such election, receive approval, and the business has no
8 employees, the corporation or L.L.C. shall not be required to purchase workers' compensation
9 coverage.

10 (1) A person is not deemed to be an "employer" of excluded corporate executive officers or
11 L.L.C. managers or members provided:

12 The corporate executive officers or L.L.C. managers or members:

13 (i) operate a separate and distinct business from that of the person with whom the person
14 contracts, and are actively registered with the Vermont Secretary of State, and;

15 (ii) control the means and manner of the work performed. And

16 (iii) The corporation or L.L.C. holds itself out as in business itself, performs work for the
17 general public and does not perform work exclusively for or with another person ,and

18 (iv) The corporate executive officers or L.L.C. managers or members are not treated as
19 employees of the contracting person for purposes of income or employment taxation with regard
20 to the work performed, and

21 (v) The services are performed pursuant to a written agreement or contract between the
22 corporation or L.L.C. and another person, and the written agreement or contract explicitly states

1 that the corporate executive officers or L.L.C. managers or members are not considered to be an
2 employees under this chapter, and are working independently. The written contract or agreement
3 shall also include information regarding the right of the corporation or L.L.C. to purchase
4 workers' compensation insurance coverage and the corporate executive officers or L.L.C.
5 managers or members election not to exclude themselves from coverage; and

6 (vi) a person shall not hire multiple single member corporations or L.L.C.'s to perform the same
7 work on a project or jobsite

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

16 Sec. 12. 21 V.S.A. § 1301 is amended as follows:

17 21 V.S.A. § 1301. Definitions

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

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

1 (ii) Such service is ~~either~~ outside the usual course of the business for which such service is
2 performed, unless it can be demonstrated that such individual regularly provides such service to
3 multiple businesses, and holds him - or herself out to the public as a provider of such service ~~or~~
4 ~~that such service is performed outside of all the places of business of the enterprise for which~~
5 ~~such service is performed; and~~

6 (iii) Such individual is customarily engaged in an independently established trade, occupation,
7 profession, or business that is actively registered with the Secretary of State.

8 (C) Notwithstanding the provisions of 21 V.S.A. § 1301(6)(B), multiple individuals
9 performing the same work on a project or job site shall be deemed to be performing services in
10 employment.

11 (Remainder of section to be renumbered accordingly)

12