1	H.867
2	Representative Pearson of Burlington moves that the bill be amended as
3	follows:
4	First: In Sec. 1, 21 V.S.A. § 601, in subdivision (14)(F), after subdivision
5	(i)(II), by adding a subdivision (III) to read as follows:
6	(III) The person who is providing the individual or partner
7	owner with compensation for the services has not hired multiple sole
8	proprietors, partnerships, or single-member corporations or L.L.C.s to perform
9	the same work as the individual or partner owner is performing on the project
10	<u>or jobsite.</u>
11	Second: In Sec. 1, 21 V.S.A. § 601, in subdivision (14)(H), after
12	subdivision (i)(II), by adding a subdivision (III) to read as follows:
13	(III) The person who is providing the corporation or L.L.C.
14	with compensation for the services has not hired multiple sole proprietors,
15	partnerships, or single-member corporations or L.L.C.s to perform the same
16	work as the corporate executive officer or the L.L.C. manager or member is
17	performing on the project or jobsite.
18	Third: In Sec. 1, 21 V.S.A. § 601, in subdivision (31), by striking out
19	subdivision (A)(v) in its entirety and inserting a new subdivision (A)(v) to read
20	as follows:

1	(v) offers its services to the general public and does not work
2	exclusively for or with another person; and
3	Fourth: By striking out Sec. 2, 21 V.S.A. § 1301, in its entirety and
4	inserting a new Sec. 2 to read as follows:
5	Sec. 2. 21 V.S.A. § 1301 is amended to read:
6	§ 1301. DEFINITIONS
7	The following words and phrases, as used in this chapter, shall have the
8	following meanings unless the context clearly requires otherwise:
9	* * *
10	(6)(A)(i) "Employment," subject to the other provisions of this
11	subdivision (6), means service within the jurisdiction of this State, performed
12	prior to January 1, 1978, which was employment as defined in this subdivision
13	prior to such date and, subject to the other provisions of this subdivision,
14	service performed after December 31, 1977, by an employee, as defined in
15	subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including
16	service in interstate commerce, performed for wages or under any contract of
17	hire, written or oral, expressed or implied. Services partly within and partly
18	without this State may by election as hereinbefore provided be treated as if
19	wholly within the jurisdiction of this State. And whenever an employing unit
20	shall have elected to come under the provisions of a similar act of a state where
21	a part of the services of an employee are performed, the Commissioner, upon

1	his or her approval of said election as to any such employee, may treat the
2	services covered by said approved election as having been performed wholly
3	without the jurisdiction of this State.
4	* * *
5	(B) Services performed by an individual for wages shall be deemed
6	to be employment subject to this chapter unless and until it is shown to the
7	satisfaction of the Commissioner that the individual:
8	(i) Such individual has been and will continue to be free from
9	control or direction over the performance of such services, both under his or
10	her contract of service and in fact; and
11	(ii) Such service is either outside the usual course of the business
12	for which such service is performed, or that such service is performed outside
13	of all the places of business of the enterprise for which such service is
14	performed; and
15	(iii) Such individual is customarily engaged in an independently
16	established trade, occupation, profession, or business.
17	is free from the direction and control of the employing unit, both under the
18	individual's contract of service and in fact;
19	(ii) controls the means and manner of the services performed;
20	(iii) operates a separate and distinct business from that of the
21	person with whom he or she contracts;

1	(iv) holds him- or herself out as in business for him- or herself;
2	(v) offers his or her services to the general public and does not
3	work exclusively for or with another person; and
4	(vi) is not treated as an employee for purposes of income or
5	employment taxation with regard to the services performed.
6	(C) <u>Notwithstanding any provision of subdivision (B) of this</u>
7	subdivision (6), multiple individuals performing the same work on a project or
8	job site shall be deemed to be performing services in employment.
9	(D) The term "employment" shall not include:
10	* * *
10 11	* * * (D)(E) Notwithstanding any other provisions of this subdivision,
11	(D)(E) Notwithstanding any other provisions of this subdivision,
11 12	(D)(E) Notwithstanding any other provisions of this subdivision, service with respect to which a tax is required to be paid under any federal law
11 12 13	(D)(E) Notwithstanding any other provisions of this subdivision, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to
11 12 13 14	(D)(E) Notwithstanding any other provisions of this subdivision, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax
11 12 13 14 15	(D)(E) Notwithstanding any other provisions of this subdivision, service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is

- 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 <u>an</u> 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) Any person who, for the purpose of avoiding its obligations under this
- 8 <u>title, coerces an employee or prospective employee into becoming an</u>
- 9 <u>independent contractor, after notice and an opportunity for a hearing, may be</u>
- 10 <u>assessed an administrative penalty of not more than \$5,000.00.</u>