

COMPARISON OF EXISTING STATUTES WITH H.867'S PROPOSED LANGUAGE RELATING TO INDEPENDENT CONTRACTORS

Prepared By: Damien Leonard, Esq.

Office of Legislative Council

March 22, 2016

Statutory Provision	Existing Statutory Language	As Proposed by H.867 as Introduced by House Committee on Commerce and Economic Development (Clean)	As Proposed by H.867 as Introduced by House Committee on Commerce and Economic Development
<b>21 V.S.A. § 601(14)</b>	(14) "Worker" and "employee" means an individual who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. Any reference to a worker who has died as the result of a work injury shall include a reference to the worker's dependents, and any reference to a worker who is a minor or incompetent shall include a reference to the minor's committee, guardian, or next friend. The term "worker" or "employee" does not include:	(14) "Worker" and "employee" means a person who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. Any reference to a worker who has died as the result of a work injury shall include a reference to the worker's dependents, and any reference to a worker who is a minor or incompetent shall include a reference to the minor's committee, guardian, or next friend. A person who performs services for compensation is presumed to be an employee unless the person is one of the following:	(14) "Worker" and "employee" means <del>an individual a</del> <u>person</u> who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. Any reference to a worker who has died as the result of a work injury shall include a reference to the worker's dependents, and any reference to a worker who is a minor or incompetent shall include a reference to the minor's committee, guardian, or next friend. <del>The term "worker" or "employee" does not include</del> <u>A person who performs services for compensation is presumed to be an employee unless the person is one of the following:</u>
<b>21 V.S.A. § 601(14)(F)</b>	(F) The sole proprietor or partner owner or partner owners of an unincorporated business provided: (i) The individual performs work that is distinct and separate from that of the person with whom the individual contracts. (ii) The individual controls the means and manner of the work performed. (iii) The individual holds him or herself out as in business for him or herself. (iv) The individual holds him or herself out for work for the general public and does not perform work exclusively for or with another person. (v) The individual is not treated as an employee for purposes of income or employment taxation with regard to the work performed. (vi) The services are performed pursuant to a written agreement or contract between the individual and another person, and the written agreement or contract explicitly states that the individual is not considered to be an employee under this chapter, is working independently, has no employees, and has not contracted with other independent contractors. The written contract or agreement shall also include information regarding the right of the individual to purchase workers' compensation insurance coverage and the individual's election not to purchase that coverage. However, if the individual who is party to the agreement or contract under this subdivision is found to have employees, those employees may file a claim for benefits under this chapter against either or both parties to the agreement.	(F)(i) A sole proprietor or partner owner or partner owners of an unincorporated business provided the following conditions are met: (I)(aa) The individual or partner owner is an independent contractor who performs work that is distinct and separate from that of the person with whom the individual or partner owner contracts; or (bb) the individual or partner owner is an independent contractor and is either actively registered as a business with the Vermont Secretary of State or actively registered as a business in the state or country of domicile. (II) The services are performed pursuant to a written agreement or contract between the individual or partner owner and the person who is providing compensation for the services, and the written agreement or contract explicitly states that the individual or partner owner is not considered to be an employee under this chapter, is working independently, has no employees, and has not contracted with other independent contractors. The written contract or agreement shall also include information regarding the right of the individual or partner owner to purchase workers' compensation insurance coverage. However, if the individual or partner owner who is party to the agreement or contract under this subdivision is found to have employees, those employees may file a claim for benefits under this chapter against either or both parties to the agreement. (ii)(I) An individual or partner owner that meets the conditions of subdivision (i) of this subdivision (14)(F) may elect to file with the Commissioner a notice to waive the right to make a claim for workers' compensation against the person with whom the individual or partner owner contracts. (II) If, after filing a notice under subdivision (I) of this subdivision (14)(F)(ii), the individual or partner owner suffers a personal injury arising out of and in the course of his or	(F)(i) <del>The</del> <u>A</u> sole proprietor or partner owner or partner owners of an unincorporated business provided <u>the following conditions are met:</u> (i) <del>The individual or partner owner is an independent contractor who performs work that is distinct and separate from that of the person with whom the individual or partner owner contracts; or</del> (ii) <del>the individual or partner owner is an independent contractor and is either actively registered as a business with the Vermont Secretary of State or actively registered as a business in the state or country of domicile.</del> (iii) <del>The individual controls the means and manner of the work performed.</del> (iv) <del>The individual holds him or herself out as in business for him or herself.</del> (v) <del>The individual holds him or herself out for work for the general public and does not perform work exclusively for or with another person.</del> (vi) <del>The individual is not treated as an employee for purposes of income or employment taxation with regard to the work performed.</del> (vii) <del>(II)</del> <u>(II)</u> The services are performed pursuant to a written agreement or contract between the individual <u>or partner owner</u> and <del>another person</del> <u>the person who is providing compensation for the services,</u> and the written agreement or contract explicitly states that the individual <u>or partner owner</u> is not considered to be an employee under this chapter, is working independently, has no employees, and has not contracted with other independent contractors. The written contract or agreement shall also include information regarding the right of the individual <u>or partner owner</u> to purchase workers' compensation insurance coverage <del>and the individual's election not to purchase that coverage.</del> However, if the individual <u>or partner owner</u> who

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		<p>her employment, he or she may bring an action to recover damages for personal injury against the person who is providing compensation for the services, and in such action the person who is providing compensation for the services shall have all of the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded pursuant to subdivision (i) of this subdivision (14)(F), who is determined to be an employee of the unincorporated business from claiming workers' compensation benefits under this chapter from the unincorporated business, or from a statutory employer.</p> <p>(iii) An individual or partner owner that makes an election under subdivision (i) of this subdivision (14)(F) shall collect and maintain documentation that any other person hired to perform services for the sole proprietor or partner owner's unincorporated business has workers' compensation coverage, or is otherwise in compliance with the provisions of this chapter.</p>	<p>is party to the agreement or contract under this subdivision is found to have employees, those employees may file a claim for benefits under this chapter against either or both parties to the agreement.</p> <p><u>(ii)(I) An individual or partner owner that meets the conditions of subdivision (i) of this subdivision (14)(F) may elect to file with the Commissioner a notice to waive the right to make a claim for workers' compensation against the person with whom the individual or partner owner contracts.</u></p> <p><u>(II) If, after filing a notice under subdivision (I) of this subdivision (14)(F)(ii), the individual or partner owner suffers a personal injury arising out of and in the course of his or her employment, he or she may bring an action to recover damages for personal injury against the person who is providing compensation for the services, and in such action the person who is providing compensation for the services shall have all of the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded pursuant to subdivision (i) of this subdivision (14)(F), who is determined to be an employee of the unincorporated business from claiming workers' compensation benefits under this chapter from the unincorporated business, or from a statutory employer.</u></p> <p><u>(iii) An individual or partner owner that makes an election under subdivision (i) of this subdivision (14)(F) shall collect and maintain documentation that any other person hired to perform services for the sole proprietor or partner owner's unincorporated business has workers' compensation coverage, or is otherwise in compliance with the provisions of this chapter.</u></p>
<p><b>21 V.S.A. § 601(14)(H)</b></p>	<p>(H) With the approval of the Commissioner, a corporation or a limited liability company (L.L.C.) may elect to file exclusions from the provisions of this chapter. A corporation or an L.L.C. may elect to exclude up to four executive officers or managers or members from coverage requirements under this chapter. If all officers of the corporation or all managers or members of an L.L.C. make such election, receive approval, and the business has no employees, the corporation or L.L.C. shall not be required to purchase workers' compensation coverage. If after election, the officer, manager, or member experiences a personal injury and files a claim under this chapter, the employer shall have all the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded under this section, found to be an employee of the corporation or L.L.C. to recover workers' compensation from either the corporation, L.L.C., or the statutory</p>	<p>(H) With the approval of the Commissioner, a corporation or a limited liability company (L.L.C.) may elect to file exclusions from the provisions of this chapter. A corporation or an L.L.C. may elect to exclude up to four corporate executive officers or four L.L.C. managers or members from coverage requirements under this chapter. If all officers of the corporation or all managers or members of an L.L.C. make such election, receive approval, and the business has no employees, the corporation or L.L.C. shall not be required to purchase workers' compensation coverage.</p> <p>(i) A person shall not be deemed to be an "employer" for purposes of this chapter of corporate executive officers or L.L.C. managers or members that are excluded under this subdivision (14) if the following conditions are met:</p> <p>(I) The corporate executive officers or L.L.C. managers or members operate a separate and distinct business</p>	<p>(H) With the approval of the Commissioner, a corporation or a limited liability company (L.L.C.) may elect to file exclusions from the provisions of this chapter. A corporation or an L.L.C. may elect to exclude up to four <u>corporate</u> executive officers or <u>four L.L.C.</u> managers or members from coverage requirements under this chapter. If all officers of the corporation or all managers or members of an L.L.C. make such election, receive approval, and the business has no employees, the corporation or L.L.C. shall not be required to purchase workers' compensation coverage. <del>If after election, the officer, manager, or member experiences a personal injury and files a claim under this chapter, the employer shall have all the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded under this section, found to be an employee of the corporation or L.L.C. to recover workers' compensation from either the</del></p>

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	<p>employer.</p>	<p>that is an independent contractor, is actively registered with the Vermont Secretary of State, and elects to file a corporate officer or L.L.C. member exclusion from the provisions of this chapter.</p> <p>(II) The services are performed pursuant to a written agreement or contract between the corporation or L.L.C. and the person who is providing compensation for the services, and the written agreement or contract explicitly states that the corporate executive officers or L.L.C. managers or members are not considered to be employees under this chapter and are working independently. The written contract or agreement shall also include information regarding the right of the corporation or L.L.C. to purchase workers' compensation insurance coverage and of the corporate executive officers or the L.L.C. managers or members to elect not to exclude themselves from coverage.</p> <p>(ii) If, after making an election under this subdivision (14), the corporate officer or L.L.C. manager or member suffers a personal injury arising out of and in the course of his or her employment, he or she may bring an action to recover damages for personal injury against the person who is providing compensation for the services, and in such action the person who is providing compensation for the services shall have all of the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded pursuant to this subdivision, who is determined to be an employee of the corporation or L.L.C. from claiming workers' compensation benefits under this chapter from the corporation or L.L.C. or from a statutory employer.</p> <p>(iii) A corporation or L.L.C. whose executive officers, members, or managers make an election under subdivision (H)(i) of this subdivision (14) shall collect and maintain documentation that any other person hired to perform services for the corporation or L.L.C. has workers' compensation coverage, or is otherwise in compliance with this chapter.</p>	<p><del>corporation, L.L.C., or the statutory employer.</del></p> <p><u>(i) A person shall not be deemed to be an "employer" for purposes of this chapter of corporate executive officers or L.L.C. managers or members that are excluded under this subdivision (14) if the following conditions are met:</u></p> <p><u>(I) The corporate executive officers or L.L.C. managers or members operate a separate and distinct business that is an independent contractor, is actively registered with the Vermont Secretary of State, and elects to file a corporate officer or L.L.C. member exclusion from the provisions of this chapter.</u></p> <p><u>(II) The services are performed pursuant to a written agreement or contract between the corporation or L.L.C. and the person who is providing compensation for the services, and the written agreement or contract explicitly states that the corporate executive officers or L.L.C. managers or members are not considered to be employees under this chapter and are working independently. The written contract or agreement shall also include information regarding the right of the corporation or L.L.C. to purchase workers' compensation insurance coverage and of the corporate executive officers or the L.L.C. managers or members to elect not to exclude themselves from coverage.</u></p> <p><u>(ii) If, after making an election under this subdivision (14), the corporate officer or L.L.C. manager or member suffers a personal injury arising out of and in the course of his or her employment, he or she may bring an action to recover damages for personal injury against the person who is providing compensation for the services, and in such action the person who is providing compensation for the services shall have all of the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded pursuant to this subdivision, who is determined to be an employee of the corporation or L.L.C. from claiming workers' compensation benefits under this chapter from the corporation or L.L.C. or from a statutory employer.</u></p> <p><u>(iii) A corporation or L.L.C. whose executive officers, members, or managers make an election under subdivision (H)(i) of this subdivision (14) shall collect and maintain documentation that any other person hired to perform services for the corporation or L.L.C. has workers' compensation coverage, or is otherwise in compliance with this chapter.</u></p>
<p><b>21 V.S.A. § 601(31)</b></p>	<p>N/A</p>	<p>(31)(A) "Independent contractor" means a person who meets all of the following:</p> <p>(i) is free from the direction and control of the employing unit, both under the person's contract of service and</p>	<p><u>(31)(A) "Independent contractor" means a person who meets all of the following:</u></p> <p><u>(i) is free from the direction and control of the employing unit, both under the person's contract of service and</u></p>

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		<p>in fact; (ii) controls the means and manner of the work performed; (iii) operates a separate and distinct business from that of the person with whom it contracts; (iv) holds itself out as in business for itself; (v) offers its services to the general public; and (vi) is not treated as an employee for purposes of income or employment taxation with regard to the work performed. (B) An independent contractor shall purchase workers' compensation coverage for its employees as provided in this chapter.</p>	<p><u>in fact;</u> <u>(ii) controls the means and manner of the work performed;</u> <u>(iii) operates a separate and distinct business from that of the person with whom it contracts;</u> <u>(iv) holds itself out as in business for itself;</u> <u>(v) offers its services to the general public; and</u> <u>(vi) is not treated as an employee for purposes of income or employment taxation with regard to the work performed.</u> <u>(B) An independent contractor shall purchase workers' compensation coverage for its employees as provided in this chapter.</u></p>
<p><b>21 V.S.A. § 1301(6)(B)</b></p>	<p>(B) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Commissioner that: (i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact; and (ii) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (iii) Such individual is customarily engaged in an independently established trade, occupation, profession, or business.</p>	<p>(B) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Commissioner that the individual: (i) is free from the direction and control of the employing unit, both under the individual's contract of service and in fact; (ii) controls the means and manner of the services performed; (iii) operates a separate and distinct business from that of the person with whom he or she contracts; (iv) holds him- or herself out as in business for him- or herself; (v) offers his or her services to the general public; and (vi) is not treated as an employee for purposes of income or employment taxation with regard to the services performed.</p>	<p>(B) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the Commissioner that <u>the individual:</u> <del>(i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact; and</del> <del>(ii) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and</del> <del>(iii) Such individual is customarily engaged in an independently established trade, occupation, profession, or business.</del> <u>is free from the direction and control of the employing unit, both under the individual's contract of service and in fact;</u> <u>(ii) controls the means and manner of the services performed;</u> <u>(iii) operates a separate and distinct business from that of the person with whom he or she contracts;</u> <u>(iv) holds him- or herself out as in business for him- or herself;</u> <u>(v) offers his or her services to the general public;</u> <u>and</u> <u>(vi) is not treated as an employee for purposes of income or employment taxation with regard to the services performed.</u></p>