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H.119

Introduced by Representatives Scheuermann of Stowe, Beck of St. Johnsbury,
Brennan of Colchester, Burditt of West Rutland, Corcoran of
Bennington, Cupoli of Rutland City, Gage of Rutland City,
Greshin of Warren, Jickling of Brookfield, Keefe of
Manchester, LaClair of Barre Town, McCormack of Burlington,
Olsen of Londonderry, Parent of St. Albans Town, Shaw of
Pittsford, Sibia of Dover, Tate of Mendon, Van Wyck of
Ferrisburgh, and Wright of Burlington

Referred to Committee on

Date:

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

Statement of purpose of bill as introduced: This bill proposes to establish a
common definition of "independent contractor" for the workers' compensation
and unemployment insurance statutes.

An act relating to the 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. § 601 is amended to read:

3 § 601. DEFINITIONS

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

6 * * *

7 (14) “Worker” and “employee” ~~means~~ mean an individual who has
8 entered into the employment of, or works under contract of service or
9 apprenticeship with, an employer. Any reference to a worker who has died as
10 the result of a work injury shall include a reference to the worker’s dependents,
11 and any reference to a worker who is a minor or incompetent shall include a
12 reference to the minor’s committee, guardian, or next friend. The term
13 “worker” or “employee” does not include:

14 * * *

15 (F) The sole proprietor or partner owner or partner owners of an
16 unincorporated business ~~provided:~~

17 ~~(i) The individual performs work that is distinct and separate from~~
18 ~~that of the person with whom the individual contracts.~~

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

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

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

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

8 ~~(vi) The services are performed pursuant to a written agreement or~~
9 ~~contract between the individual and another person, and the written agreement~~
10 ~~or contract explicitly states that the individual is not considered to be an~~
11 ~~employee under this chapter, is working independently, has no employees, and~~
12 ~~has not contracted with other independent contractors. The written contract or~~
13 ~~agreement shall also include information regarding the right of the individual~~
14 ~~to purchase workers' compensation insurance coverage and the individual's~~
15 ~~election not to purchase that coverage. However, if the individual who is party~~
16 ~~to the agreement or contract under this subdivision is found to have employees,~~
17 ~~those employees may file a claim for benefits under this chapter against either~~
18 ~~or both parties to the agreement unless the sole proprietor or partner owner~~
19 ~~notifies the Commissioner that he or she is to be included within the provisions~~
20 ~~of this chapter. The submission of an insurance contract or an amendment to~~

1 an insurance contract to elect coverage of the sole proprietor or partner owner
2 shall be considered sufficient notice.

3 * * *

4 (I) An independent contractor if it can be demonstrated that the
5 independent contractor is free from the essential direction and control of the
6 employing unit, both under the individual's contract and in fact, and the
7 employing unit proves that the individual meets all of the criteria in
8 subdivision (i) and at least two of the criteria in subdivision (ii) of this
9 subdivision (14)(I).

10 (i) In order for an individual to be an independent contractor, all of
11 the following criteria must be satisfied:

12 (I) The individual has the essential right to control the means
13 and progress of the work except as to the final results.

14 (II) The individual is customarily engaged in an independently
15 established trade, occupation, profession, or business.

16 (III) The individual has a substantive investment in the
17 facilities, tools, instruments, materials, and knowledge used by him or her to
18 complete the work.

19 (IV) The individual has the opportunity for profit and loss as a
20 result of the services being performed for the employing unit.

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

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 outside~~ this State may by election as ~~hereinbefore provided~~ be treated
15 as if wholly within the jurisdiction of this State. ~~And whenever~~ Whenever an
16 employing unit ~~shall have~~ has elected to come under the provisions of a similar
17 act of a state where a part of the services of an employee are performed, the
18 Commissioner, ~~upon his or her~~ after approval of ~~said the~~ election as to any
19 ~~such employee~~, may treat the services ~~covered by said approved election the~~
20 employee as having been performed wholly ~~without outside~~ the jurisdiction of
21 this State.

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(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 they are specifically excluded pursuant to this chapter.~~

(C) The term “employment” shall not include:

* * *

(xxii) Services performed by an independent contractor, if it can be demonstrated that the independent contractor is free from the essential direction and control of the person for whom the services are performed, both under the individual’s contract and in fact, and the person for whom the services are performed proves that the individual satisfies all of the criteria in

1 subdivision (I) and at least two of the criteria in subdivision (II) of this
2 subdivision (6)(C)(xxii).

3 (I) In order for an individual to be an independent contractor,
4 the following criteria must be satisfied:

5 (aa) The individual has the essential right to control the
6 means and progress of the work except as to the final results.

7 (bb) The individual is customarily engaged in an
8 independently established trade, occupation, profession, or business.

9 (cc) The individual has a substantive investment in the
10 facilities, tools, instruments, materials, and knowledge used by him or her to
11 complete the work.

12 (dd) The individual has the opportunity for profit and loss as
13 a result of the services being performed.

14 (ee) The individual hires and pays his or her employees, if
15 any, and supervises the details of the employees' work.

16 (ff) The individual makes his or her services available to the
17 general public and is able to accept work for entities other than the employer,
18 whether or not he or she chooses to do so.

19 (II) In order for an individual to be an independent contractor,
20 at least two of the following criteria must be satisfied:

