

1 H.681

2 Introduced by Representatives O’Sullivan of Burlington, Donovan of  
3 Burlington, Howard of Rutland City, Macaig of Williston,  
4 Till of Jericho, Walz of Barre City, Weed of Enosburgh, and  
5 Yantachka of Charlotte

6 Referred to Committee on

7 Date:

8 Subject: Labor; workers’ compensation; unemployment insurance; employee  
9 misclassification

10 Statement of purpose of bill as introduced: This bill proposes to provide for  
11 notice at worksites of the requirements regarding employee classification;  
12 permit the Department of Labor to enter an employer’s premises for the  
13 purposes of investigating compliance with the workers’ compensation and  
14 unemployment compensation laws; permit the Department to obtain an  
15 injunction to enforce a stop-work order related to a violation of the workers’  
16 compensation law; clarify the requirements for consultation regarding  
17 debarment of employers that have violated the wage and hour, workers’  
18 compensation, or unemployment compensation statutes; clarify the prohibition  
19 against retaliation under the workers’ compensation law; clarify the civil  
20 enforcement provision of the workers’ compensation law; provide for  
21 individual liability of officers and agents that knowingly permit violations of

1 certain provisions of the workers' compensation law; and require information  
2 from the Department of Labor's online employee misclassification reporting  
3 system to be distributed to the Office of the Attorney General.

4 An act relating to enforcement of employee misclassification

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

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

7 § 398. NOTICE TO PERSON RECEIVING COMPENSATION AS AN  
8 INDEPENDENT CONTRACTOR

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

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

15 (B) the penalties provided pursuant to this title for failure to classify  
16 an individual properly as an employee;

17 (C) how an individual may file a complaint or inquiry with the  
18 Commissioner about his or her employment classification status; and

1           (D) how an employer may obtain guidance or information from the  
2           Department with respect to the proper classification of employees and  
3           independent contractors.

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

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

8           (3) An employer shall, at the time of hiring, provide home-based  
9           employees and employees who do not work at a fixed worksite with the  
10          information required under subdivision (1) of this subsection. The information  
11          shall be provided in a format provided by the Department.

12          (b) On or before August 1, 2018, the Commissioner shall create the poster  
13          required pursuant to subsection (a) of this section and shall make it available to  
14          employers on the Department's website.

15          (c) An employer who violates a provision of this section shall be subject to  
16          an administrative penalty of not more than \$100.00 per violation.

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

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

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

1     to demand the production of books, papers, records, and documents for his or  
2     her examination. In addition, the Commissioner or designee may, upon  
3     presenting appropriate credentials, at reasonable times and without unduly  
4     disrupting business operations enter and inspect any place of business or  
5     employment, question any employees, and investigate any facts, conditions, or  
6     matters necessary and material to the administration of this chapter. The  
7     employer shall, at reasonable times and without unduly disrupting business  
8     operations, make its workers available to meet with the Commissioner or  
9     designee, as required by the Commissioner. The Commissioner or designee  
10    shall inform the employer of the employer's rights to refuse entry and to  
11    consult with legal counsel and of the Commissioner's rights under this section.  
12    If entry is refused, the Commissioner may apply to the Civil Division of the  
13    Superior Court for an order to enforce the rights given to the Commissioner  
14    under this section.

15   \* \* \*

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

17    § 692. PENALTIES; FAILURE TO INSURE; ~~STOP WORK~~ STOP-WORK  
18   ORDERS

19         (a)(1) Failure to insure. If after a hearing under section 688 of this title, the  
20    Commissioner determines that an employer has failed to comply with the  
21    provisions of section 687 of this title, the employer shall be assessed an

1 administrative penalty of not more than \$100.00 for every day for the first  
2 seven days the employer neglected to secure liability and not more than  
3 \$150.00 for every day thereafter.

4 (2) Purposeful violation. If the Commissioner determines that the  
5 employer purposefully violated section 687 of this title, the employer shall be  
6 assessed an administrative penalty of not more than \$300.00 for every day for  
7 the first seven days the employer neglected to secure liability and not more  
8 than \$450.00 for every day thereafter.

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

1 day that the employer fails to secure workers' compensation coverage as  
2 required in section 687 of this title. When a stop-work order is issued, the  
3 Commissioner shall post a notice at a conspicuous place on the work site of the  
4 employer informing the employees that their employer failed to comply with  
5 the provisions of section 687 of this title and that work at the work site has  
6 been ordered to cease until workers' compensation insurance is secured. If an  
7 employer fails to comply with a stop-work order, the Commissioner may seek  
8 an order from the Civil Division of the Superior Court to enjoin the employer  
9 from employing any individual. The stop-work order shall be rescinded as  
10 soon as the Commissioner determines that the employer is in compliance with  
11 section 687 of this title.

12 (c) Debarment. An employer ~~against whom a stop-work order has been~~  
13 ~~issued~~ who has not been in compliance with section 687 of this title, unless the  
14 Commissioner determines that the failure to comply was inadvertent or  
15 excusable, is prohibited from ~~contracting~~ entering into subsequent contracts,  
16 directly or indirectly, with the State or any of its subdivisions for a period of up  
17 to three years following the date of the issuance of ~~the stop-work order a~~  
18 citation, as determined by the Commissioner in consultation with the  
19 ~~Commissioner of Buildings and General Services or the Secretary of~~  
20 ~~Transportation, as appropriate. Either the Secretary or the Commissioner, as~~  
21 ~~appropriate, shall be consulted in any contest of the prohibition of the~~

1 ~~employer from contracting with the State or its subdivisions~~ Secretary of  
2 Administration. The consultation shall be informal and shall occur within five  
3 business days after the notification by the Commissioner. The results of the  
4 consultation shall be documented.

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

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

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

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

14 § 7. COLLECTION OF ADMINISTRATIVE PENALTIES

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

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

19 § 1102. JUDICIAL BUREAU; JURISDICTION

20 \* \* \*

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

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\* \* \*

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

\* \* \*

Sec. 6. 21 V.S.A. § 690 is amended to read:

§ 690. CERTIFICATE, FORM; COPY OF POLICY

\* \* \*

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

\* \* \*

(2)(A) ~~Any~~ If an employer who fails to comply with this subsection or falsifies information on the compliance statement, the Commissioner may ~~be assessed~~ assess an administrative penalty of not more than \$5,000.00 for each week during which the noncompliance or falsification occurred and any costs and attorney's fees required to enforce this subsection against the employer.



1            (B) The Commissioner may also seek injunctive relief in Washington  
2 Superior Court.

3            (C) If the Commissioner determines that the employer has  
4 purposefully failed to comply with this subsection or purposefully falsified  
5 information on the compliance statement, the Commissioner may assess an  
6 administrative penalty of not more than \$10,000.00 for each week during  
7 which the noncompliance or falsification occurred and any costs and attorney’s  
8 fees required to enforce this subsection against the employer.

9    \* \* \*

10           (c) Upon receiving written authorization from an employer to release  
11 information to the Commissioner, the employer’s agent or broker or the  
12 authorized representative of an insurance or guarantee company shall provide  
13 within five business days any contract or policy information, including an  
14 insurance application, binder, or reported payroll, that is requested by the  
15 Commissioner pursuant to this section.

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

17        § 625. CONTRACTING OUT FORBIDDEN; PROHIBITED ACTS;

18                        PENALTIES

19        (a) ~~An~~ Except as provided in subdivisions 601(3) and (14) of this chapter,  
20 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) The Commissioner may investigate complaints that an employee has  
4 been improperly classified.

5 (c) Unless the improper classification was inadvertent or due to excusable  
6 neglect, any person who, for the purpose of avoiding its obligations under this  
7 title, improperly classifies an employee as an independent contractor shall be  
8 subject to an administrative penalty of not more than \$5,000.00.

9 (d)(1) If, following an investigation, the Commissioner determines that a  
10 person has improperly classified an employee as an independent contractor, the  
11 Commissioner shall notify the Commissioners of Financial Regulation and of  
12 Taxes of the determination.

13 (2) Upon receiving notification of the determination, the Commissioners  
14 of Financial Regulation and of Taxes shall conduct an investigation to  
15 determine whether the person has also misclassified the employee pursuant to  
16 the applicable provisions of law under his or her jurisdiction.

17 (e) Any person who, for the purpose of avoiding its obligations under this  
18 title, coerces an employee or prospective employee into becoming an  
19 independent contractor or forming a limited liability company, after notice and  
20 an opportunity for a hearing, may be assessed an administrative penalty of not  
21 more than \$5,000.00.

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

2 § 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND  
3 PENALTIES

4 \* \* \*

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

21 \* \* \*

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

2 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;

3 PENALTIES

4 \* \* \*

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

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

9 (B) Properly classify an individual regarding the status of  
10 employment is subject to a an administrative penalty of not more than  
11 \$5,000.00 for each improperly classified employee. In addition, an employer  
12 found to have violated this section is prohibited from ~~contracting~~ entering into  
13 subsequent contracts, directly or indirectly, with the State or any of its  
14 subdivisions for up to three years following the date the employer was found to  
15 have failed to properly classify, as determined by the Commissioner in  
16 consultation with the ~~Commissioner of Buildings and General Services or the~~  
17 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~  
18 ~~Commissioner, as appropriate, shall be consulted in any appeal relating to~~  
19 ~~prohibiting the employer from contracting with the State or its subdivisions~~  
20 Secretary of Administration. The consultation may be informal and shall occur

1 within five business days after the notification by the Commissioner. The  
2 outcome of the consultation shall be documented.

3 \* \* \*

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

5 § 708. PENALTY FOR FALSE REPRESENTATION

6 (a)(1)(A) ~~Action by the Commissioner of Labor. A person who willfully~~ If  
7 a person purposefully makes a false statement or representation, ~~for the~~  
8 ~~purpose of obtaining~~ to obtain any benefit or payment under the provisions of  
9 this chapter, either for herself or himself or for any other person, the  
10 Commissioner may, after notice and opportunity for hearing, ~~may be assessed~~  
11 assess an administrative penalty of not more than \$20,000.00, ~~and~~ against the  
12 person.

13 (B) In addition to any penalty imposed pursuant to subdivision (A) of  
14 this subdivision (1), the person shall forfeit all or a portion of any right to  
15 compensation under the provisions of this chapter, as determined to be  
16 appropriate by the Commissioner after a determination by the Commissioner  
17 that the person has ~~willfully~~ purposefully made a false statement or  
18 representation of a material fact.

19 (2) In addition, an employer found to have violated this section is  
20 prohibited from ~~contracting~~ entering into subsequent contracts, directly or  
21 indirectly, with the State or any of its subdivisions for up to three years

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

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

17 \* \* \*

18 Sec. 11. 21 V.S.A. § 710 is amended to read:

19 § 710. UNLAWFUL DISCRIMINATION; ENFORCEMENT; CIVIL

20 ACTIONS

21 \* \* \*

1 (b) No person shall discharge from employment or retaliate or discriminate  
2 against an employee ~~from employment~~ because ~~such~~ the employee asserted or  
3 attempted to assert a claim for benefits under this chapter or under the law of  
4 any state or of the United States.

5 \* \* \*

6 (d) An employer shall not retaliate or take any other negative action against  
7 an individual because the employer knows or suspects that the individual has  
8 filed a complaint with the Department or other authority, ~~or~~; reported a  
9 violation of this chapter, ~~or~~; cooperated in an investigation of misclassification,  
10 discrimination, or other violation of this chapter; or testified in a proceeding  
11 related to a violation of this chapter.

12 (e) The Attorney General or a State's Attorney may enforce the provisions  
13 of this section by restraining prohibited acts, seeking civil penalties, obtaining  
14 assurances of discontinuance, and conducting civil investigations in  
15 accordance with the procedures established in 9 V.S.A. §§ 2458-2461 as  
16 though discrimination under this section were an unfair act in commerce.

17 (f) The provisions against retaliation in subdivision 495(a)(8) of this title  
18 and the penalty and enforcement provisions of section 495b of this title shall  
19 apply to this ~~subchapter~~ chapter.

1 Sec. 12. 21 V.S.A. § 712 is added to read:

2 § 712. INDIVIDUAL LIABILITY OF OFFICERS AND AGENTS

3 An officer or agent of an employer that knowingly permits the employer to  
4 violate the provisions of section 603, 625, 687, 692, 708, or 710 of this chapter  
5 may be held individually liable for each violation and any penalties assessed  
6 for that violation.

7 Sec. 13. 21 V.S.A. § 1307 is amended to read:

8 § 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

9 The Commissioner of Labor shall administer this chapter. The  
10 Commissioner may employ ~~such~~ persons, make ~~such~~ expenditures, require  
11 ~~such~~ reports, make ~~such~~ investigations, and take ~~such~~ other action as he or she  
12 considers necessary or suitable to that end. In the discharge of his or her duties  
13 imposed by this chapter, the Commissioner may administer oaths, take  
14 depositions, certify to official acts, ~~and~~ subpoena witnesses, and compel the  
15 production of books, papers, correspondence, memoranda, and other records  
16 necessary and material to the administration of this chapter. In addition, the  
17 Commissioner or designee may, upon presenting appropriate credentials, at  
18 reasonable times and without unduly disrupting business operations enter and  
19 inspect any place of business or employment, question any employee, and  
20 investigate any fact, condition, or matter necessary and material to the  
21 administration of this chapter. The employer shall, at reasonable times and



1 without unduly disrupting business operations, make its workers available to  
2 meet with the Commissioner or designee, as required by the Commissioner.  
3 The Commissioner or designee shall inform the employer of the employer's  
4 rights to refuse entry and to consult with legal counsel and of the  
5 Commissioner's rights under this section. If entry is refused, the  
6 Commissioner may apply to the Civil Division of the Superior Court for an  
7 order to enforce the rights given to the Commissioner under this section.

8 Sec. 14. 2010 Acts and Resolves No. 142, Sec. 7 is amended to read:

9 Sec. 7. DEPARTMENT OF LABOR; EMPLOYEE

10 MISCLASSIFICATION REPORTING SYSTEM

11 The ~~department of labor~~ Department of Labor shall create and maintain an  
12 online employee misclassification reporting system. The system shall be  
13 designed to allow individuals to report suspected cases of employee  
14 misclassification, failure to have appropriate insurance coverage, and claimant  
15 fraud to the ~~department~~ Department to ensure that this information is  
16 distributed to appropriate departments and agencies, including the Office of the  
17 Attorney General. The ~~department~~ Department and any agency or department  
18 that the information is distributed to, including the Office of the Attorney  
19 General, shall keep the name of the complainant confidential.

20 Sec. 15. EFFECTIVE DATES

21 (a) This section shall take effect on July 1, 2018.

1        (b) In Sec. 1, 21 V.S.A. § 398(b) shall take effect on July 1, 2018, and the  
2        remainder of the section shall take effect on October 1, 2018.

3        (c) The remaining sections shall take effect on October 1, 2018.