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S.141

Introduced by Senators Rodgers, Branagan, Degree, and Starr

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

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

Sec. 1. 21 V.S.A. § 601 is amended to read:

§ 601. DEFINITIONS

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

* * *

(14) "Worker" and "employee" ~~means~~ mean 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

1 the result of a work injury shall include a reference to the worker's dependents,
2 and any reference to a worker who is a minor or incompetent shall include a
3 reference to the minor's committee, guardian, or next friend. The term
4 "worker" or "employee" does not include:

5 * * *

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

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

10 ~~(ii) The individual controls the means and manner of the work~~
11 ~~performed.~~

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

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

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

19 ~~(vi) The services are performed pursuant to a written agreement or~~
20 ~~contract between the individual and another person, and the written agreement~~
21 ~~or contract explicitly states that the individual is not considered to be an~~

1 ~~employee under this chapter, is working independently, has no employees, and~~
2 ~~has not contracted with other independent contractors. The written contract or~~
3 ~~agreement shall also include information regarding the right of the individual~~
4 ~~to purchase workers' compensation insurance coverage and the individual's~~
5 ~~election not to purchase that coverage. However, if the individual who is party~~
6 ~~to the agreement or contract under this subdivision is found to have employees,~~
7 ~~those employees may file a claim for benefits under this chapter against either~~
8 ~~or both parties to the agreement unless the sole proprietor or partner owner~~
9 notifies the Commissioner that he or she is to be included within the provisions
10 of this chapter. The submission of an insurance contract or an amendment to
11 an insurance contract to elect coverage of the sole proprietor or partner owner
12 shall be considered sufficient notice.

13 * * *

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

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

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

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

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

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

10 (V) The individual hires and pays his or her employees, if any,
11 and supervises the details of the employees' work.

12 (VI) The individual makes his or her services available to the
13 general public and is able to accept work for entities other than the employing
14 unit, whether or not he or she chooses to do so.

15 (ii) In order for an individual to be an independent contractor, at
16 least two of the following criteria must be met:

17 (I) The individual is responsible for satisfactory completion of
18 the work and may be held contractually responsible for failure to complete the
19 work.

1 subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including
2 service in interstate commerce, performed for wages or under any contract of
3 hire, written or oral, expressed or implied. Services partly within and partly
4 ~~without~~ outside this State may by election as ~~hereinbefore provided~~ be treated
5 as if wholly within the jurisdiction of this State. ~~And whenever~~ Whenever an
6 employing unit ~~shall have~~ has elected to come under the provisions of a similar
7 act of a state where a part of the services of an employee are performed, the
8 Commissioner, ~~upon his or her~~ after approval of ~~said~~ the election as to any
9 ~~such employee~~, may treat the services ~~covered by said approved election~~ the
10 employee as having been performed wholly ~~without~~ outside the jurisdiction of
11 this State.

12 * * *

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

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

19 (ii) ~~Such service is either outside the usual course of the business~~
20 ~~for which such service is performed, or that such service is performed outside~~

1 of all the places of business of the enterprise for which such service is
2 performed; and

3 ~~(iii) Such individual is customarily engaged in an independently~~
4 ~~established trade, occupation, profession, or business~~ they are specifically
5 excluded pursuant to this chapter.

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

7 * * *

8 (xxii) Services performed by an independent contractor, if it can
9 be demonstrated that the independent contractor is free from the essential
10 direction and control of the person for whom the services are performed, both
11 under the individual’s contract and in fact, and the person for whom the
12 services are performed proves that the individual satisfies all of the criteria in
13 subdivision (I) and at least two of the criteria in subdivision (II) of this
14 subdivision (6)(C)(xxii).

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

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

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

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

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

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

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

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

13 (aa) The individual is responsible for satisfactory
14 completion of the work and may be held contractually responsible for failure to
15 complete the work.

16 (bb) The parties have a written contract that defines the
17 relationship and gives the individual contractual rights in the event the contract
18 is terminated, prior to completion of the work, by the person for whom the
19 services are performed.

1 (cc) Payment to the individual is based on factors directly
2 related to the work performed and not solely on the amount of time expended
3 by him or her.

4 (dd) The work is outside the usual course of business of the
5 person for whom the service is performed.

6 (ee) The individual has elected to file taxes as an
7 independent contractor with the federal Internal Revenue Service.

8 * * *

9 Sec. 3. EFFECTIVE DATE

10 This act shall take effect on July 1, 2017.