

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 731 entitled “An act relating to the classification of
4 employees” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 * * * Workers’ Compensation; Protection Against Retaliation * * *

8 Sec. 1. 21 V.S.A. § 710 is amended to read:

9 § 710. UNLAWFUL DISCRIMINATION

10 (a) No person, firm, or corporation shall refuse to employ any applicant for
11 employment because ~~such~~ the applicant asserted a claim for workers’
12 compensation benefits under this chapter or under the law of any state or of the
13 United States. Nothing in this section shall require a person to employ an
14 applicant who does not meet the qualifications of the position sought.

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

19 (c) The Department shall not include in any publication or public report the
20 name or contact information of any individual who has alleged that an

1 employer has made a false statement or misclassified any employees, unless it
2 is required by law or necessary to enable enforcement of this chapter.

3 (d) An employer shall not retaliate or take any other negative action against
4 an individual because the employer knows or suspects that the individual has
5 filed a complaint ~~with the Department or other authority~~, or reported a
6 violation of this chapter, or has testified, assisted, or cooperated in any manner
7 with the Department or other appropriate governmental agency or department
8 in an investigation of misclassification, discrimination, or other violation of
9 this chapter.

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

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

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* * * Vermont Occupational Safety and Health Act * * *

Sec. 5. 21 V.S.A. § 225 is amended to read:

§ 225. CITATIONS

(a)(1) If, upon inspection or investigation, the Commissioner or the Director, or the agent of either of them, finds that an employer has violated a requirement of the VOSHA Code, the Commissioner shall with reasonable promptness issue a citation to the employer and serve it on the employer by certified mail or in the same manner as a summons to the Superior Court. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provisions of the statute, standard, rule, or order alleged to have been violated, as well as the penalty, if any, proposed to be assessed pursuant to section 210 of this title. In addition, the citation shall fix a reasonable time for the abatement of the violation.

(2) By rule, the Commissioner shall ~~prescribe~~ adopt procedures for issuance of a notice in lieu of a citation with respect to de ~~minimus~~ minimis violations ~~which~~ that have no direct or immediate relationship to safety or health, and for hearing interested parties before a civil penalty is assessed.

(b) Each citation issued under this section, or a copy or copies ~~thereof~~ of the citation, shall be prominently posted, as prescribed in rules ~~promulgated~~

1 adopted by the Commissioner, at or near each place a violation referred to in
2 the citation occurred or existed.

3 * * *

4 Sec. 6. 21 V.S.A. § 226 is amended to read:

5 § 226. ENFORCEMENT

6 (a)(1) ~~After issuing a citation under section 225 of this title, the~~
7 ~~Commissioner shall notify the employer by certified mail or by service by an~~
8 ~~agent, of the penalty, if any, proposed to be assessed under section 210 of this~~
9 ~~title. The~~ An employer shall ~~have, within~~ within 20 days after personal service or
10 receipt of ~~the notice within which to~~ a citation issued under section 225 of this
11 title, notify the Commissioner that he or she wishes to appeal the citation or
12 proposed ~~assessment of penalty, and if no notice is filed by~~ .

13 (2) If an employer does not notify the Commissioner as provided in this
14 subsection and an employee does not file a notice under subsection (c) of this
15 section, the citation and ~~assessment~~ penalty, as proposed, shall be deemed a
16 final order of the Review Board and not subject to review by any court or
17 agency.

18 (b)(1)(A) If the Commissioner on inspection or investigation finds that an
19 employer has failed to correct a violation for which a citation has been issued
20 within the period permitted for its correction (~~which period shall not begin to~~
21 ~~run until the entry of a final order by the Review Board in the case of any~~

1 ~~review proceedings under this section initiated by the employer in good faith~~
2 ~~and not solely for delay or avoidance of penalties, or on the day the citation~~
3 ~~and assessment becomes final under subsection (a) of this section), the~~
4 Commissioner shall notify the employer by certified mail of ~~such~~ the failure
5 and of the penalty proposed to be assessed under section 210 of this title by
6 reason of ~~such~~ the failure.

7 (B) The period to correct a violation shall begin to run:

8 (i) when a final order is entered by the Review Board in relation to
9 review proceedings under this section that are initiated by an employer in good
10 faith and not solely for delay or avoidance of penalties; or

11 (ii) on the day the citation and penalty become final under
12 subsection (a) of this section.

13 (2) The employer shall have 20 days after the receipt of the notice
14 ~~within which~~ to notify the Commissioner that he or she wishes to appeal the
15 Commissioner's ~~notification~~ citation or the proposed ~~assessment of~~ penalty. If
16 within 20 days from the receipt of the notification issued by the Commissioner,
17 the employer fails to notify the Commissioner that he or she intends to appeal
18 ~~the notification or proposed assessment of penalty~~, the ~~notification~~ citation and
19 assessment, as proposed, shall be deemed a final order of the Review Board
20 and not subject to review by any court or agency.

1 (c) If an employer notifies the Commissioner that he or she intends to
2 contest a citation issued under section 225 of this title ~~or notification issued~~
3 ~~under subsection (a) or (b) of this section~~, or if, within 20 days of after the
4 issuance of a citation issued under section 225 of this title, any employee or
5 representative of employees files a notice with the Commissioner alleging that
6 the period of time fixed in the citation for the abatement of the violation is
7 unreasonable, the Commissioner shall immediately advise the Review Board
8 of ~~such~~ the notification and the Review Board shall afford an opportunity for a
9 hearing. Unless ~~the~~ a notice is timely filed, the proposed penalty and, in
10 appropriate cases, the ~~notification of the Commissioner~~ citation shall be
11 deemed a final order of the Review Board not subject to review by any court or
12 agency.

13 (d) After hearing an appeal, the Review Board shall ~~thereafter~~ issue an
14 order based on findings of fact ~~affirming, modifying, or vacating~~ that affirms,
15 modifies, or vacates the Commissioner's citation or proposed penalty, or both,
16 ~~or directing provides~~ other appropriate relief, ~~and the~~ The order shall become
17 final 30 days after its issuance unless judicial review is timely taken under
18 section 227 of this title. The rules of procedure ~~prescribed~~ adopted by the
19 Review Board shall provide affected employees or their representatives with
20 an opportunity to participate as parties in ~~hearings~~ a hearing under this
21 subsection.

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* * * Effective Dates * * *

Sec. 7. EFFECTIVE DATES

(a) This section and Secs. 3 and 4 shall take effect on passage.

(b) The remaining sections shall take effect on July 1, 2018.

(Committee vote: _____)

Representative _____

FOR THE COMMITTEE