

**Testimony by David Mickenberg on Behalf of Working Vermont and the  
Vermont Building and Constructions Trades**

Thank you for the opportunity to testify on H.731. Generally, we support the intent of this bill and appreciate the sponsor bringing it forward. I understand that we are in changed times given recent Vermont Supreme Court decisions, guidance from the Department of Labor and the societal thrust toward encouraging greater utilization of independent contractors in our economy. The labor community continues to have serious concerns about this trend, for the reasons I've stated in this committee many times in the past: the loss of key worker protections and the shifting of burdens onto the social safety net and tax payers.

We appreciate this bill's effort to try to discourage businesses from utilizing the increasingly permissive environment to their advantage in an inappropriate way. I would offer a few specific thoughts on Sections 1 and 2 to ensure the bill's intent can be fully effectuated:

- 1) First, I would suggest eliminating the phrase, "for the purpose of avoiding its obligations under this chapter." The establishment of an intent standard provides a potential loophole for employers. There are any number of reasons that an employers may say they were helping an employee set up her or his own business that is not for the purpose of avoiding these obligations, and it may be legally difficult to show otherwise. I would suggest perhaps the committee would consider including could include language that provides a rebuttable presumption that any requirement by a business that an individual be an independent business demonstrates intent to avoid ones obligation. An employer could then rebut that by demonstrating a legitimate business reason as to why they would have such a requirement.
- 2) The second change I would suggest is that the phrase "substantial and material assistance" be altered so that it would include only "material assistance". The word "substantial" sets a high bar, is undefined and may be difficult to prove for an aggrieved worker. We think "material assistance" alone should be sufficient to effectuate the purpose of this bill.
- 3) My third suggestion would be that the enforcement of this law, and our misclassification laws generally, be tied to current enforcement regime in our "Fair employment Practices Act" (21 V.S.A. 495(a)(b)). This current enforcement regime fits well with our other labor laws, is known to both employers an employees, and allows for additional enforcement resources to be brought to the table related specifically to the misclassification of employees generally.
- 4) In Sec. 4 we support the elimination of the sunset date for the discontinuance language altogether, but we understand the sponsor's rationale for the

extension and can live with it should that be the direction the committee chooses. I certainly appreciate the time and the effort that the chair, vice chair and others have put into that issue.

5) We have no substantive comments on the remainder of the bill.