Prepared By: Damien Leonard, Esq. Office of Legislative Council

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Fel	bru	arv	24,	20	17	

Statutory Provision	H.119	H.223	H.323
21 V.S.A. § 601(3)	N/A	(3) "Employer" includes any body of persons, corporate or	(3) "Eı
		unincorporated, public or private, and the legal representative of	unincorporate
		a deceased employer, and includes the owner or lessee of	a deceased en
		premises or other person who is virtually the proprietor or	premises or c
		operator of the business there carried on, but who, by reason of	operator of th
		there being an independent contractor or for any other reason, is	there being a
		not the direct employer of the workers there employed. If the	not the direct
		employer is insured, the term "employer" includes the	employer is i
		employer's insurer so far as applicable. A person is not deemed	employer's in
		to be an "employer" for the purposes of this chapter as the result	to be an "em
		of entering into a contract for services or labor with an individual	of entering in
		a sole proprietor or partner owner who has knowingly and	a sole proprie
		voluntarily waived coverage of this chapter pursuant to	voluntarily w
		subdivision (14)(F) of this section, or an individual who is a	subdivision (
		corporate officer or L.L.C. member or manager that has filed,	corporate off
		and had approved, an exclusion pursuant to subdivision 14(H) of	and had appr
		this section and who meets the criteria set forth in that	this section a
		subdivision.	subdivision.
21 V.S.A.	N/A	N/A	(B)
§ 601(14)(B)			<u>a referee or o</u>
			even if an em
21 V.S.A.	(F) The sole proprietor or partner owner or partner	(F)(i) The <u>A</u> sole proprietor or partner owner or partner	(F) <u>(</u>
§ 601(14)(F)	owners of an unincorporated business provided:	owners of an unincorporated business, provided the following	owners of an
	(i) The individual performs work that is distinct and	conditions are met:	conditions are
	separate from that of the person with whom the individual	(i)(I)(aa) The the individual or partner owner is an	(i
	contracts.	independent contractor who performs work that is distinct and	independent of
	(ii) The individual controls the means and manner of	separate from that of the person with whom the individual <u>or</u>	separate from
	the work performed.	partner owner contracts; or	partner owner
	(iii) The individual holds him- or herself out as in	(bb) the individual or partner owner is an	
	business for him- or herself.	independent contractor and is either actively registered as a	independent of
	(iv) The individual holds him- or herself out for	business with the Vermont Secretary of State or actively	business with
	work for the general public and does not perform work	registered as a business in the state or country of domicile.	registered as
	exclusively for or with another person.	(ii) The individual controls the means and manner of	(i
	(v) The individual is not treated as an employee for	the work performed.	the work perf
	purposes of income or employment taxation with regard to the	(iii) The individual holds him or herself out as in	(i
	work performed.	business for him or herself.	business for l
	(vi) The services are performed pursuant to a written	(iv) The individual holds him or herself out for work	(i
	agreement or contract between the individual and another person,	for the general public and does not perform work exclusively for	for the genera
	and the written agreement or contract explicitly states that the	or with another person.	or with anoth
	individual is not considered to be an employee under this	(v) The individual is not treated as an employee for	(*
	chapter, is working independently, has no employees, and has	purposes of income or employment taxation with regard to the	purposes of in
	not contracted with other independent contractors. The written	work performed.	work perform
	contract or agreement shall also include information regarding	(vi)(II)(aa) The services are performed pursuant to a	(
	the right of the individual to purchase workers' compensation	written agreement or contract between the individual or partner	written agree

Employer" includes any body of persons, corporate or ated, public or private, and the legal representative of employer, and includes the owner or lessee of other person who is virtually the proprietor or the business there carried on, but who, by reason of an independent contractor or for any other reason, is ct employer of the workers there employed. If the s insured, the term "employer" includes the insurer so far as applicable. A person is not deemed nployer" for the purposes of this chapter as the result into a contract for services or labor with an individual ietor or partner owner who has knowingly and waived coverage of this chapter pursuant to (14)(F) of this section, or an individual who is a fficer or L.L.C. member or manager that has filed, proved, an exclusion pursuant to subdivision 14(H) of and who meets the criteria set forth in that

) An individual engaged in amateur sports, including official who is paid on a per game or per event basis, employer contributes to the support of such sports.

)(i) The <u>A</u> sole proprietor or partner owner or partner in unincorporated business provided the following are met:

(i)(I)(aa) The individual <u>or partner owner is an</u> <u>t contractor who</u> performs work that is distinct and m that of the person with whom the individual <u>or</u> <u>her</u> contracts; <u>or</u>

(bb) the individual or partner owner is an t contractor and is either actively registered as a th the Vermont Secretary of State or actively s a business in the state or country of domicile.

(ii) The individual controls the means and manner of orformed.

(iii) The individual holds him or herself out as in thim or herself.

(iv) The individual holds him or herself out for work bral public and does not perform work exclusively for ther person.

(v) The individual is not treated as an employee for income or employment taxation with regard to the med.

(vi)(II) The services are performed pursuant to a cement or contract between the individual or partner

Prepared By: Damien Leonard, Esq. Office of Legislative Council February 24, 2017

		February 24, 2017	
	insurance coverage and the individual's election not to purchase	owner and another the person who is providing compensation for	owner and a
	that coverage. However, if the individual who is party to the	the services, and the written agreement or contract explicitly	compensation
	agreement or contract under this subdivision is found to have	states that the individual <u>or partner owner</u> is not considered to be	contract exp
	employees, those employees may file a claim for benefits under	an employee under this chapter, is working independently, has no	not consider
	this chapter against either or both parties to the agreement <u>unless</u>	employees, and has not contracted with other independent	independent
	the sole proprietor or partner owner notifies the Commissioner	contractors. The written contract or agreement shall also include	other indepe
	that he or she is to be included within the provisions of this	information regarding the right of the individual <u>or partner owner</u>	shall also in
	chapter. The submission of an insurance contract or an	to purchase workers' compensation insurance coverage and the	individual o
	amendment to an insurance contract to elect coverage of the sole	individual's election not to purchase that coverage. The contract	insurance co
	proprietor or partner owner shall be considered sufficient notice.	or agreement shall provide that any claim related to a personal	that coverag
		injury arising out of and in the course of the individual or partner	is party to th
		owner's employment shall be brought in Vermont Superior	found to hav
		Court.	benefits und
		(bb) However, if If the individual or partner	agreement.
		owner who is party to the agreement or contract under this	<u>(</u>
		subdivision is found to have employees, those employees may	conditions o
		file a claim for benefits under this chapter against either or both	to file with t
		parties to the agreement.	<u>a claim for v</u>
		(ii)(I) An individual or partner owner that meets the	the individuation
		conditions of subdivision (i) of this subdivision (14)(F) may elect	
		to file with the Commissioner a notice to waive the right to make	of this subdi
		a claim for workers' compensation against the person with whom	suffers a per
		the individual or partner owner contracts.	her employn
		(II) If, after filing a notice under subdivision (I)	damages for
		of this subdivision (14)(F)(ii), the individual or partner owner	<u>compensatio</u>
		suffers a personal injury arising out of and in the course of his or	who is provi
		her employment, he or she may bring an action to recover	the defenses
		damages for personal injury against the person who is providing	election shal
		compensation for the services and, in that action, the person who	individual ex
		is providing compensation for the services shall have all of the	subdivision
		defenses available in a personal injury claim. This election shall	unincorporat
		not prevent any individual, other than the individual excluded	benefits und
		pursuant to subdivision (i) of this subdivision (14)(F), who is	from a statut
		determined to be an employee of the unincorporated business	<u>(</u>
		from claiming workers' compensation benefits under this chapter	election und
		from the business or a statutory employer.	collect and n
		(iii) An individual or partner owner that makes an	to perform se
		election under subdivision (ii) of this subdivision (14)(F) shall	unincorpora
		document that any person hired to perform services for the	is otherwise
		individual or partner owner's unincorporated business has	
		workers' compensation coverage or is otherwise in compliance	
		with the provisions of this chapter.	
21 V.S.A.	N/A	(H) With the approval of the Commissioner, a	(H)
§ 601(14)(H)		corporation or a limited liability company (L.L.C.) may elect to	corporation
		file exclusions from the provisions of this chapter. A corporation	file exclusio

another person the person who is providing

ion for the services, and the written agreement or aplicitly states that the individual <u>or partner owner</u> is ered to be an employee under this chapter, is working htly, has no employees, and has not contracted with bendent contractors. The written contract or agreement nclude information regarding the right of the <u>or partner owner</u> to purchase workers' compensation coverage and the individual's election not to purchase ege. However, if the individual <u>or partner owner</u> who the agreement or contract under this subdivision is ave employees, those employees may file a claim for uder this chapter against either or both parties to the

(ii)(I) An individual or partner owner that meets the of subdivision (i) of this subdivision (14)(F) may elect the Commissioner a notice to waive the right to make workers' compensation against the person with whom ual or partner owner contracts.

(II) If, after filing a notice under subdivision (I) division (14)(F)(ii), the individual or partner owner ersonal injury arising out of and in the course of his or yment, he or she may bring an action to recover or personal injury against the person who is providing ion for the services and, in such action, the person viding compensation for the services shall have all of es available in a personal injury claim. However, this hall not prevent any other individual, other than the excluded pursuant to subdivision (i) of this n (14)(F), who is determined to be an employee of the rated business from claiming workers' compensation inder this chapter from the unincorporated business or nutory employer.

(iii) An individual or partner owner that makes an inder subdivision (ii) of this subdivision (14)(F) shall I maintain documentation that any other person hired services for the sole proprietor or partner owner's rated business has workers' compensation coverage or se in compliance with the provisions of this chapter.

H) With the approval of the Commissioner, a on or a limited liability company (L.L.C.) may elect to sions from the provisions of this chapter. A corporation

Prepared By: Damien Leonard, Esq. Office of Legislative Council February 24, 2017

February 24, 2017	
or an L.L.C. may elect to exclude up to four corporate executive	or an L.L.C. ma
officers or four L.L.C. managers or members from coverage	officers or four
requirements under this chapter. If all officers of the corporation	requirements ur
or all managers or members of an L.L.C. make such the election,	or all managers
and receive approval, and the business has no employees, the	receive approva
corporation or L.L.C. shall not be required to purchase workers'	corporation or I
compensation coverage. If after election, the officer, manager, or	compensation c
member experiences a personal injury and files a claim under	member experie
this chapter, the employer shall have all the defenses available in	this chapter, the
a personal injury claim. However, this election shall not prevent	a personal injur
any other individual, other than the individual excluded under	any other indivi
this section, found to be an employee of the corporation or	this section, fou
L.L.C. to recover workers' compensation from either the	L.L.C. to recover
corporation, L.L.C., or the statutory employer.	corporation, L.I
(i) For purposes of this chapter a person shall not be	<u>(i)</u>
deemed to be an "employer" of corporate executive officers or	"employer" for
L.L.C. managers or members that are excluded under this	officers or L.L.
subdivision (14)(H) if the following conditions are met:	this subdivision
(I) The corporate executive officers or L.L.C.	<u>(</u>
managers or members operate a separate and distinct business	managers or me
that is an independent contractor and is actively registered with	that is an indepe
the Vermont Secretary of State.	Vermont Secret
(II) The services are performed pursuant to a	or L.L.C. memb
written contract or agreement between the corporation or L.L.C.	<u>(</u>
and the person who is providing compensation for the services,	written agreeme
and the contract or agreement explicitly states that the corporate	and the person v
executive officers or L.L.C. managers or members are not	and the written
considered to be employees under this chapter and are working	corporate execu
independently. The contract or agreement shall also include	not considered t
information regarding the right of the corporation or L.L.C. to	working indepe
purchase workers' compensation insurance coverage and the	also include info
right of the corporate executive officers or the L.L.C. managers	L.L.C. to purch
or members to elect not to exclude themselves from coverage.	and of the corpo
The contract or agreement shall provide that any claim related to	members to elec
a personal injury arising out of and in the course of the individual	<u>(ii)</u>
or partner owner's employment shall be brought in Vermont	subdivision (14
Superior Court.	member suffers
(ii) If, after making an election under this	of his or her em
subdivision (14)(H), the corporate officer or L.L.C. manager or	recover damage
member suffers a personal injury arising out of and in the course	providing comp
of his or her employment, he or she may bring an action to	person who is p
recover damages for personal injury against the person who is	all of the defense
providing compensation for the services and, in that action, the	this election sha
person who is providing compensation for the services shall have	individual exclu
all of the defenses available in a personal injury claim. This	determined to b

may elect to exclude up to four <u>corporate</u> executive <u>ur L.L.C.</u> managers or members from coverage under this chapter. If all officers of the corporation ers or members of an L.L.C. make such election, wal, and the business has no employees, the r L.L.C. shall not be required to purchase workers' n coverage. If after election, the officer, manager, or priences a personal injury and files a claim under the employer shall have all the defenses available in mury claim. However, this election shall not prevent ividual, other than the individual excluded under cound to be an employee of the corporation or over workers' compensation from either the L.L.C., or the statutory employer.

A person shall not be deemed to be an
 For purposes of this chapter of corporate executive
 L.C. managers or members that are excluded under
 fon (14)(H) if the following conditions are met:

(I) The corporate executive officers or L.L.C. members operate a separate and distinct business ependent contractor, is actively registered with the retary of State, and elects to file a corporate officer mber exclusion from the provisions of this chapter.

(II) The services are performed pursuant to a nent or contract between the corporation or L.L.C. who is providing compensation for the services, n agreement or contract explicitly states that the cutive officers or L.L.C. managers or members are d to be employees under this chapter and are bendently. The written contract or agreement shall formation regarding the right of the corporation or chase workers' compensation insurance coverage porate executive officers or the L.L.C. managers or lect not to exclude themselves from coverage. i) If, after making an election under this 4)(H), the corporate officer or L.L.C. manager or rs a personal injury arising out of and in the course mployment, he or she may bring an action to ges for personal injury against the person who is npensation for the services and, in such action, the providing compensation for the services shall have nses available in a personal injury claim. However, hall not prevent any other individual, other than the luded pursuant to this subdivision, who is be an employee of the corporation or L.L.C. from

Prepared By: Damien Leonard, Esq. Office of Legislative Council

		Office of Legislative Council	
		February 24, 2017	
		election shall not prevent any individual, other than the	<u>claiming</u>
		individual excluded pursuant to this subdivision, who is	the corpo
		determined to be an employee of the corporation or L.L.C. from	
		claiming workers' compensation benefits under this chapter from	officers, 1
		the corporation or L.L.C. or from a statutory employer.	subdivisi
		(iii) A corporation or L.L.C. whose executive	that any o
		officers, members, or managers make an election under this	<u>corporati</u>
		subdivision (14)(H) shall document that any person hired to	otherwise
		perform services for the corporation or L.L.C. has workers'	
		compensation coverage or is otherwise in compliance with this	
		chapter.	
21 V.S.A.	(I) An independent contractor if it can be demonstrated	N/A	
§ 601(14)(I)	that the independent contractor is free from the essential		she receiv
§ 001(14)(1)	direction and control of the employing unit, both under the		
			from gros
	individual's contract and in fact, and the employing unit proves		Revenue
	that the individual meets all of the criteria in subdivision (i) and		
	at least two of the criteria in subdivision (ii) of this subdivision		
	<u>(14)(I).</u>		
	(i) In order for an individual to be an independent		
	contractor, all of the following criteria must be satisfied:		
	(I) The individual has the essential right to		
	control the means and progress of the work except as to the final		
	results.		
	(II) The individual is customarily engaged in an		
	independently established trade, occupation, profession, or		
	business.		
	(III) The individual has a substantive investment		
	in the facilities, tools, instruments, materials, and knowledge		
	used by him or her to complete the work.		
	(IV) The individual has the opportunity for profit		
	and loss as a result of the services being performed for the		
	employing unit.		
	(V) The individual hires and pays his or her		
	employees, if any, and supervises the details of the employees'		
	work.		
	(VI) The individual makes his or her services		
	available to the general public and is able to accept work for		
	entities other than the employing unit, whether or not he or she		
	chooses to do so.		
	(ii) In order for an individual to be an independent		
	contractor, at least two of the following criteria must be met:		
	(I) The individual is responsible for satisfactory		
	completion of the work and may be held contractually		
	responsible for failure to complete the work.		
	(II) The parties have a written contract that		

g workers' compensation benefits under this chapter from poration or L.L.C. or from a statutory employer. (iii) A corporation or L.L.C. whose executive , members, or managers make an election under this sion (14)(H) shall collect and maintain documentation other person hired to perform services for the tion or L.L.C. has workers' compensation coverage, or is se in compliance with this chapter.

(I) An individual who provides services for which he or eives foster care payments that are specifically excluded oss income pursuant to Section 131 of the federal Internal e Code, 26 U.S.C. § 131.

Prepared By: Damien Leonard, Esq. Office of Legislative Council

February 24, 2017

		February 24, 2017	
	defines the relationship and gives the individual contractual		
	rights in the event the contract is terminated by the employing		
	unit prior to completion of the work.		
	(III) Payment to the individual is based on factors		
	directly related to the work performed and not solely on the		
	amount of time expended by him or her.		
	(IV) The work is outside the usual course of		
	business of the employing unit for which the service is		
	performed.		
	(V) The individual has elected to file taxes as an		
	independent contractor with the federal Internal Revenue		
	Service.		
21 V.S.A. § 601(31)	N/A	(31)(A) "Independent contractor" means a person that is	<u>(31)(A)</u>
		economically independent of the person's employing unit under	economically
		the totality of the circumstances based on an assessment of the	the totality of
		following factors:	following fact
		(i) whether the person is free from the direction and	<u>(i</u>
		control of the employing unit with respect to the means and	control of the
		manner of the services performed, both under the person's	manner of the
		contract of service and in fact;	contract of ser
		(ii) whether the person operates a separate and	<u>(ii</u>
		distinct business from that of the employing unit and the extent	integral part o
		to which the person is performing work that is not a substantial,	<u>(ii</u>
		essential, and recurring part of the core services, functions, or	opportunity for
		activities of the employing unit;	<u>(i</u>
		(iii) whether the person's contract of service	by the person
		provides for the performance of specific services for specified	equipment ne
		amounts of compensation and does not provide that the services	<u>(v</u>
		will be performed on an ongoing or indefinite basis, and whether	to exercise spe
		the person may realize a profit or suffer a loss under the contract	<u>(v</u>
		of service;	business for it
		(iv) the extent of the person's investment in the	general public
		resources, assets, or equipment necessary to perform the services	<u>(v</u>
		contracted for; whether the person possesses specialized skills or	the person and
		knowledge necessary to perform the services contracted for; and	(B)
		whether the person has continuing and recurring business	independent p
		liabilities and obligations;	no single facto
		$\frac{(v) \text{ whether the person holds itself out as in business}}{1 + 1 + 1 + 1 + 1 + 1 + 1 + 1 + 1 + 1 +$. <u>(C)</u>
		for itself and offers its services to the general public; and	on a project of
		(vi) whether the person is not treated as an employee	economically
		for purposes of income or employment taxation with regard to	account the re
		the work performed and either:	by the person
		(I) holds or has applied for a federal employer	relation to whi
		<u>identification number; or</u>	(D)
		(II) has filed business or self-employment tax	<u>compensation</u>

) "Independent contractor" means a person that is y independent of the person's employing unit under f the circumstances based on an assessment of the ctors:

(i) whether the person is free from the direction and e employing unit with respect to the means and he services performed, both under the person's ervice and in fact;

(ii) whether the person performs work that is an of the employing unit's business;

(iii) whether the person's managerial skills affect its for profit or loss;

(iv) the nature and extent of the relative investments n and the employing unit in the resources, assets, or eccessary to perform the services contracted for;
(v) whether the work performed requires the person pecialized business skills, judgment, and initiative;
(vi) whether the person holds itself out as in itself and competes to offer its services to the ic in the open market; and

(vii) the degree to which the relationship between nd the employing unit is permanent or indefinite. In considering whether a person is economically pursuant to subdivision (A) of this subdivision (31), etor in and of itself shall be dispositive.

If multiple persons are performing the same work or jobsite, the determination of whether the person is y independent of the employing unit shall take into relationship between the specific services performed n and the circumstances of the project or job in which the person is providing services.

An independent contractor shall purchase workers' on coverage for its employees as provided in this

Prepared By: Damien Leonard, Esq. Office of Legislative Council

		February 24, 2017	
		returns with the federal Internal Revenue Service within the past	chapter.
		year or will file business or self-employment tax returns with the	
		federal Internal Revenue Service for the current year.	
		(B) In considering whether a person is economically	
		independent pursuant to subdivision (A) of this subdivision (31),	
		no single factor in and of itself shall be dispositive.	
		(C) If multiple persons are performing the same work	
		on a project or jobsite, the determination of whether the person is	
		economically independent of the employing unit shall take into	
		account the relationship between the specific services performed	
		by the person and the circumstances of the project or job in	
		relation to which the person is providing services.	
		(D) An independent contractor shall purchase workers'	
		compensation coverage for its employees as provided in this	
		chapter.	
21 V.S.A.	(B) Services performed by an individual for wages	(B)(i) Services performed by an individual for wages	
§ 1301(6)(B)	shall be deemed to be employment subject to this chapter unless	shall be deemed to be employment subject to this chapter unless	shall be o
	and until it is shown to the satisfaction of the Commissioner that:	and until it is shown to the satisfaction of the Commissioner that	and until
	(i) Such individual has been and will continue to be	the individual is economically independent of his or her	the indiv
	free from control or direction over the performance of such	employing unit under the totality of the circumstances in light of	employir
	services, both under his or her contract of service and in fact; and	the following factors:	the follow
	(ii) Such service is either outside the usual course of	(i) Such individual has been and will continue to be	
	the business for which such service is performed, or that such	free from control or direction over the performance of such	free from
	service is performed outside of all the places of business of the	services, both under his or her contract of service and in fact; and	services,
	enterprise for which such service is performed; and	(ii) Such service is either outside the usual course of	
	(iii) Such individual is customarily engaged in an	the business for which such service is performed, or that such	the busin
	independently established trade, occupation, profession, or	service is performed outside of all the places of business of the	service is
	business they are specifically excluded pursuant to this chapter.	enterprise for which such service is performed; and	enterpris
		(iii) Such individual is customarily engaged in an	•
		independently established trade, occupation, profession, or	independ
		business.	business
		(I) whether the individual is free from the	o usinessi
		direction and control of his or her employing unit with respect to	direction
		the means and manner of the services performed, both under his	the mean
		or her contract of service and in fact;	his or he
		(II) whether the individual operates a separate	<u>1115 01 110</u>
		and distinct business from that of the employing unit and the	an integr
		extent to which he or she is performing work that is not a	
		substantial, essential, and recurring part of the core services,	affect his
		functions, or activities of the employing unit;	
		(III) whether the individual's contract of service	investme
		provides for the performance of specific services for specified	
			resources
		amounts of compensation and does not provide that the services	contracte
		will be performed on an ongoing or indefinite basis, and whether the individual may realize a prefit or suffer a loss up don the	in dia 1
		the individual may realize a profit or suffer a loss under the	<u>individu</u>

(B)(i) Services performed by an individual for wages e deemed to be employment subject to this chapter unless til it is shown to the satisfaction of the Commissioner that ividual is economically independent of his or her ving unit under the totality of the circumstances in light of owing factors:

(i) Such individual has been and will continue to be om control or direction over the performance of such s, both under his or her contract of service and in fact; and (ii) Such service is either outside the usual course of iness for which such service is performed, or that such is performed outside of all the places of business of the ise for which such service is performed; and (iii) Such individual is customarily engaged in an indently established trade, occupation, profession, or

(I) whether the individual is free from the on and control of his or her employing unit with respect to ans and manner of the services performed, both under the her contract of service and in fact;

(II) whether the individual performs work that is gral part of his or her employing unit's business;

(III) whether the individual's managerial skills is or her opportunity for profit or loss;

(IV) the nature and extent of the relative ments by the individual and the employing unit in the res, assets, or equipment necessary to perform the services red for;

(V) whether the work performed requires the ual to exercise specialized business skills, judgment, and

Prepared By: Damien Leonard, Esq. Office of Legislative Council February 24, 2017

February 24, 2017	
contract of service;	initiative;
(IV) the extent of the individual's investment in	
the resources, assets, and equipment, as well as the specialized	herself out as
skills or knowledge necessary to perform the services contracted	offer his or he
for, and whether he or she has continuing and recurring business	<u>and</u>
liabilities and obligations;	
(V) whether the individual holds himself or	between the in
herself out as in business for himself or herself and offers his or	indefinite.
her services to the general public; and	<u>(ii</u>
(VI) whether the individual is not treated as an	economically
employee for purposes of income or employment taxation with	subdivision (6
regard to the work performed and either:	dispositive.
(aa) holds or has applied for a federal	<u>(ii</u>
employer identification number; or	work on a pro
(bb) has filed business or self-employment tax	individual is e
returns with the federal Internal Revenue Service within the past	shall take into
year or will file business or self-employment tax returns with the	services perfo
federal Internal Revenue Service for the current year.	the project or
(ii) In considering whether an individual is	services.
economically independent pursuant to subdivision (i) of this	
subdivision (6)(B), no single factor in and of itself shall be	
dispositive.	

(iii) If multiple individuals are performing the same work on a project or jobsite, the determination of whether an individual is economically independent of the employing unit shall take into account the relationship between the specific services performed by the individual and the circumstances of the project or job in relation to which he or she is providing services.

	work on a project of jobsite, the determination of whether an
t tax	individual is economically independent of the employing unit
<u>past</u>	shall take into account the relationship between the specific
the	services performed by the individual and the circumstances o
	the project or job in relation to which he or she is providing
	services.

N/A

21 V.S.A.	(C)
§ 1301(6)(C)	

	services periornied by the marviadar and the er
	the project or job in relation to which he or she
	services.
(C) The term "employment" shall not include:	N/A
* * *	
(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 subdivision (I) and at least two of the criteria in	
subdivision (II) of this subdivision (6)(C)(xxii).	
(I) In order for an individual to be an independent	
contractor, the following criteria must be satisfied:	
(aa) The individual has the essential right to	
control the means and progress of the work except as to the final	
results.	
(bb) The individual is customarily engaged in	
	*** (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 subdivision (I) and at least two of the criteria in subdivision (II) of this subdivision (6)(C)(xxii). (I) In order for an individual to be an independent contractor, the following criteria must be satisfied: (aa) The individual has the essential right to control the means and progress of the work except as to the final results.

(VI) whether the individual holds himself or
out as in business for himself or herself and competes to
is or her services to the general public in the open market;
(VII) the degree to which the relationship
n the individual and the employing unit is permanent or
ite.
(ii) In considering whether an individual is
nically independent pursuant to subdivision (i) of this
sion (6)(B), no single factor in and of itself shall be
tive.
(iii) If multiple individuals are performing the same
n a project or jobsite, the determination of whether an
ual is economically independent of the employing unit
ke into account the relationship between the specific
s performed by the individual and the circumstances of

Prepared By: Damien Leonard, Esq.
Office of Legislative Council
February 24, 2017

		February 24, 2017	
	an independently established trade, occupation, profession, or		
	business.		
	(cc) The individual has a substantive		
	investment in the facilities, tools, instruments, materials, and		
	knowledge used by him or her to complete the work.		
	(dd) The individual has the opportunity for		
	profit and loss as a result of the services being performed.		
	(ee) The individual hires and pays his or her		
	employees, if any, and supervises the details of the employees'		
	work.		
	(ff) The individual makes his or her services		
	available to the general public and is able to accept work for		
	entities other than the employer, whether or not he or she		
	chooses to do so.		
	(II) In order for an individual to be an		
	independent contractor, at least two of the following criteria must		
	be satisfied:		
	(aa) The individual is responsible for		
	satisfactory completion of the work and may be held		
	contractually responsible for failure to complete the work.		
	(bb) The parties have a written contract that		
	defines the relationship and gives the individual contractual		
	rights in the event the contract is terminated, prior to completion		
	of the work, by the person for whom the services are performed.		
	(cc) Payment to the individual is based on		
	factors directly related to the work performed and not solely on		
	the amount of time expended by him or her.		
	(dd) The work is outside the usual course of		
	business of the person for whom the service is performed.		
	(ee) The individual has elected to file taxes as an		
	independent contractor with the federal Internal Revenue		
	Service.		
3 V.S.A. § 2222d	N/A	§ 2222d. INTERAGENCY AND DEPARTMENTAL	§ 2222d. VER
		EMPLOYEE MISCLASSIFICATION TASK FORCE;	FORCE
		INVESTIGATION AND ENFORCEMENT	(a) Creation
		(a) As used in this section, "employee misclassification"	Classification 7
		means the improper classification of employees as independent	Administration
		contractors.	misclassificatio
		(b) The Agency of Administration shall create an interagency	coordination of
		and departmental task force to coordinate efforts to combat	among State go
		misclassification of workers and to ensure enforcement of all	stakeholders.
		related laws and regulations. The task force shall be overseen by	(b) Member
		the Agency of Administration and the Office of the Attorney	following nine
		General and shall be composed of the following members:	<u>(1)</u> the S
		(1) the Secretary of Administration or designee;	<u>(2)</u> the C

VERMONT EMPLOYEE CLASSIFICATION TASK

eation and purpose. The Vermont Employee tion Task Force is created in the Agency of ation to reduce the frequency of employee ication through enhanced education, improved on of State resources, and increased collaboration atte government, businesses, labor, and other

embership. The Task Force shall be composed of the nine members: the Secretary of Administration or designee; the Commissioner of Labor or designee;

SIDE-BI-SIDE OF SELEC	TED I KOVISIONS FROM HOUSE LIMPLOTEE CLASSIFICATION BILLS	
	Prepared By: Damien Leonard, Esq.	
	Office of Legislative Council	
	February 24, 2017	
	(2) the Attorney General or designee;	(3) the Secr
	(3) the Secretary of Transportation or designee;	(4) the Com
	(4) the Commissioner of Buildings and General Services	or designee;
	or designee;	(5) the Com
	(5) the Commissioner of Labor or designee;	(6) the Secr
	(6) the Commissioner of Financial Regulation or designee;	(7) the Com
	(7) the Secretary of Human Services or designee;	(8) the Atto
	(8) the Commissioner of Taxes or designee;	(9) the Com
	(9) the Commissioner of Liquor Control or designee; and	(c) Meetings.
	(10) the Secretary, Commissioner, or designee of any	(1) The Tas
	other State licensing agency or department as determined by the	(2) The Sec
	Secretary of Administration.	the Chair.
<u><u> </u></u>	(c)(1) The Task Force shall meet at least six times per year.	(3) A major
	(2) The Secretary of Administration or designee and the	constitute a quorui
	Attorney General or designee shall be Co-Chairs of the Task	(d) Duties.
	Force.	(1) The Tas
<u>1</u>	(d) The Secretary of Administration shall ensure that all State	(A) to de
	agencies do the following:	program to educat
<u>-</u>	(1) coordinate their efforts to combat employee	general public abo
	misclassification in a manner that increases the efficiency and	independent contra
	effectiveness of those efforts; and	(B) to ex
<u>×</u>	(2) In a central database accessible to all State agencies	enforcement by St
	and departments, share information concerning any employer	(C) to de
	determined to have misclassified one or more employees as	coordination, coor
	independent contractors.	agencies and depa
4	(e) The Secretary shall adopt rules and procedures necessary	enforcement of en
	to carry out the duties set forth in subsection (d) of this section.	(D) to re
<u> </u>	(f) The Secretary of Administration shall report annually on	accept complaints
	or before January 15 of each year to the House Committees on	(E) to en
	Commerce and Economic Development and on Ways and Means	engaged in timely
	and the Senate Committee on Finance regarding activities that he	(F) to en
	or she has undertaken pursuant to this section and any additional	posted on a public
	tax revenue and unemployment insurance contributions, as well	extent permitted b
	as any reduction in workers' compensation premiums and costs,	<u>(G) to re</u>
	realized as a result of the efforts undertaken by the Secretary	provide public not
	pursuant to this section. The provisions of 2 V.S.A. § 20(d)	enforcement, pena
	(expiration of required reports) shall not apply to the report to be	(H) to de
	made under this subsection.	businesses in com
<u>1</u>		proper classification
		and to reduce the f
		(I) to rec
		administrative me
		misclassification.
		(2) The Tas
		(2) The Tas

cretary of Transportation or designee; mmissioner of Buildings and General Services mmissioner of Financial Regulation or designee; cretary of Human Services or designee; mmissioner of Taxes or designee; torney General or designee; and mmissioner of Liquor Control or designee. ask Force shall meet at least six times per year. ecretary of Administration or designee shall be ority of the membership of the Task Force shall um. ask Force shall have the following duties: develop and implement an ongoing outreach ate and inform employers, workers, and the bout the proper classification of employees and tractors; examine and evaluate existing misclassification State agencies and departments; develop and implement strategies to improve operation, and information sharing among State partments in relation to the investigation and employee misclassification; review and establish reasonable mechanisms to ts and reports of noncompliance; ensure that State agencies and departments are y enforcement; ensure that penalties and debarment periods are icly available website in a timely manner, to the by law: review and recommend additional methods to otice and share information regarding nalties, and debarment periods; develop strategies and programs to assist mplying with Vermont's requirements for the tion of employees and independent contractors, e frequency of employee misclassification; and ecommend legislative, regulatory, and easures to reduce the frequency of employee (2) The Task Force shall consult and collaborate with businesses, labor, and other interested stakeholders to accomplish

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	the duties set
	appoint repre
	stakeholders
	appropriate.
	<u>(e)</u> Repor
	<u>(1)</u> Th
	January 15 to
	Developmen
	the activities
	progress of th
	programs, the
	conducted du
	impediments
	independent
	report may re
	measures to 1
	The provision
	reports) shall
	subsection.
	<u>(2)</u> Th
	comprehensi
	within Verm
	measures to i
	enforcement
	responsibility
	misclassifica
	Task Force s
	evaluate the
	classification
	improvement
	over time. O
	report to the
	Developmen
	recommenda
	misclassifica
	regulatory, or
	the plan.
	(3) Th
	independent
	jobsite to det
	in such situat
	review docur consult with
	On or before
	written repor

t forth in subdivision (1) of this subsection, and may esentatives of business, labor, and other interested to subcommittees as the Task Force deems

rts.

the Task Force shall report annually on or before to the House Committee on Commerce and Economic at and the Senate Committee on Finance regarding that it has undertaken pursuant to this section, the he Task Force's ongoing education and outreach the number and results of the employer audits uring the previous calendar year, and any barriers or to the proper classification of employees and contractors that the Task Force has identified. The ecommend legislative, regulatory, and administrative reduce the frequency of employee misclassification. ons of 2 V.S.A. § 20(d) (expiration of required 1 not apply to the report to be made under this

e Task Force shall examine the issue of ve enforcement of employee misclassification ont's workers' compensation system and potential improve the efficacy of the State's misclassification mechanisms, including by transferring the y for the investigation and enforcement of tion to the Office of the Attorney General. The hall develop and establish performance measures to efficacy of efforts to enforce the requirements for of employees and independent contractors, and any t in the outcomes of the State's enforcement efforts On or before February 15, 2018, the Task Force shall House Committee on Commerce and Economic t and the Senate Committee on Finance with a tion for a comprehensive plan to improve the State's tion enforcement mechanisms and any legislative, r administrative measures necessary to implement

te Task Force shall study the use of multiple contractors to perform the same work on a project or termine how often employee misclassification occurs tions. In performing its study, the Task Force shall mented instances of misclassification and may businesses, labor, and other interested stakeholders. February 15, 2018, the Task Force shall submit a rt to the General Assembly with its findings and any

Prepared By: Damien Leonard, Esq. Office of Legislative Council February 24, 2017

		February 24, 2017	
			recommendati
			<u>(4)</u> The
			workers in cer
			workers' com
			<u>2018, the Tas</u>
			Assembly wit
			legislative act
			<u>(f)</u> Definit
			misclassificat
			employees as
21 V.S.A. § 692	N/A	§ 692. PENALTIES; FAILURE TO INSURE; STOP WORK	§ 692. PENA
		<u>STOP–WORK</u> ORDERS	STOPWORK
		(a)(1) Failure to insure. If after a hearing under section 688	
		of this title, the Commissioner determines that an employer has	(b) Stop-w
		failed to comply with the provisions of section 687 of this title,	provisions of
		the employer shall be assessed an administrative penalty of not	Commissione
		more than \$100.00 for every day for the first seven days the	order to that e
		employer neglected to secure liability and not more than \$150.00	secured worke
		for every day thereafter.	determines the
		(2) Purposeful violation. If the Commissioner determines	threaten the sa
		that the employer purposefully violated section 687 of this title:	permit work t
		(A) any penalties assessed pursuant to subdivision (1)	safety or healt
		of this subsection shall be doubled; and	the reasons fo
		(B) the employer may be liable for punitive damages in	shall be availa
		an amount equal to any penalties assessed pursuant to this	be assessed an
		subsection in an action related to the employer's purposeful	for every day
		violation of section 687 that is brought pursuant to section 712 of	compensation
		this chapter.	to obtain insu
		(b) Stop-work orders. If an employer fails to comply with the	penalty of not
		provisions of section 687 of this title after investigation by the	day that the en
		Commissioner, the Commissioner shall <u>may</u> issue an emergency	coverage as re
		order to that employer to stop work until the employer has	work order is
		secured workers' compensation insurance. If the Commissioner	conspicuous p
		determines that issuing a stop-work order would immediately threaten the safety or health of the public, the Commissioner may	the employees provisions of
		permit work to continue until the immediate threat to public	site has been
		safety or health is removed. The Commissioner shall document	insurance is so
		the reasons for permitting work to continue, and the document	work order, th
		shall be available to the public. In addition, the employer shall	Division of th
		be assessed an administrative penalty of not more than \$250.00	employing an
		for every day that the employer fails to secure workers'	rescinded as s
		compensation coverage after the Commissioner issues an order	employer is ir
		to obtain insurance and may also be assessed an administrative	(c) Debarr
		penalty of not more than \$250.00 for each employee for every	order has been
		day that the employer fails to secure workers' compensation	section 687 of
L		aay mat the employer rans to secure workers compensation	<u>section 007 0</u>

ations for legislative action.

the Task Force shall examine the issue of whether all ertain industries should be required to be covered by mpensation insurance. On or before February 15, sk Force shall submit a written report to the General ith its findings and any recommendations for ection.

ition. As used in this section, "employee ation" means the improper classification of s independent contractors.

ALTIES; FAILURE TO INSURE; STOP WORK <u>K</u> ORDERS * * *

work orders. If an employer fails to comply with the f section 687 of this title after investigation by the er, the Commissioner shall may issue an emergency employer to stop work until the employer has kers' compensation insurance. If the Commissioner hat issuing a stop-work order would immediately safety or health of the public, the Commissioner may to continue until the immediate threat to public lth is removed. The Commissioner shall document for permitting work to continue, and the document lable to the public. In addition, the employer shall an administrative penalty of not more than \$250.00 y that the employer fails to secure workers' n coverage after the Commissioner issues an order urance and may also be assessed an administrative ot more than \$250.00 for each employee for every employer fails to secure workers' compensation required in section 687 of this title. When a stops issued, the Commissioner shall post a notice at a place on the work site of the employer informing es that their employer failed to comply with the f section 687 of this title and that work at the work ordered to cease until workers' compensation secured. If an employer fails to comply with a stopthe Commissioner may seek an order from the Civil the Superior Court to enjoin the employer from ny individual. The stop-work order shall be soon as the Commissioner determines that the in compliance with section 687 of this title. rment. An employer against whom a stop-work en issued who has not been in compliance with of this chapter, unless the Commissioner determines

Prepared By: Damien Leonard, Esq. Office of Legislative Council February 24, 2017

		February 24, 2017	
		coverage as required in section 687 of this title. When a stop-	that the failur
		work order is issued, the Commissioner shall post a notice at a	prohibited from
		conspicuous place on the work site of the employer informing	directly or inc
		the employees that their employer failed to comply with the	a period of up
		provisions of section 687 of this title and that work at the work	the stop-work
		site has been ordered to cease until workers' compensation	the Commiss
		insurance is secured. If an employer fails to comply with a stop-	Buildings and
		work order, the Commissioner may seek an order from the Civil	Transportatio
		Division of the Superior Court to enjoin the employer from	Commissione
		employing any individual. The stop-work order shall be	of the prohibi
		rescinded as soon as the Commissioner determines that the	State or its su
		employer is in compliance with section 687 of this title.	consultation s
		(c) Debarment. An employer against whom a stop work	business days
		order has been issued who has not been in compliance with	results of the
		section 687 of this title, unless the Commissioner determines that	(c)<u>(d)</u> Pen
		the failure to comply was inadvertent or excusable, is prohibited	any other pen
		from contracting entering into subsequent contracts, directly or	described in s
		indirectly, with the State or any of its subdivisions for a period of	(1) a ci
		up to three years following the date of the issuance of the stop-	\$5,000.00 for
		work order <u>a citation</u> , as determined by the Commissioner in	penalty of not
		consultation with the Commissioner of Buildings and General	violation; or
		Services or the Secretary of Transportation, as appropriate.	(2) a ci
		Either the Secretary or the Commissioner, as appropriate, shall	imprisonmen
		be consulted in any contest of the prohibition of the employer	
		from contracting with the State or its subdivisions Secretary of	
		Administration. The consultation shall be informal and shall	
		occur within five business days of the notification by the	
		Commissioner. The results of the consultation shall be	
		documented.	
		(c)(d) Penalty for violation of stop-work order. In addition to	
		any other penalties, an employer who violates a stop-work order	
		described in subsection (b) of this section is subject to:	
		(1) a civil an administrative penalty of not more than	
		\$5,000.00 for the first violation and a civil an administrative	
		penalty of not more than \$10,000.00 for a second or subsequent	
		violation; or	
		(2) a criminal fine of not more than \$10,000.00 or	
		imprisonment for not more than 180 days, or both.	
		(e) The Commissioner shall be represented by the	
		Attorney General in any action related to a purposeful violation	
		of the provisions of this section.	
21 V.S.A. § 690	N/A	§ 690. CERTIFICATE, FORM; COPY OF POLICY	§ 690. CERT
		* * *	
		(b)(1) In addition to any other authority provided to the	(b)(1) In a
		Commissioner pursuant to this chapter, the Commissioner may	Commissione
	I		

ure to comply was inadvertent or excusable, is rom contracting entering into subsequent contracts, indirectly, with the State or any of its subdivisions for up to three years following the date of the issuance of rk order an administrative citation, as determined by ssioner in consultation with the Commissioner of nd General Services or the Secretary of ion, as appropriate. Either the Secretary or the ner, as appropriate, shall be consulted in any contest bition of the employer from contracting with the subdivisions Secretary of Administration. The shall be informal and shall occur within five ys of the notification by the Commissioner. The e consultation shall be documented. enalty for violation of stop-work order. In addition to enalties, an employer who violates a stop-work order subsection (b) of this section is subject to: civil an administrative penalty of not more than or the first violation and a civil an administrative ot more than \$10,000.00 for a second or subsequent

criminal fine of not more than \$10,000.00 or ent for not more than 180 days, or both.

RTIFICATE, FORM; COPY OF POLICY

addition to any other authority provided to the ner pursuant to this chapter, the Commissioner may

Prepared By: Damien Leonard, Esq. Office of Legislative Council February 24, 2017

		February 24, 2017	
		issue a written request to an employer subject to the provisions of	issue a writt
		this chapter to provide a workers' compensation compliance	this chapter
		statement on a form provided by the Commissioner. The	statement or
		employer shall provide the compliance statement to the	employer sh
		Commissioner within 30 days of the request. For the purposes of	Commission
		this subsection, an employer includes subcontractors and	this subsecti
		independent contractors. The form shall require all the following	independent
		information sorted by job site:	information
		* * *	
		(2)(A) Any If an employer who fails to comply with this	<u>(c)</u> Upon
		subsection or falsifies information on the compliance statement	release infor
		the Commissioner may be assessed assess an administrative	or broker or
		penalty of not more than \$5,000.00 for each week during which	guarantee co
		the noncompliance or falsification occurred and any costs and	contract or p
		attorney's fees required to enforce this subsection against the	application,
		employer.	Commission
		(B) The Commissioner may also seek injunctive relief	
		in Washington Superior Court.	
		(C) If the Commissioner determines that the employer	
		has purposefully failed to comply with this subsection or	
		purposefully falsified information on the compliance statement,	
		any penalties assessed pursuant to subdivision (b)(2)(A) of this	
		subsection shall be doubled.	
		* * *	
		(c) Upon receiving written authorization from an employer to	
		release information to the Commissioner, the employer's agent	
		or broker or the authorized representative of an insurance or	
		guarantee company shall provide within five business days any	
		contract or policy information, including an insurance	
		application, binder, or reported payroll, that is requested by the	
		Commissioner pursuant to this section.	
		(d) The Commissioner shall be represented by the Attorney	
		General in any action related to a purposeful violation of the	
		provisions of this section.	
21 V.S.A. § 625	N/A	§ 625. CONTRACTING OUT FORBIDDEN; PROHIBITED	§ 625. CON
		ACTS; PENALTIES	ACTS; PEN
		(a) An Except as provided in subdivisions 601(3) and (14) of	<u>(a)</u> An <u>E</u>
		this chapter, an employer shall not be relieved in whole or in part	this chapter,
		from liability created by the provisions of this chapter by any	from liabilit
		contract, rule, regulation, or device whatsoever.	contract, rul
		(b) The Commissioner may investigate complaints that an	(b) The (
		employee has been improperly classified and determine whether	determine w
		a person meets the requirements to be an independent contractor	contractor se
		as set forth in subdivision 601(31) of this title.	Unless the C
		(c) Unless the improper classification was inadvertent or due	classificatio

ten request to an employer subject to the provisions of to provide a workers' compensation compliance in a form provided by the Commissioner. The hall provide the compliance statement to the ner within 30 days of the request. For the purposes of tion, an employer includes subcontractors and it contractors. The form shall require all the following a sorted by job site:

* * *

n receiving written authorization from an employer to rmation to the Commissioner, the employer's agent the authorized representative of an insurance or ompany shall provide within five business days any policy information, including an insurance binder, or reported payroll, that is requested by the ner pursuant to this section.

NTRACTING OUT FORBIDDEN<u>; PROHIBITED</u> NALTIES

Except as provided in subdivisions 601(3) and (14) of , an employer shall not be relieved in whole or in part ty created by the provisions of this chapter by any le, regulation, or device whatsoever. <u>Commissioner may investigate complaints and</u> whether the requirements to be an independent set forth in subdivision 601(31) of this title are met. <u>Commissioner determines that the improper</u> on was inadvertent or excusable, any person that, for

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February	24,	201	7
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		February 24, 2017	
		to excusable neglect, any person that, for the purpose of avoiding	the purpose of
		its obligations under this title, improperly classifies an employee	improperly cla
		as an independent contractor:	<u>may, after not</u>
		(A) shall be subject to an administrative penalty of not	administrative
		more than \$5,000.00; and	(c) A perso
		(B) may be liable for punitive damages in an amount	under this cha
		equal to any penalties assessed pursuant to this subsection in an	performing se
		action related to the improper classification of the employee that	assistance rela
		is brought pursuant to section 712 of this chapter.	business, incl
		(d)(1) If, following an investigation, the Commissioner	with the Vern
		determines that a person has improperly classified an employee	corporation of
		as an independent contractor, the Commissioner shall notify the	Identification
		Commissioners of Financial Regulation and of Taxes of the	hearing, be as
		determination.	\$5,000.00. A
		(2) Upon receiving notification of the determination, the	assistance" do
		Commissioners of Financial Regulation and of Taxes shall	<u>(1)</u> inqu
		conduct an investigation to determine whether the person has	corporation, o
		also misclassified the employee pursuant to the applicable	State;
		provisions of law under his or her jurisdiction.	(2) inq
		(e) Any person who, for the purpose of avoiding its	performing se
		obligations under this title, coerces an employee or prospective	corporation, o
		employee into becoming an independent contractor, after notice	(3) refe
		and an opportunity for a hearing, may be assessed an	or website rel
		administrative penalty of not more than \$5,000.00 and may be	unincorporate
		liable to the employee or prospective employee for punitive	-
		damages in an amount equal to any penalty assessed pursuant to	
		this subdivision in an action brought pursuant to section 712 of	
		this chapter.	
21 V.S.A. § 708	N/A	§ 708. PENALTY FOR FALSE REPRESENTATION	§ 708. PENA
		(a)(1)(A) Action by the Commissioner of Labor. A person	(a) Action
		who willfully If a person purposefully makes a false statement or	willfully purp
		representation, for the purpose of obtaining to obtain any benefit	for the purpos
		or payment under the provisions of this chapter, either for herself	under the pro-
		or himself or for any other person, the Commissioner may, after	or for any oth
		notice and opportunity for hearing, may be assessed assess an	may be assess
		administrative penalty of not more than \$20,000.00, and against	\$20,000.00, a
		the person.	compensation
		(B) In addition to any penalty imposed pursuant to	to be appropri
		(D) In addition to any denaity industry bursually to	
		subdivision (1)(A) of this subsection (a), the person shall forfeit	the Commissi
		subdivision (1)(A) of this subsection (a), the person shall forfeit all or a portion of any right to compensation under the provisions	the Commissi made a false s
		subdivision (1)(A) of this subsection (a), the person shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the	the Commissi made a false s addition, an er
		subdivision (1)(A) of this subsection (a), the person shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the Commissioner after a determination by the Commissioner that	the Commissi made a false s addition, an en prohibited fro
		subdivision (1)(A) of this subsection (a), the person shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the Commissioner after a determination by the Commissioner that the person has willfully purposefully made a false statement or	the Commissi made a false s addition, an en prohibited fro directly or ind
		subdivision (1)(A) of this subsection (a), the person shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the Commissioner after a determination by the Commissioner that	the Commissi made a false s addition, an en prohibited fro

of avoiding its obligations under this title, classifies an employee as an independent contractor otice and an opportunity for a hearing, be assessed an ve penalty of not more than \$5,000.00. rson who, for the purpose of avoiding its obligations hapter, provides an individual that is or will be services for the person with substantial and material elated to the establishment of an independent cluding the registration of an unincorporated business rmont Secretary of State, the establishment of a or L.L.C., or the acquisition of a federal Employer on Number, may, after notice and an opportunity for a assessed an administrative penalty of not more than As used in this subsection, "substantial and material does not include:

quiring about whether an unincorporated business, , or L.L.C. is actively registered with the Secretary of

iquiring about whether an individual that is or will be services operates an unincorporated business, , or L.L.C.; or

eferring an individual to a State agency, department, elated to the registration or establishment of an ited business, corporation, or L.L.C.

ALTY FOR FALSE REPRESENTATION

on by the Commissioner of Labor. A person who posefully makes a false statement or representation, ose of obtaining to obtain any benefit or payment ovisions of this chapter, either for herself or himself ther person, after notice and opportunity for hearing, ssed an administrative penalty of not more than and shall forfeit all or a portion of any right to on under the provisions of this chapter, as determined riate by the Commissioner after a determination by sioner that the person has willfully purposefully statement or representation of a material fact. In employer found to have violated this section is om contracting entering into subsequent contracts, directly, with the State or any of its subdivisions for ears following the date the employer was found to purposeful false statement or misrepresentation of a

Prepared By: Damien Leonard, Esq. Office of Legislative Council February 24, 2017

		February 24, 2017	
		section is prohibited from contracting entering into subsequent <u>contracts</u> , directly or indirectly, with the State or any of its subdivisions for up to three years following the date the employer was found to have made a <u>purposeful</u> false statement or misrepresentation of a material fact, as determined by the Commissioner in consultation with the Commissioner of Buildings and General Services or the Secretary of Transportation, as appropriate. Either the Secretary or the Commissioner, as appropriate, shall be consulted in any contest relating to the prohibition of the employer from contracting with the State or its subdivisions Secretary of Administration. The consultation may be informal and shall occur within five business days of the notification by the Commissioner. The outcome of the consultation shall be documented. (B) The employer may also be liable for punitive damages in an amount equal to any administrative penalty assessed pursuant to subsection (a) of this section that is brought pursuant to section 712 of this chapter. (b) When In addition to any penalties assessed pursuant to subsection (a) of this section, when the Department Commissioner of Labor has sufficient reason to believe that an employer has <u>purpose of obtaining to obtain</u> a lower workers' compensation premium, the <u>Department Commissioner</u> shall refer the alleged violation to the Commissioner of Financial Regulation for the Commissioner's consideration of enforcement pursuant to & V.S.A. § 3661(c).	material fact, a with the Comm Secretary of Tr or the Commiss contest relating contracting with Administration occur within fi Commissioner documented. (b) When I subsection (a) of sufficient reason made a false st obtaining to ob Department sho of Financial Re- enforcement pu
21 V.S.A. § 710	N/A	 § 710. UNLAWFUL DISCRIMINATION *** (b) No person shall discharge from employment or retaliate or discriminate against an employee from employment because such the employee asserted or attempted to assert a claim for benefits under this chapter or under the law of any state or under the United States. *** (d) An employer shall not retaliate or take any other negative action against an individual because the employer knows or suspects that the individual has filed a complaint with the Department or other authority, or reported a violation of this chapter, or cooperated in an investigation of misclassification, discrimination, or other violation of this chapter. (e) The Attorney General or a State's Attorney may enforce 	N/A

Il fact, as determined by the Commissioner in consultation e Commissioner of Buildings and General Services or the rry of Transportation, as appropriate. Either the Secretary Commissioner, as appropriate, shall be consulted in any relating to the prohibition of the employer from eting with the State or its subdivisions <u>Secretary of</u> istration. The consultation may be informal and shall within five business days of the notification by the issioner. The outcome of the consultation shall be

When In addition to any penalties assessed pursuant to tion (a) of this section, when the Department of Labor has ent reason to believe that an employer has <u>purposefully</u> false statement or representation for the purpose of <u>ng to obtain</u> a lower workers' compensation premium, the ment shall refer the alleged violation to the Commissioner ncial Regulation for the Commissioner's consideration of ement pursuant to 8 V.S.A. § 3661(c).

		February 24, 2017	
		the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurance assurances of	
		discontinuance, and conducting civil investigations in accordance	
		with the procedures established in 9 V.S.A. §§ 2458-2461 as	
		though discrimination under this section were an unfair act in	
		commerce.	
		(f) The provisions against retaliation in subdivision $405(2)(2)$ of this title and the second seco	
		495(a)(8) of this title and the penalty and enforcement provisions	
A1 X/C A 9 71A		of section 495b of this title shall apply to this subchapter.	
21 V.S.A. § 712	N/A	§ 712. PRIVATE RIGHT OF ACTION	N/A
		(a) If an employer fails to comply with the provisions of $(22, 622, 602, 708)$ or 710 of this shorter a neuron	
		sections 603, 625, 692, 708, or 710 of this chapter, a person harmed by the employer's failure may bring an action in the	
		Civil Division of the Superior Court seeking:	
		(1) compensatory damages;	
		(2) punitive damages,	
		(3) additional damages not more than \$500.00 for each	
		violation of sections 603, 625, 692, 708, and 710 of this chapter;	
		(4) equitable relief, including restraint of prohibited acts	
		and reinstatement;	
		(5) restitution of wages, benefits, and other compensation;	
		(6) costs and reasonable attorney's fees;	
		(7) and any other appropriate relief.	
		(b) An action pursuant to this section may be brought by one	
		or more persons on behalf of themselves and other persons	
		similarly situated.	
		(c) An action under this section must be brought within three	
		years after the final date on which the person performed services	
		for the employer.	
21 V.S.A. § 713	N/A	§ 713. INDIVIDUAL LIABILITY OF OFFICERS AND	N/A
		AGENTS	
		An officer or agent of an employer that knowingly permits the	
		employer to violate the provisions of sections 603, 625, 692, 708,	
		or 710 of this chapter may be held individually liable for each	
		violation and any penalties assessed for that violation.	
2010 Acts and	N/A	2010 Acts and Resolves No. 142, Sec. 7 is amended to read:	N/A
Resolves No. 142,		Sec. 7. DEPARTMENT OF LABOR; EMPLOYEE	
Sec. 7		MISCLASSIFICATION REPORTING SYSTEM	
		The department of labor Department of Labor shall create and	
		maintain an online employee misclassification reporting system.	
		The system shall be designed to allow individuals to report	
		suspected cases of employee misclassification, failure to have	
		appropriate insurance coverage, and claimant fraud to the department Department to ansure that this information is	
		department <u>Department</u> to ensure that this information is distributed to appropriate departments and agencies, including	
		usinouted to appropriate departments and agencies, including	



	<u>Sid</u>	DE-BY-SIDE OF SELECTED PROVISIONS FROM HOUSE EMPLOYEE CLASSIFICATION BILLS Prepared By: Damien Leonard, Esq. Office of Legislative Council February 24, 2017	
		the Office of the Attorney General. The department Department and any agency or department that the information is distributed to, including the Office of the Attorney General, shall keep the name of the complainant confidential.	
DFR and DOL Education and Outreach	N/A	N/A	DEPARTMEN DEPARTMEN On or befor Financial Regu and outreach p companies, ag workers, attorn (1) the o to 21 V.S.A. § (2) how classified as an circumstances

ENT OF FINANCIAL REGULATION AND ENT OF LABOR; EDUCATION; OUTREACH fore October 1, 2017, the Commissioners of egulation and of Labor shall develop an education h program for workers' compensation insurance agents, auditors, and adjusters, as well as employers, orneys, and tax professionals, regarding: the definition of "independent contractor" that is added . §§ 601 and 1301 by this act; and ow to determine whether a person should be an independent contractor under "the totality of the es" pursuant to those definitions.