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H.731

Representative Marcotte of Coventry moves that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 21 V.S.A. § 625 is amended to read:

* * * Misclassification of Employees * * *

625. CONTRACTING OUT FORBIDDEN; PROHIBITED ACTS;

PENALTIES

(a) An employer shall not be relieved in whole or in part from liability created by the provisions of this chapter by any contract, rule, regulation, or device whatsoever.

(b) A person who, for the purpose of avoiding its obligations under this chapter, provides an individual who is or will be performing services for the person with substantial and material assistance related to the establishment of an independent business, including the registration of an unincorporated business with the Vermont Secretary of State, the establishment of a corporation or L.L.C., or the acquisition of a federal Employer Identification Number, may, after notice and an opportunity for a hearing, be assessed an administrative penalty of not more than \$5,000.00. As used in this subsection, “substantial and material assistance” does not include:

1 (1) inquiring about whether an unincorporated business, corporation, or
2 L.L.C. is actively registered with the Secretary of State;

3 (2) inquiring about whether an individual operates an unincorporated
4 business, corporation, or L.L.C.; or

5 (3) referring an individual to a State agency, department, or website
6 related to the registration or establishment of an unincorporated business,
7 corporation, or L.L.C.

8 Sec. 2. 21 V.S.A. § 1369 is amended to read:

9 § 1369. FALSE STATEMENTS TO AVOID UNEMPLOYMENT

10 PROGRAM OBLIGATIONS

11 (a) A person who willfully makes a material false statement or
12 representation to avoid becoming or remaining subject to this chapter, or to
13 avoid or reduce a contribution or other payment required of an employer under
14 this chapter for either herself or himself or for any other person, after notice
15 and opportunity for hearing, may be assessed an administrative penalty of not
16 more than \$5,000.00.

17 (b) An employing unit or employer who, for the purpose of avoiding its
18 obligations under this chapter, provides an individual who is or will be
19 performing services for the employing unit or employer with substantial and
20 material assistance related to the establishment of an independent business,
21 including the registration of an unincorporated business with the Vermont

1 Secretary of State, the establishment of a corporation or L.L.C., or the
2 acquisition of a federal Employer Identification Number, may, after notice and
3 an opportunity for a hearing, be assessed an administrative penalty of not more
4 than \$5,000.00. As used in this subsection, “substantial and material
5 assistance” does not include:

6 (1) inquiring about whether an unincorporated business, corporation, or
7 L.L.C. is actively registered with the Secretary of State;

8 (2) inquiring about whether an individual operates an unincorporated
9 business, corporation, or L.L.C.; or

10 (3) referring an individual to a State agency, department, or website
11 related to the registration or establishment of an unincorporated business,
12 corporation, or L.L.C.

13 * * * Workers’ Compensation Administration Fund * * *

14 Sec. 3. WORKERS’ COMPENSATION RATE OF CONTRIBUTION

15 For fiscal year 2019, after consideration of the formula in 21 V.S.A.
16 § 711(b) and historical rate trends, the General Assembly has established that
17 the rate of contribution for the direct calendar year premium for workers’
18 compensation insurance shall remain at the rate of 1.4 percent. The
19 contribution rate for self-insured workers’ compensation losses and workers’
20 compensation losses of corporations approved under 21 V.S.A. chapter 9 shall
21 remain at one percent.

1 rule, or order alleged to have been violated, as well as the penalty, if any,
2 proposed to be assessed pursuant to section 210 of this title. In addition, the
3 citation shall fix a reasonable time for the abatement of the violation.

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

8 (b) Each citation issued under this section, or a copy or copies ~~thereof~~ of
9 the citation, shall be prominently posted, as prescribed in rules ~~promulgated~~
10 adopted by the Commissioner, at or near each place a violation referred to in
11 the citation occurred or existed.

12 * * *

13 Sec. 7. 21 V.S.A. § 226 is amended to read:

14 § 226. ENFORCEMENT

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

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

6 (b)(1)(A) If the Commissioner on inspection or investigation finds that an
7 employer has failed to correct a violation for which a citation has been issued
8 within the period permitted for its correction (~~which period shall not begin to~~
9 ~~run until the entry of a final order by the Review Board in the case of any~~
10 ~~review proceedings under this section initiated by the employer in good faith~~
11 ~~and not solely for delay or avoidance of penalties, or on the day the citation~~
12 ~~and assessment becomes final under subsection (a) of this section~~), the
13 Commissioner shall notify the employer by certified mail of ~~such~~ the failure
14 and of the penalty proposed to be assessed under section 210 of this title by
15 reason of ~~such~~ the failure.

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

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

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

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

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

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

10 * * * Effective Date * * *

11 Sec. 8. EFFECTIVE DATE

12 (a) This section and Secs. 4 and 5 shall take effect on passage.

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