

1 Introduced by Committee on Commerce and Economic Development

2 Date:

3 Subject: Labor; workers' compensation; unemployment insurance;  
4 independent contractors

5 Statement of purpose of bill as introduced: This bill proposes to amend the  
6 definitions related to independent contractors in the workers' compensation  
7 and unemployment insurance statutes.

8 An act relating to the classification of employees and independent  
9 contractors

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

11 Sec. 1. PURPOSE

12 By enacting this legislation, the General Assembly intends to support  
13 Vermont's entrepreneurial spirit, adapt to emerging business and employment  
14 trends, strengthen and grow Vermont's economy, make the State more  
15 competitive and affordable, support business growth and development, and  
16 maintain protections for Vermont's workforce. In particular, this legislation is  
17 intended to update Vermont's workers' compensation and unemployment  
18 insurance laws to make them more simple, clear, and comprehensible in  
19 order to:

1           (1) ensure that Vermont’s workers’ compensation and unemployment  
2           insurance systems reflect and support the unique character and spirit of  
3           innovation that is inherent in Vermont’s entrepreneurs, businesses, workers,  
4           and economy;

5           (2) embrace, strengthen, and build upon the emerging entrepreneurial,  
6           independent, and collaborative sectors of Vermont’s workforce and economy;

7           (3) assist businesses, employees, independent contractors, and insurers  
8           in complying with the requirements for the proper classification of employees  
9           and independent contractors;

10           (4) reduce the frequency of misclassification and the related harmful  
11           effects of misclassification to individuals, businesses, and society;

12           (5) facilitate the proper classification of employees and independent  
13           contractors by establishing a common definition for “independent contractor”  
14           and clarifying the presumption that an individual who performs services for  
15           compensation is an employee;

16           (6) provide for the efficient and fair enforcement of Vermont’s workers’  
17           compensation and unemployment insurance laws by the Department of  
18           Labor; and

19           (7) build on the more than 100-year evolution and improvement of the  
20           grand bargain in Vermont’s workers’ compensation law that provides

1 employees with a prompt, no-fault remedy for workplace injuries while  
2 limiting the potential liability of employers.

3 Sec. 2. 21 V.S.A. § 601 is amended to read:

4 § 601. DEFINITIONS

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

7 \* \* \*

8 (3) “Employer” includes any body of persons, corporate or  
9 unincorporated, public or private, and the legal representative of a deceased  
10 employer, and includes the owner or lessee of premises or other person who is  
11 virtually the proprietor or operator of the business there carried on, but who, by  
12 reason of there being an independent contractor or for any other reason, is not  
13 the direct employer of the workers there employed. If the employer is insured,  
14 the term “employer” includes the employer’s insurer so far as applicable. A  
15 person is not deemed to be an “employer” for the purposes of this chapter as  
16 the result of entering into a contract for services or labor with an individual  
17 a sole proprietor or partner owner who has knowingly and voluntarily waived  
18 coverage of this chapter pursuant to subdivision (14)(F) of this section, or an  
19 individual who is a corporate officer or L.L.C. member or manager who has  
20 filed, and had approved, an exclusion pursuant to subdivision 14(H) of this  
21 section and who meets the criteria set forth in that subdivision.

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\* \* \*

(14) “Worker” and “employee” means an individual who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. Any reference to a worker who has died as the result of a work injury shall include a reference to the worker’s dependents, and any reference to a worker who is a minor or incompetent shall include a reference to the minor’s committee, guardian, or next friend. ~~The term “worker” or “employee” does not include~~ An individual who performs services for compensation is presumed to be an employee unless he or she is one of the following:

\* \* \*

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

\* \* \*

(F)(i) ~~The~~ A sole proprietor or partner owner or partner owners of an unincorporated business provided the following conditions are met:

~~(i)(I)(aa)~~ The individual or partner owner is an independent contractor who performs work that is distinct and separate from that of the person with whom the individual or partner owner contracts; or

1                    (bb) the individual or partner owner is an independent  
2                    contractor and is either actively registered as a business with the Vermont  
3                    Secretary of State or actively registered as a business in the state or country of  
4                    domicile.

5                    ~~(ii) The individual controls the means and manner of the work~~  
6                    ~~performed.~~

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

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

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

14                    ~~(vi)~~(II) The services are performed pursuant to a written  
15                    agreement or contract between the individual or partner owner and ~~another~~  
16                    ~~person~~ the person that is providing compensation for the services, and the  
17                    written agreement or contract explicitly states that the individual or partner  
18                    owner is not considered to be an employee under this chapter, is working  
19                    independently, has no employees, and has not contracted with other  
20                    independent contractors. The written contract or agreement shall also include  
21                    information regarding the right of the individual or partner owner to purchase

1 workers' compensation insurance coverage ~~and the individual's election not to~~  
2 ~~purchase that coverage.~~ However, if the individual or partner owner who is  
3 party to the agreement or contract under this subdivision is found to have  
4 employees, those employees may file a claim for benefits under this chapter  
5 against either or both parties to the agreement.

6 (ii)(I) An individual or partner owner that meets the conditions of  
7 subdivision (i) of this subdivision (14)(F) may elect to file with the  
8 Commissioner a notice to waive the right to make a claim for workers'  
9 compensation against the person with whom the individual or partner owner  
10 contracts.

11 (II) If, after filing a notice under subdivision (I) of this  
12 subdivision (14)(F)(ii), the individual or partner owner suffers a personal  
13 injury arising out of and in the course of his or her employment, he or she may  
14 bring an action to recover damages for personal injury against the person who  
15 is providing compensation for the services and, in such action, the person who  
16 is providing compensation for the services shall have all of the defenses  
17 available in a personal injury claim. However, this election shall not prevent  
18 any other individual, other than the individual excluded pursuant to subdivision  
19 (i) of this subdivision (14)(F), who is determined to be an employee of the  
20 unincorporated business from claiming workers' compensation benefits under  
21 this chapter from the unincorporated business or from a statutory employer.



1                   (i) A person shall not be deemed to be an “employer” for purposes  
2                   of this chapter of corporate executive officers or L.L.C. managers or members  
3                   that are excluded under this subdivision (14)(H) if the following conditions  
4                   are met:

5                   (I) The corporate executive officers or L.L.C. managers or  
6                   members operate a separate and distinct business that meets the requirements  
7                   to be an independent contractor, is actively registered with the Vermont  
8                   Secretary of State, and elects to file a corporate officer or L.L.C. member  
9                   exclusion from the provisions of this chapter.

10                   (II) The services are performed pursuant to a written agreement  
11                   or contract between the corporation or L.L.C. and the person who is providing  
12                   compensation for the services, and the written agreement or contract explicitly  
13                   states that the corporate executive officers or L.L.C. managers or members are  
14                   not considered to be employees under this chapter and are working  
15                   independently. The written contract or agreement shall also include  
16                   information regarding the right of the corporation or L.L.C. to purchase  
17                   workers’ compensation insurance coverage and of the corporate executive  
18                   officers or the L.L.C. managers or members to elect not to exclude themselves  
19                   from coverage.

20                   (ii) If, after making an election under this subdivision (14)(H), the  
21                   corporate officer or L.L.C. manager or member suffers a personal injury

1 arising out of and in the course of his or her employment, he or she may bring  
2 an action to recover damages for personal injury against the person that is  
3 providing compensation for the services and, in such action, the person that is  
4 providing compensation for the services shall have all of the defenses available  
5 in a personal injury claim. However, this election shall not prevent any other  
6 individual, other than the individual excluded pursuant to this subdivision, who  
7 is determined to be an employee of the corporation or L.L.C. from claiming  
8 workers' compensation benefits under this chapter from the corporation or  
9 L.L.C. or from a statutory employer.

10 (iii) A corporation or L.L.C. whose executive officers, members,  
11 or managers make an election under this subdivision (14)(H) shall collect and  
12 maintain documentation that any other person hired to perform services for the  
13 corporation or L.L.C. has workers' compensation coverage, or is otherwise in  
14 compliance with this chapter.

15 (I) An individual who provides services for which he or she receives  
16 foster care payments that are specifically excluded from gross income pursuant  
17 to Section 131 of the federal Internal Revenue Code, 26 U.S.C. § 131.

18 \* \* \*

19 (31)(A) "Independent contractor" means a person that is economically  
20 independent of the person's employing unit under the totality of the  
21 circumstances based on an assessment of the following factors:

1           (i) whether the individual is free from the direction and control of  
2           the employing unit with respect to the means and manner of the work  
3           performed, both under the person’s contract of service and in fact;

4           (ii) whether the individual performs work that is an integral part of  
5           the employing unit’s business;

6           (ii) whether the individual operates a separate and distinct  
7           business from that of the employing unit and the extent to which the individual  
8           is performing work that is an integral part of the employing unit’s business;

9           (iii) whether the individual has an opportunity for profit or loss  
10          depending on his or her managerial skill;

11          (iii) whether the individual may realize a profit or suffer a loss as a  
12          result of the application of his or her business acumen in performing the  
13          services;

14          (iv) whether the individual has a substantial investment in the  
15          facilities, tool, instruments, materials, and knowledge used by him or her to  
16          complete the work;

17          (v) whether the work performed requires specialized skills and  
18          initiative;

19          (vi) whether the individual holds himself or herself out as in  
20          business for himself or herself and competes to offer its services to the general  
21          public; and

1                   (vii) whether the individual is not treated as an employee for  
2                   purposes of income or employment taxation with regard to the work performed  
3                   and either:

4                   (I) holds or has applied for a federal employer identification  
5                   number; or

6                   (II) has filed business or self-employment tax returns with the  
7                   federal Internal Revenue Service within the past year or will file business or  
8                   self-employment tax returns with the federal Internal Revenue Service for the  
9                   current year.

10                  (B) In considering whether a person is economically independent  
11                  pursuant to subdivision (A) of this subdivision (31), no single factor in and of  
12                  itself shall be dispositive.

13                  (C) If multiple persons are performing the same work on a project or  
14                  jobsite, the determination of whether the person is economically independent  
15                  of the employing unit shall take into account the relationship between the  
16                  specific services performed by the person and the circumstances of the project  
17                  or job in relation to which the person is providing services.

18                  (D) An independent contractor shall purchase workers' compensation  
19                  coverage for its employees as provided in this chapter.

1 Sec. 3. 21 V.S.A. § 1301 is amended to read:

2 § 1301. DEFINITIONS

3 The following words and phrases, as used in this chapter, shall have the  
4 following meanings unless the context clearly requires otherwise:

5 \* \* \*

6 (6)(A)(i) “Employment,” subject to the other provisions of this  
7 subdivision (6), means service within the jurisdiction of this State, performed  
8 prior to January 1, 1978, which was employment as defined in this subdivision  
9 prior to ~~such~~ that date and, subject to the other provisions of this subdivision,  
10 service performed after December 31, 1977, by an employee, as defined in  
11 subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including  
12 service in interstate commerce, performed for wages or under any contract of  
13 hire, written or oral, expressed or implied. Services partly within and partly  
14 without this State may by election as hereinbefore provided be treated as if  
15 wholly within the jurisdiction of this State. And whenever an employing unit  
16 shall have elected to come under the provisions of a similar act of a state where  
17 a part of the services of an employee are performed, the Commissioner, upon  
18 his or her approval of ~~said~~ the election as to any such employee, may treat the  
19 services covered by ~~said~~ the approved election as having been performed  
20 wholly without the jurisdiction of this State.

21 \* \* \*

1           (B)(i) Services performed by an individual for wages shall be deemed  
2 to be employment subject to this chapter unless and until it is shown to the  
3 satisfaction of the Commissioner that the individual is economically  
4 independent of his or her employing unit under the totality of the  
5 circumstances in light of the following factors:

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

9           ~~(ii) Such service is either outside the usual course of the business~~  
10 ~~for which such service is performed, or that such service is performed outside~~  
11 ~~of all the places of business of the enterprise for which such service is~~  
12 ~~performed; and~~

13           ~~(iii) Such individual is customarily engaged in an independently~~  
14 ~~established trade, occupation, profession, or business.~~

15           (I) whether the individual is free from the direction and control  
16 of the employing unit with respect to the means and manner of the services  
17 performed, both under the person's contract of service and in fact;

18           (II) whether the individual performs work that is an integral  
19 part of the employing unit's business;

1                   (II) whether the individual operates a separate and distinct  
2                   business from that of the employing unit and the extent to which the individual  
3                   is performing work that is an integral part of the employing unit’s business;

4                   (III) whether the individual has an opportunity for profit or loss  
5                   depending on his or her managerial skill;

6                   (III) whether the individual may realize a profit or suffer a loss  
7                   as a result of the application of his or her business acumen in performing the  
8                   services;

9                   (IV) whether the individual has a substantial investment in the  
10                  facilities, tool, instruments, materials, and knowledge used by him or her to  
11                  complete the work;

12                  (V) whether the work performed requires specialized skills and  
13                  initiative;

14                  (VI) whether the individual holds himself or herself out as in  
15                  business for himself or herself and competes to offer his or her services to the  
16                  general public; and

17                  (VII) whether the individual is not treated as an employee for  
18                  purposes of income or employment taxation with regard to the work performed  
19                  and either:

20                         (aa) holds or has applied for a federal employer  
21                         identification number; or



1        (b) The Agency of Administration shall create an interagency and  
2        departmental task force to coordinate efforts to combat misclassification of  
3        workers and to ensure enforcement of all related laws and regulations. The  
4        task force shall be overseen by the Agency of Administration and the Office of  
5        the Attorney General and shall be composed of the following members:

6                (1) the Secretary of Administration or designee;

7                (2) the Attorney General or designee;

8                (3) the Secretary of Transportation or designee;

9                (4) the Commissioner of Buildings and General Services or designee;

10               (5) the Commissioner of Labor or designee;

11               (6) the Commissioner of Financial Regulation or designee;

12               (7) the Secretary of Human Services or designee;

13               (8) the Commissioner of Taxes or designee;

14               (9) the Commissioner of Liquor Control or designee; and

15               (10) the Secretary, Commissioner, or designee of any other State

16        licensing agency or department as determined by the Secretary of  
17        Administration.

18               (c)(1) The Task Force shall meet at least six times per year.

19               (2) The Secretary of Administration or designee and the Attorney  
20        General or designee shall be Co-Chairs of the Task Force.

1        (d) The Secretary of Administration shall ensure that all State agencies do  
2        the following:

3            (1) coordinate their efforts to combat employee misclassification in a  
4        manner that increases the efficiency and effectiveness of those efforts; and

5            (2) In a central database accessible to all State agencies and  
6        departments, share information concerning any employer determined to have  
7        misclassified one or more employees as independent contractors.

8        (e) The Secretary shall adopt rules and procedures necessary to carry out  
9        the duties set forth in subsection (d) of this section.

10       (f) The Secretary of Administration shall report annually on or before January  
11       15 of each year to the House Committees on Commerce and Economic  
12       Development and on Ways and Means and the Senate Committee on Finance  
13       regarding activities that he or she has undertaken pursuant to this section and  
14       any additional tax revenue and unemployment insurance contributions, as well  
15       as any reduction in workers' compensation premiums and costs, realized as a  
16       result of the efforts undertaken by the Secretary pursuant to this section. The  
17       provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply  
18       to the report to be made under this subsection.

19       **[H.323]** Sec. 4. 3 V.S.A. § 2222d is added to read:

20       § 2222d. VERMONT EMPLOYEE CLASSIFICATION TASK FORCE

1        (a) Creation and purpose. The Vermont Employee Classification Task  
2        Force is created in the Agency of Administration to reduce the frequency of  
3        employee misclassification through enhanced education, improved  
4        coordination of State resources, and increased collaboration among State  
5        government, businesses, labor, and other stakeholders.

6        (b) Membership. The Task Force shall be composed of the following nine  
7        members:

8            (1) the Secretary of Administration or designee;

9            (2) the Commissioner of Labor or designee;

10           (3) the Secretary of Transportation or designee;

11           (4) the Commissioner of Buildings and General Services or designee;

12           (5) the Commissioner of Financial Regulation or designee;

13           (6) the Secretary of Human Services or designee;

14           (7) the Commissioner of Taxes or designee;

15           (8) the Attorney General or designee; and

16           (9) the Commissioner of Liquor Control or designee.

17        (c) Meetings.

18           (1) The Task Force shall meet at least six times per year.

19           (2) The Secretary of Administration or designee shall be the Chair.

20           (3) A majority of the membership of the Task Force shall constitute a  
21        quorum.

1        (d) Duties.

2            (1) The Task Force shall have the following duties:

3                    (A) to develop and implement an ongoing outreach program to  
4                    educate and inform employers, workers, and the general public about the  
5                    proper classification of employees and independent contractors;

6                    (B) to examine and evaluate existing misclassification enforcement  
7                    by State agencies and departments;

8                    (C) to develop and implement strategies to improve coordination,  
9                    cooperation, and information sharing among State agencies and departments in  
10                   relation to the investigation and enforcement of employee misclassification;

11                   (D) to review and establish reasonable mechanisms to accept  
12                   complaints and reports of noncompliance;

13                   (E) to ensure that State agencies and departments are engaged in  
14                   timely enforcement;

15                   (F) to ensure that penalties and debarment periods are posted on a  
16                   publicly available website in a timely manner, to the extent permitted by law;

17                   (G) to review and recommend additional methods to provide public  
18                   notice and share information regarding enforcement, penalties, and debarment  
19                   periods;

20                   (H) to develop strategies and programs to assist businesses in  
21                   complying with Vermont’s requirements for the proper classification of

1 employees and independent contractors, and to reduce the frequency of  
2 employee misclassification; and

3 (I) to recommend legislative, regulatory, and administrative measures  
4 to reduce the frequency of employee misclassification.

5 (2) The Task Force shall consult and collaborate with businesses, labor,  
6 and other interested stakeholders to accomplish the duties set forth in  
7 subdivision (1) of this subsection, and may appoint representatives of business,  
8 labor, and other interested stakeholders to subcommittees as the Task Force  
9 deems appropriate.

10 (e) Reports.

11 (1) The Task Force shall report annually on or before January 15 to the  
12 House Committee on Commerce and Economic Development and the Senate  
13 Committee on Finance regarding the activities that it has undertaken pursuant  
14 to this section, the progress of the Task Force's ongoing education and  
15 outreach programs, the number and results of the employer audits conducted  
16 during the previous calendar year, and any barriers or impediments to the  
17 proper classification of employees and independent contractors that the Task  
18 Force has identified. The report may recommend legislative, regulatory, and  
19 administrative measures to reduce the frequency of employee misclassification.  
20 The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not  
21 apply to the report to be made under this subsection.

1           (2) The Task Force shall examine the issue of comprehensive  
2           enforcement of employee misclassification within Vermont’s workers’  
3           compensation system and potential measures to improve the efficacy of the  
4           State’s misclassification enforcement mechanisms, including by transferring  
5           the responsibility for the investigation and enforcement of misclassification to  
6           the Office of the Attorney General. The Task Force shall develop and  
7           establish performance measures to evaluate the efficacy of efforts to enforce  
8           the requirements for classification of employees and independent contractors,  
9           and any improvement in the outcomes of the State’s enforcement efforts over  
10           time. On or before February 15, 2018, the Task Force shall report to the House  
11           Committee on Commerce and Economic Development and the Senate  
12           Committee on Finance with a recommendation for a comprehensive plan to  
13           improve the State’s misclassification enforcement mechanisms and any  
14           legislative, regulatory, or administrative measures necessary to implement  
15           the plan.

16           (3) The Task Force shall study the use of multiple independent  
17           contractors to perform the same work on a project or jobsite to determine how  
18           often employee misclassification occurs in such situations. In performing its  
19           study, the Task Force shall review documented instances of misclassification  
20           and may consult with businesses, labor, and other interested stakeholders. On  
21           or before February 15, 2018, the Task Force shall submit a written report to the

1 General Assembly with its findings and any recommendations for legislative  
2 action.

3 (4) The Task Force shall examine the issue of whether all workers in  
4 certain industries should be required to be covered by workers' compensation  
5 insurance. On or before February 15, 2018, the Task Force shall submit a  
6 written report to the General Assembly with its findings and any  
7 recommendations for legislative action.

8 (f) Definition. As used in this section, “employee misclassification” means  
9 the improper classification of employees as independent contractors.

10 [H.223 and 323] Sec. 5. 21 V.S.A. § 398 is added to read:

11 § 398. NOTICE TO PERSON RECEIVING COMPENSATION AS AN  
12 INDEPENDENT CONTRACTOR

13 (a)(1) Every employer shall post in a prominent and accessible place on a  
14 site where work is performed a poster provided by the Department that shall  
15 explain the differences between an “employee” and an “independent  
16 contractor” pursuant to the applicable provisions of chapters 9 and 17 of this  
17 title. The poster shall also include information regarding:

18 (A) the protections against retaliation provided by this title;

19 (B) the penalties provided pursuant to this title for failure to classify  
20 an individual properly as an employee;

1           (C) how an individual may file a complaint or inquiry with the  
2           Commissioner about his or her employment classification status; and

3           (D) how an employer may obtain guidance or information from the  
4           Department with respect to the proper classification of employees and  
5           independent contractors.

6           (2)(A) The information set forth on the poster shall be in English or  
7           other languages as required by the Commissioner.

8           (B) If the poster is located outdoors, it shall be constructed of  
9           materials capable of withstanding adverse weather conditions.

10           (3) An employer shall, at the time of hiring, provide home-based  
11           employees and employees that do not work at a fixed worksite with the  
12           information required under subdivision (1) of this subsection. The information  
13           shall be provided in a format provided by the Department.

14           (b) On or before August 1, 2017, the Commissioner shall create the poster  
15           required pursuant to subsection (a) of this section and shall make it available to  
16           employers on the Department's website.

17           (c) An employer who violates the provisions of this section shall be subject  
18           to an administrative penalty of not more than \$100.00 per violation.

19           [H.223 and H.323] Sec. 6. 21 V.S.A. § 603 is amended to read:

20           § 603. WITNESSES, OATHS, BOOKS, PAPERS, RECORDS

1 (a) So far as it is necessary in his or her examinations and investigations  
2 and in the determination of matters within his or her jurisdiction, the  
3 Commissioner shall have power to subpoena witnesses, administer oaths, and  
4 to demand the production of books, papers, records, and documents for his or  
5 her examination. In addition, the Commissioner or designee may, upon  
6 presenting appropriate credentials, at reasonable times and without unduly  
7 disrupting business operations enter and inspect any place of business or  
8 employment, question any employees, and investigate any facts, conditions, or  
9 matters necessary and material to the administration of this chapter. The  
10 employer shall, at reasonable times and without unduly disrupting business  
11 operations, make its workers available to meet with the Commissioner or  
12 designee, as required by the Commissioner. The Commissioner or designee  
13 shall inform the employer of the employer's rights to refuse entry and to  
14 consult with legal counsel, and of the Commissioner's rights under this  
15 section. If entry is refused, the Commissioner may apply to the Civil Division  
16 of the Superior Court for an order to enforce the rights given to the  
17 Commissioner under this section.

18 \* \* \*

19 [H.223] Sec. 7. 21 V.S.A. § 692 is amended to read:

20 § 692. PENALTIES; FAILURE TO INSURE; ~~STOP WORK~~ STOP WORK  
21 ORDERS

1           (a)(1) Failure to insure. If after a hearing under section 688 of this title, the  
2 Commissioner determines that an employer has failed to comply with the  
3 provisions of section 687 of this title, the employer shall be assessed an  
4 administrative penalty of not more than \$100.00 for every day for the first  
5 seven days the employer neglected to secure liability and not more than  
6 \$150.00 for every day thereafter.

7           (2) Purposeful violation. If the Commissioner determines that the  
8 employer purposefully violated section 687 of this title:

9           (A) any penalties assessed pursuant to subdivision (1) of this  
10 subsection shall be doubled; and

11           (B) the employer may be liable for punitive damages in an amount  
12 equal to any penalties assessed pursuant to this subsection in an action related  
13 to the employer's purposeful violation of section 687 that is brought pursuant  
14 to section 712 of this chapter.

15           (b) Stop-work orders. If an employer fails to comply with the provisions of  
16 section 687 of this title after investigation by the Commissioner, the  
17 Commissioner ~~shall~~ may issue an emergency order to that employer to stop  
18 work until the employer has secured workers' compensation insurance. If the  
19 Commissioner determines that issuing a stop-work order would immediately  
20 threaten the safety or health of the public, the Commissioner may permit work  
21 to continue until the immediate threat to public safety or health is removed.

1 The Commissioner shall document the reasons for permitting work to continue,  
2 and the document shall be available to the public. In addition, the employer  
3 shall be assessed an administrative penalty of not more than \$250.00 for every  
4 day that the employer fails to secure workers' compensation coverage after the  
5 Commissioner issues an order to obtain insurance and may also be assessed an  
6 administrative penalty of not more than \$250.00 for each employee for every  
7 day that the employer fails to secure workers' compensation coverage as  
8 required in section 687 of this title. When a stop-work order is issued, the  
9 Commissioner shall post a notice at a conspicuous place on the work site of the  
10 employer informing the employees that their employer failed to comply with  
11 the provisions of section 687 of this title and that work at the work site has  
12 been ordered to cease until workers' compensation insurance is secured. If an  
13 employer fails to comply with a stop-work order, the Commissioner may seek  
14 an order from the Civil Division of the Superior Court to enjoin the employer  
15 from employing any individual. The stop-work order shall be rescinded as  
16 soon as the Commissioner determines that the employer is in compliance with  
17 section 687 of this title.

18 (c) Debarment. An employer ~~against whom a stop-work order has been~~  
19 ~~issued~~ who has not been in compliance with section 687 of this title, unless the  
20 Commissioner determines that the failure to comply was inadvertent or  
21 excusable, is prohibited from ~~contracting~~ entering into subsequent contracts,

1 directly or indirectly, with the State or any of its subdivisions for a period of up  
2 to three years following the date of the issuance of ~~the stop-work order a~~  
3 citation, as determined by the Commissioner in consultation with the  
4 ~~Commissioner of Buildings and General Services or the Secretary of~~  
5 ~~Transportation, as appropriate. Either the Secretary or the Commissioner, as~~  
6 ~~appropriate, shall be consulted in any contest of the prohibition of the~~  
7 ~~employer from contracting with the State or its subdivisions~~ Secretary of  
8 Administration. The consultation shall be informal and shall occur within five  
9 business days of the notification by the Commissioner. The results of the  
10 consultation shall be documented.

11 ~~(e)~~(d) Penalty for violation of stop-work order. In addition to any other  
12 penalties, an employer who violates a stop-work order described in subsection  
13 (b) of this section is subject to:

14 (1) ~~a civil~~ an administrative penalty of not more than \$5,000.00 for the  
15 first violation and ~~a civil~~ an administrative penalty of not more than  
16 \$10,000.00 for a second or subsequent violation; or

17 (2) a criminal fine of not more than \$10,000.00 or imprisonment for not  
18 more than 180 days, or both.



1 Commissioner shall post a notice at a conspicuous place on the work site of the  
2 employer informing the employees that their employer failed to comply with  
3 the provisions of section 687 of this title and that work at the work site has  
4 been ordered to cease until workers' compensation insurance is secured. If an  
5 employer fails to comply with a stop-work order, the Commissioner may seek  
6 an order from the Civil Division of the Superior Court to enjoin the employer  
7 from employing any individual. The stop-work order shall be rescinded as  
8 soon as the Commissioner determines that the employer is in compliance with  
9 section 687 of this title.

10 (c) Debarment. An employer ~~against whom a stop-work order has been~~  
11 ~~issued~~ who has not been in compliance with section 687 of this chapter, unless  
12 the Commissioner determines that the failure to comply was inadvertent or  
13 excusable, is prohibited from ~~contracting~~ entering into subsequent contracts,  
14 directly or indirectly, with the State or any of its subdivisions for a period of up  
15 to three years following the date of the issuance of ~~the stop-work order~~ an  
16 administrative citation, as determined by the Commissioner in consultation  
17 with the ~~Commissioner of Buildings and General Services or the Secretary of~~  
18 ~~Transportation, as appropriate. Either the Secretary or the Commissioner, as~~  
19 ~~appropriate, shall be consulted in any contest of the prohibition of the~~  
20 ~~employer from contracting with the State or its subdivisions~~ Secretary of  
21 Administration. The consultation shall be informal and shall occur within five

1 business days of the notification by the Commissioner. The results of the  
2 consultation shall be documented.

3 ~~(e)~~(d) Penalty for violation of stop-work order. In addition to any other  
4 penalties, an employer who violates a stop-work order described in subsection  
5 (b) of this section is subject to:

6 (1) ~~a civil~~ an administrative penalty of not more than \$5,000.00 for the  
7 first violation and ~~a civil~~ an administrative penalty of not more than  
8 \$10,000.00 for a second or subsequent violation; or

9 (2) a criminal fine of not more than \$10,000.00 or imprisonment for not  
10 more than 180 days, or both.

11 [H.223 and H.323] Sec. 8. 21 V.S.A. § 7 is added to read:

12 § 7. COLLECTION OF ADMINISTRATIVE PENALTIES

13 The Commissioner may collect any unpaid administrative penalty assessed  
14 pursuant to this title by filing an action in Superior Court or through any other  
15 means available to State agencies.

16 [H.223 and H.323] Sec. 9. 4 V.S.A. § 1102 is amended to read:

17 § 1102. JUDICIAL BUREAU; JURISDICTION

18 \* \* \*

19 (b) The Judicial Bureau shall have jurisdiction of the following matters:

20 \* \* \*

21 (20) ~~Violations of 21 V.S.A. § 692(e)(1).~~ [Repealed.]

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[H.223] Sec. 10. 21 V.S.A. § 690 is amended to read:

§ 690. CERTIFICATE, FORM; COPY OF POLICY

\* \* \*

(b)(1) In addition to any other authority provided to the Commissioner pursuant to this chapter, the Commissioner may issue a written request to an employer subject to the provisions of this chapter to provide a workers' compensation compliance statement on a form provided by the Commissioner. The employer shall provide the compliance statement to the Commissioner within 30 days of the request. For the purposes of this subsection, an employer includes subcontractors and independent contractors. The form shall require all the following information sorted by job site:

\* \* \*

(2)(A) ~~Any~~ If an employer who fails to comply with this subsection or falsifies information on the compliance statement the Commissioner may be assessed assess an administrative penalty of not more than \$5,000.00 for each week during which the noncompliance or falsification occurred and any costs and attorney's fees required to enforce this subsection against the employer.

(B) The Commissioner may also seek injunctive relief in Washington Superior Court.



1 within 30 days of the request. For the purposes of this subsection, an employer  
2 includes subcontractors and independent contractors. The form shall require  
3 all the following information sorted by job site:

4 \* \* \*

5 (c) Upon receiving written authorization from an employer to release  
6 information to the Commissioner, the employer's agent or broker or the  
7 authorized representative of an insurance or guarantee company shall provide  
8 within five business days any contract or policy information, including an  
9 insurance application, binder, or reported payroll, that is requested by the  
10 Commissioner pursuant to this section.

11 **[H.223]** Sec. 11. 21 V.S.A. § 625 is amended to read:

12 § 625. CONTRACTING OUT FORBIDDEN; PROHIBITED ACTS;

13 PENALTIES

14 (a) ~~An~~ Except as provided in subdivisions 601(3) and (14) of this chapter,  
15 an employer shall not be relieved in whole or in part from liability created by  
16 the provisions of this chapter by any contract, rule, regulation, or device  
17 whatsoever.

18 (b) The Commissioner may investigate complaints that an employee has  
19 been improperly classified and determine whether a person meets the  
20 requirements to be an independent contractor as set forth in subdivision  
21 601(31) of this title.

1        (c) Unless the improper classification was inadvertent or due to excusable  
2        neglect, any person that, for the purpose of avoiding its obligations under this  
3        title, improperly classifies an employee as an independent contractor:

4                (A) shall be subject to an administrative penalty of not more than  
5                \$5,000.00; and

6                (B) may be liable for punitive damages in an amount equal to any  
7        penalties assessed pursuant to this subsection in an action related to the  
8        improper classification of the employee that is brought pursuant to section 712  
9        of this chapter.

10              (d)(1) If, following an investigation, the Commissioner determines that a  
11              person has improperly classified an employee as an independent contractor, the  
12              Commissioner shall notify the Commissioners of Financial Regulation and of  
13              Taxes of the determination.

14              (2) Upon receiving notification of the determination, the Commissioners  
15              of Financial Regulation and of Taxes shall conduct an investigation to  
16              determine whether the person has also misclassified the employee pursuant to  
17              the applicable provisions of law under his or her jurisdiction.

18              (e) Any person who, for the purpose of avoiding its obligations under this  
19              title, coerces an employee or prospective employee into becoming an  
20              independent contractor, after notice and an opportunity for a hearing, may be  
21              assessed an administrative penalty of not more than \$5,000.00 and may be

1 liable to the employee or prospective employee for punitive damages in an  
2 amount equal to any penalty assessed pursuant to this subdivision in an action  
3 brought pursuant to section 712 of this chapter.

4 [H.323] Sec. 11. 21 V.S.A. § 625 is amended to read:

5 § 625. CONTRACTING OUT FORBIDDEN; PROHIBITED ACTS;

6 PENALTIES

7 (a) ~~An~~ Except as provided in subdivisions 601(3) and (14) of this chapter,  
8 an employer shall not be relieved in whole or in part from liability created by  
9 the provisions of this chapter by any contract, rule, regulation, or device  
10 whatsoever.

11 (b) The Commissioner may investigate complaints and determine whether  
12 the requirements to be an independent contractor set forth in subdivision  
13 601(31) of this title are met. Unless the Commissioner determines that the  
14 improper classification was inadvertent or excusable, any person that, for the  
15 purpose of avoiding its obligations under this title, improperly classifies an  
16 employee as an independent contractor may, after notice and an opportunity  
17 for a hearing, be assessed an administrative penalty of not more than  
18 \$5,000.00.

19 (c) A person who, for the purpose of avoiding its obligations under this  
20 chapter, provides an individual that is or will be performing services for the  
21 person with substantial and material assistance related to the establishment of

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

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

9 (2) inquiring about whether an individual that is or will be performing  
10 services operates an unincorporated business, corporation, or L.L.C.; or

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

14 [H.223 and H.323] Sec. 12. 8 V.S.A. § 3661 is amended to read:

15 § 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND

16 PENALTIES

17 \* \* \*

18 (c) An employer who makes a false statement or representation that results  
19 in a lower workers’ compensation premium, after notice and opportunity for  
20 hearing before the Commissioner, may be assessed an administrative penalty  
21 of not more than \$20,000.00 in addition to any other appropriate penalty. In

1 addition, an employer found to have violated this section is prohibited from  
2 ~~contracting~~ entering into subsequent contracts, directly or indirectly, with the  
3 State or any of its subdivisions for up to three years following the date the  
4 employer was found to have made a false statement or misrepresentation, as  
5 determined by the Commissioner in consultation with the ~~Commissioner of~~  
6 ~~Buildings and General Services or the Secretary of Transportation~~, as  
7 appropriate. ~~Either the Secretary or the Commissioner, as appropriate, shall be~~  
8 ~~consulted in any appeal relating to prohibiting the employer from contracting~~  
9 ~~with the State or its subdivisions~~ Secretary of Administration. The  
10 consultation may be informal and shall occur within five business days of the  
11 notification by the Commissioner. The outcome of the consultation shall be  
12 documented.

13 \* \* \*

14 [H.223 and H.323] Sec. 13. 21 V.S.A. § 1314a is amended to read:

15 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;

16 PENALTIES

17 \* \* \*

18 (f)(1) Any employing unit or employer that fails to:

19 (A) File any report required by this section shall be subject to a an  
20 administrative penalty of \$100.00 for each report not received by the  
21 prescribed due dates.



1 Commissioner may, after notice and opportunity for hearing, ~~may be assessed~~  
2 assess an administrative penalty of not more than \$20,000.00, ~~and~~ against the  
3 person.

4 (B) In addition to any penalty imposed pursuant to subdivision (1)(A)  
5 of this subsection (a), the person shall forfeit all or a portion of any right to  
6 compensation under the provisions of this chapter, as determined to be  
7 appropriate by the Commissioner after a determination by the Commissioner  
8 that the person has ~~willfully~~ purposefully made a false statement or  
9 representation of a material fact.

10 (2)(A) In addition, an employer found to have violated this section is  
11 prohibited from ~~contracting~~ entering into subsequent contracts, directly or  
12 indirectly, with the State or any of its subdivisions for up to three years  
13 following the date the employer was found to have made a purposeful false  
14 statement or misrepresentation of a material fact, as determined by the  
15 Commissioner in consultation with the ~~Commissioner of Buildings and~~  
16 ~~General Services or the Secretary of Transportation, as appropriate. Either the~~  
17 ~~Secretary or the Commissioner, as appropriate, shall be consulted in any~~  
18 ~~contest relating to the prohibition of the employer from contracting with the~~  
19 ~~State or its subdivisions~~ Secretary of Administration. The consultation may be  
20 informal and shall occur within five business days of the notification by the  
21 Commissioner. The outcome of the consultation shall be documented.



1 Commissioner after a determination by the Commissioner that the person has  
2 ~~willfully~~ purposefully made a false statement or representation of a material  
3 fact. In addition, an employer found to have violated this section is prohibited  
4 from ~~contracting~~ entering into subsequent contracts, directly or indirectly, with  
5 the State or any of its subdivisions for up to three years following the date the  
6 employer was found to have made a purposeful false statement or  
7 misrepresentation of a material fact, as determined by the Commissioner in  
8 consultation with the ~~Commissioner of Buildings and General Services or the~~  
9 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~  
10 ~~Commissioner, as appropriate, shall be consulted in any contest relating to the~~  
11 ~~prohibition of the employer from contracting with the State or its subdivisions~~  
12 Secretary of Administration. The consultation may be informal and shall occur  
13 within five business days of the notification by the Commissioner. The  
14 outcome of the consultation shall be documented.

15 (b) ~~When~~ In addition to any penalties assessed pursuant to subsection (a) of  
16 this section, when the Department of Labor has sufficient reason to believe that  
17 an employer has purposefully made a false statement or representation for the  
18 purpose of obtaining to obtain a lower workers' compensation premium, the  
19 Department shall refer the alleged violation to the Commissioner of Financial  
20 Regulation for the Commissioner's consideration of enforcement pursuant to  
21 8 V.S.A. § 3661(c).

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[H.223 and H.323] Sec. 15. 21 V.S.A. § 1307 is amended to read:

§ 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

The Commissioner of Labor shall administer this chapter. The Commissioner may employ ~~such~~ persons, make ~~such~~ expenditures, require ~~such~~ reports, make ~~such~~ investigations, and take ~~such~~ other action as he or she considers necessary or suitable to that end. In the discharge of his or her duties imposed by this chapter, the Commissioner may administer oaths, take depositions, certify to official acts, and subpoena witnesses and compel the production of books, papers, correspondence, memoranda, and other records necessary and material to the administration of this chapter. In addition, the Commissioner or designee may, upon presenting appropriate credentials, at reasonable times and without unduly disrupting business operations enter and inspect any place of business or employment, question any employee, and investigate any fact, condition, or matter necessary and material to the administration of this chapter. The employer shall, at reasonable times and without unduly disrupting business operations, make its workers available to meet with the Commissioner or designee, as required by the Commissioner. The Commissioner or designee shall inform the employer of the employer's rights to refuse entry and to consult with legal counsel, and of the Commissioner's rights under this section. If entry is refused, the

1 Commissioner may apply to the Civil Division of the Superior Court for an  
2 order to enforce the rights given to the Commissioner under this section.

3 **[H.323]** Sec. 16. DEPARTMENT OF FINANCIAL REGULATION AND  
4 DEPARTMENT OF LABOR; EDUCATION; OUTREACH

5 On or before October 1, 2017, the Commissioners of Financial Regulation  
6 and of Labor shall develop an education and outreach program for workers’  
7 compensation insurance companies, agents, auditors, and adjusters, as well as  
8 employers, workers, attorneys, and tax professionals, regarding:

9 (1) the definition of “independent contractor” that is added to 21 V.S.A.  
10 §§ 601 and 1301 by this act; and

11 (2) how to determine whether a person should be classified as an  
12 independent contractor under “the totality of the circumstances” pursuant to  
13 those definitions.

14 **[H.223]** Sec. 17. 21 V.S.A. § 710 is amended to read:

15 § 710. UNLAWFUL DISCRIMINATION

16 \* \* \*

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

21 \* \* \*

1 (d) An employer shall not retaliate or take any other negative action against  
2 an individual because the employer knows or suspects that the individual has  
3 filed a complaint with the Department or other authority, ~~or~~ reported a  
4 violation of this chapter, ~~or~~ cooperated in an investigation of misclassification,  
5 discrimination, or other violation of this chapter, or testified in a proceeding  
6 related to a violation of this chapter.

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

1 (f) The provisions against retaliation in subdivision 495(a)(8) of this title  
2 and the penalty and enforcement provisions of section 495b of this title shall  
3 apply to this subchapter.

4 **[H.223]** Sec. 18. 21 V.S.A. § 712 is added to read:

5 § 712. PRIVATE RIGHT OF ACTION

6 (a) If an employer fails to comply with the provisions of sections 603, 625,  
7 692, 708, or 710 of this chapter, a person harmed by the employer's failure  
8 may bring an action in the Civil Division of the Superior Court seeking:

9 (1) compensatory damages;

10 (2) punitive damages,

11 (3) additional damages not more than \$500.00 for each violation of  
12 sections 603, 625, 692, 708, and 710 of this chapter;

13 (4) equitable relief, including restraint of prohibited acts and  
14 reinstatement;

15 (5) restitution of wages, benefits, and other compensation;

16 (6) costs and reasonable attorney's fees;

17 (7) and any other appropriate relief.

18 (b) An action pursuant to this section may be brought by one or more  
19 persons on behalf of themselves and other persons similarly situated.

20 (c) An action under this section must be brought within three years after the  
21 final date on which the person performed services for the employer.

1 **[H.223]** Sec. 19. 21 V.S.A. § 713 is added to read:

2 § 713. INDIVIDUAL LIABILITY OF OFFICERS AND AGENTS

3 An officer or agent of an employer that knowingly permits the employer to  
4 violate the provisions of sections 603, 625, 692, 708, or 710 of this chapter  
5 may be held individually liable for each violation and any penalties assessed  
6 for that violation.

7 **[H.223]** Sec. 20. 2010 Acts and Resolves No. 142, Sec. 7 is amended to read:

8 Sec. 7. DEPARTMENT OF LABOR; EMPLOYEE

9 MISCLASSIFICATION REPORTING SYSTEM

10 The ~~department of labor~~ Department of Labor shall create and maintain an  
11 online employee misclassification reporting system. The system shall be  
12 designed to allow individuals to report suspected cases of employee  
13 misclassification, failure to have appropriate insurance coverage, and claimant  
14 fraud to the ~~department~~ Department to ensure that this information is  
15 distributed to appropriate departments and agencies, including the Office of the  
16 Attorney General. The ~~department~~ Department and any agency or department  
17 that the information is distributed to, including the Office of the Attorney  
18 General, shall keep the name of the complainant confidential.

19 Sec. 20. RULEMAKING

20 The Department of Labor shall adopt rules as necessary to implement this  
21 act.

1 [H.223] Sec. 21. EFFECTIVE DATE

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

3 [H.323] Sec. 21. EFFECTIVE DATES

4 (a) This section and Secs. 1, 4, and 16 shall take effect on July 1, 2017.

5 (b) In Sec. 5, 21 V.S.A. § 398(b) shall take effect on July 1, 2017, and the  
6 remainder of the section shall take effect on October 1, 2017.

7 (c) The remaining sections shall take effect on October 1, 2017.

DRAFT