

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, to create the Vermont Employee
8 Classification Task Force, to provide for notice of the requirements regarding
9 employee classification at worksites, to permit the Department of Labor to
10 enter an employer's premises for the purposes of investigating compliance
11 with the workers' compensation and unemployment compensation statutes, to
12 permit the Department to obtain an injunction to enforce a stop-work order
13 related to a violation of the workers' compensation statute, and to clarify the
14 requirements for consultation regarding debarment of employers that have
15 violated the wage and hour, workers' compensation, and unemployment
16 compensation statutes.

17 An act relating to the classification of employees and independent
18 contractors

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

2 Sec. 1. PURPOSE

3 By enacting this legislation, the General Assembly intends to support
4 Vermont’s entrepreneurial spirit, adapt to emerging business and employment
5 trends, strengthen and grow Vermont’s economy, make the State more
6 competitive and affordable, support business growth and development, and
7 maintain protections for Vermont’s workforce. In particular, this legislation is
8 intended to update Vermont’s workers’ compensation and unemployment
9 insurance laws to make them more simple, clear, and comprehensible in
10 order to:

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

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

17 (3) assist businesses, employees, independent contractors, and insurers
18 in complying with the requirements for the proper classification of employees
19 and independent contractors;

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

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

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

8 (7) build on the more than 100-year evolution and improvement of the
9 grand bargain in Vermont’s workers’ compensation law that provides
10 employees with a prompt, no-fault remedy for workplace injuries while
11 limiting the potential liability of employers.

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

13 § 601. DEFINITIONS

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

16 * * *

17 (3) “Employer” includes any body of persons, corporate or
18 unincorporated, public or private, and the legal representative of a deceased
19 employer, and includes the owner or lessee of premises or other person who is
20 virtually the proprietor or operator of the business there carried on, but who, by
21 reason of there being an independent contractor or for any other reason, is not

1 the direct employer of the workers there employed. If the employer is insured,
2 the term “employer” includes the employer’s insurer so far as applicable. A
3 person is not deemed to be an “employer” for the purposes of this chapter as
4 the result of entering into a contract for services or labor with ~~an individual~~
5 a sole proprietor or partner owner that is not an employee pursuant to
6 subdivision (14)(F) of this section who has knowingly and voluntarily waived
7 coverage of this chapter pursuant to subdivision (14)(F) section 611 of this
8 section title, or an individual who is a corporate officer or L.L.C. member or
9 manager that is not an employee pursuant to subdivision (14)(H) of this
10 section.

11 * * *

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

21 * * *

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

4 * * *

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

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

10 (II) the individual or partner owner is an independent
11 contractor and is either actively registered as a business with the Vermont
12 Secretary of State or actively registered as a business in the state or country of
13 domicile.

14 ~~(ii) The individual controls the means and manner of the work~~
15 ~~performed.~~

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

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

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

3 ~~(vi)~~(ii) The services are performed pursuant to a written agreement
4 or contract between the individual or partner owner and ~~another person~~ the
5 person that is providing compensation for the services, and the written
6 agreement or contract explicitly states that the individual or partner owner is
7 not considered to be an employee under this chapter, is working independently,
8 has no employees, and has not contracted with other independent contractors.
9 The written contract or agreement shall also include information regarding the
10 right of the individual or partner owner to purchase workers' compensation
11 insurance coverage ~~and the individual's election not to purchase that coverage.~~
12 However, if the individual or partner owner who is party to the agreement or
13 contract under this subdivision is found to have employees, those employees
14 may file a claim for benefits under this chapter against either or both parties to
15 the agreement.

16 * * *

17 (H) ~~With the approval of the Commissioner, a corporation or a~~
18 ~~limited liability company (L.L.C.) may elect to file exclusions from the~~
19 ~~provisions of this chapter. A corporation or an L.L.C. may elect to exclude up~~
20 ~~to four executive officers or managers or members from coverage requirements~~
21 ~~under this chapter. If all officers of the corporation or all managers or~~

1 members of an L.L.C. make such election, receive approval, and the business
2 has no employees, the corporation or L.L.C. shall not be required to purchase
3 workers' compensation coverage. If after election, the officer, manager, or
4 member experiences a personal injury and files a claim under this chapter, the
5 employer shall have all the defenses available in a personal injury claim.
6 However, this election shall not prevent any other individual, other than the
7 individual excluded under this section, found to be an employee of the
8 corporation or L.L.C. to recover workers' compensation from either the
9 corporation, L.L.C., or the statutory employer. A corporate executive officer
10 or L.L.C. manager or member that is excluded under section 612 of this title,
11 provided the following conditions are met:
12 (i) The corporation or L.L.C.:
13 (I) is a separate and distinct business from the person for whom
14 it is performing services;
15 (II) meets the requirements to be an independent contractor
16 under subdivision (31) of this section; and
17 (III) is actively registered with the Vermont Secretary of State.
18 (ii) The services are performed pursuant to a written agreement or
19 contract between the corporation or L.L.C. and the person who is providing
20 compensation for the services, and the written agreement or contract explicitly
21 states that the corporate executive officers or L.L.C. managers or members are

1 not considered to be employees under this chapter and are working
2 independently. The written contract or agreement shall also include
3 information regarding the right of the corporation or L.L.C. to purchase
4 workers' compensation insurance coverage and of the corporate executive
5 officers or the L.L.C. managers or members to elect not to exclude themselves
6 from coverage.

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

10 * * *

11 (31)(A) "Independent contractor" means an individual that is
12 economically independent of his or her employing unit under the totality of the
13 circumstances based on an assessment of whether:

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

17 (ii) the individual operates a separate and distinct business from
18 that of the employing unit and the extent to which the individual is performing
19 work that is an integral part of the employing unit's business;

20 (iii) the individual controls his or her opportunity to realize a
21 profit or a loss;

1 (iv) the individual has a substantial investment in the facilities,
2 tools, instruments, materials, and knowledge used by him or her to complete
3 the work;

4 (v) the work performed requires specialized skills and initiative;

5 (vi) the individual holds himself or herself out as in business for
6 himself or herself and competes to offer his or her services to the general
7 public; and

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

10 (I) holds or has applied for a federal Employer Identification
11 Number; or

12 (II) has filed business or self-employment tax returns with the
13 federal Internal Revenue Service within the past year or will file business or
14 self-employment tax returns with the federal Internal Revenue Service for the
15 current year.

16 (B) In considering whether an individual is economically
17 independent pursuant to subdivision (A) of this subdivision (31), no single
18 factor in and of itself shall be dispositive.

19 (C) If multiple persons are performing the same work on a project or
20 jobsite, the determination of whether the individual is economically
21 independent of the employing unit shall take into account the relationship

1 between the specific services performed by the individual and the
2 circumstances of the project or job in relation to which the person is providing
3 services.

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

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

7 § 1301. DEFINITIONS

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

10 * * *

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

1 where a part of the services of an employee are performed, the Commissioner,
2 upon his or her approval of ~~said~~ the election as to any such employee, may
3 treat the services covered by ~~said~~ the approved election as having been
4 performed wholly ~~without~~ outside the jurisdiction of this State.

5 * * *

6 (B)(i) Services performed by an individual for wages shall be deemed
7 to be employment subject to this chapter unless and until it is shown to the
8 satisfaction of the Commissioner that the individual is economically
9 independent of his or her employing unit under the totality of the
10 circumstances in light of whether:

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

14 ~~(ii) Such service is either outside the usual course of the business~~
15 ~~for which such service is performed, or that such service is performed outside~~
16 ~~of all the places of business of the enterprise for which such service is~~
17 ~~performed; and~~

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

1 (I) the individual is free from the direction and control of the
2 employing unit with respect to the means and manner of the services
3 performed, both under his or her contract of service and in fact;

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

7 (III) the individual controls his or her opportunity to realize a
8 profit or a loss;

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

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

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

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

20 (aa) holds or has applied for a federal Employer
21 Identification Number; or

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

3 (1) the Secretary of Administration or designee;

4 (2) the Commissioner of Labor or designee;

5 (3) the Secretary of Transportation or designee;

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

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

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

9 (7) the Commissioner of Taxes or designee;

10 (8) the Attorney General or designee; and

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

12 (c) Meetings.

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

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

15 (3) A majority of the membership of the Task Force shall constitute a

16 quorum.

17 (d) Duties.

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

19 (A) to develop and implement an ongoing outreach program to

20 educate and inform employers, workers, and the general public about the

21 proper classification of employees and independent contractors;

1 (B) to examine and evaluate existing misclassification enforcement
2 by State agencies and departments;

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

6 (D) to review and establish reasonable mechanisms to accept
7 complaints and reports of noncompliance;

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

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

12 (G) to review and recommend additional methods to provide public
13 notice and share information regarding enforcement, penalties, and debarment
14 periods;

15 (H) to develop strategies and programs to assist businesses in
16 complying with Vermont’s requirements for the proper classification of
17 employees and independent contractors, and to reduce the frequency of
18 employee misclassification; and

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

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

6 (e) Reports.

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

18 (2) The Task Force shall examine the issue of comprehensive
19 enforcement of employee misclassification within Vermont’s workers’
20 compensation system and potential measures to improve the efficacy of the
21 State’s misclassification enforcement mechanisms, including by transferring

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

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

20 (4) The Task Force shall examine the issue of whether all workers in
21 certain industries should be required to be covered by workers’ compensation

1 insurance. On or before February 15, 2018, the Task Force shall submit a
2 written report to the General Assembly with its findings and any
3 recommendations for legislative action.

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

6 Sec. 5. 21 V.S.A. § 611 is added to read:

7 § 611. SOLE PROPRIETOR OR PARTNER OWNER OF

8 UNINCORPORATED BUSINESS; WAIVER OF COVERAGE

9 (a) An individual or partner owner that meets the conditions of subdivision
10 601(14)(F) of this title may elect to file with the Commissioner a notice to
11 wave the right to make a claim for workers’ compensation against the person
12 with whom the individual or partner owner contracts.

13 (b)(1) If, after filing a notice under subsection (a) of this section, the
14 individual or partner owner suffers a personal injury arising out of and in the
15 course of his or her employment, he or she may bring an action to recover
16 damages for personal injury against the person with whom he or she has
17 contracted and, in that action, the person with whom the individual or partner
18 owner has contracted shall have all of the defenses available in a personal
19 injury claim.

20 (2) An election under this section shall not prevent any other individual,
21 other than the individual that filed the election pursuant to subsection (a) of

1 this section, who is determined to be an employee of the unincorporated
2 business from claiming workers' compensation benefits under this chapter
3 from the unincorporated business or from a statutory employer.

4 (c) An individual or partner owner who makes an election under subsection
5 (a) of this section shall collect and maintain documentation that any other
6 person hired to perform services for the sole proprietor or partner owner's
7 unincorporated business has workers' compensation coverage or is otherwise
8 in compliance with the provisions of this chapter.

9 Sec. 6. 21 V.S.A. § 612 is added to read:

10 § 612. EXECUTIVE OFFICERS, MEMBERS, AND MANAGERS;

11 EXCLUSION FROM COVERAGE; ELECTION

12 (a) With the approval of the Commissioner, a corporation or a limited
13 liability company (L.L.C.) may elect to exclude up to four corporate executive
14 officers or four L.L.C. managers or members from the coverage requirements
15 under this chapter. If all officers of a corporation or all managers or members
16 of an L.L.C. make an election, receive approval, and the business has no
17 employees, the corporation or L.L.C. shall not be required to purchase
18 workers' compensation coverage.

19 (b)(1) If, after making an election pursuant to subsection (a) of this section,
20 a corporate officer or L.L.C. manager or member suffers a personal injury
21 arising out of and in the course of his or her employment, he or she may bring

1 an action to recover damages for personal injury against the person that is
2 providing compensation for the services that he or she is performing. In such
3 an action, the person that is providing compensation for the services shall have
4 all of the defenses available in a personal injury claim.

5 (2) An election under subsection (a) of this section shall not prevent any
6 other individual, other than the individual that made the election, who is
7 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 (c) A corporation whose executive officers or an L.L.C. whose members or
11 managers make an election under subsection (a) of this section shall collect
12 and maintain documentation that any other person hired to perform services for
13 the corporation or L.L.C. has workers' compensation coverage, or is otherwise
14 in compliance with this chapter.

15 Sec. 7. 21 V.S.A. § 398 is added to read:

16 § 398. NOTICE TO PERSON RECEIVING COMPENSATION AS AN
17 INDEPENDENT CONTRACTOR

18 (a)(1) Every employer shall post in a prominent and accessible place on a
19 site where work is performed a poster provided by the Department that shall
20 explain the differences between an "employee" and an "independent

1 contractor” pursuant to the applicable provisions of chapters 9 and 17 of this
2 title. The poster also shall include information regarding:

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

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

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

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

11 (2)(A) The information set forth on the poster shall be in English and
12 other languages as required by the Commissioner.

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

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

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

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

3 Sec. 8. 21 V.S.A. § 603 is amended to read:

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

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

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Sec. 9. 21 V.S.A. § 692 is amended to read:

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

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

(2) Purposeful violation. If the Commissioner determines that the employer purposefully violated section 687 of this title, any penalties assessed pursuant to subdivision (1) of this subsection shall be doubled.

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

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

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

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

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

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

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

18 (e) The Commissioner shall be represented by the Attorney General in any
19 action related to a purposeful violation of the provisions of this section.

1 Sec. 10. 21 V.S.A. § 7 is added to read:

2 § 7. COLLECTION OF ADMINISTRATIVE PENALTIES

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

6 Sec. 11. 4 V.S.A. § 1102 is amended to read:

7 § 1102. JUDICIAL BUREAU; JURISDICTION

8 * * *

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

10 * * *

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

12 * * *

13 Sec. 12. 21 V.S.A. § 690 is amended to read:

14 § 690. CERTIFICATE, FORM; COPY OF POLICY

15 * * *

16 (b)(1) In addition to any other authority provided to the Commissioner
17 pursuant to this chapter, the Commissioner may issue a written request to an
18 employer subject to the provisions of this chapter to provide a workers'
19 compensation compliance statement on a form provided by the Commissioner.
20 The employer shall provide the compliance statement to the Commissioner
21 within 30 days of the request. For the purposes of this subsection, an employer

1 includes subcontractors and independent contractors. The form shall require
2 all the following information sorted by job site:

3 * * *

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

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

12 (C) If the Commissioner determines that the employer has
13 purposefully failed to comply with this subsection (b) or purposefully falsified
14 information on the compliance statement, any penalties assessed pursuant to
15 subdivision (A) of this subdivision (2) shall be doubled.

16 * * *

17 (c) Upon receiving written authorization from an employer to release
18 information to the Commissioner, the employer's agent or broker or the
19 authorized representative of an insurance or guarantee company shall provide
20 within five business days any contract or policy information, including an

1 insurance application, binder, or reported payroll, that is requested by the
2 Commissioner pursuant to this section.

3 (d) The Commissioner shall be represented by the Attorney General in any
4 action related to a purposeful violation of the provisions of this section.

5 Sec. 13. 21 V.S.A. § 625 is amended to read:

6 § 625. CONTRACTING OUT FORBIDDEN; PROHIBITED ACTS;

7 PENALTIES

8 (a) ~~An~~ Except as provided in sections 611 and 612 and subdivisions 601(3)
9 and (14) of this chapter, an employer shall not be relieved in whole or in part
10 from liability created by the provisions of this chapter by any contract, rule,
11 regulation, or device whatsoever.

12 (b) The Commissioner may investigate complaints and determine whether
13 the requirements to be an independent contractor set forth in subdivision
14 601(31) of this title are met. Unless the Commissioner determines that the
15 improper classification was inadvertent or excusable, any person that, for the
16 purpose of avoiding its obligations under this title, improperly classifies an
17 employee as an independent contractor may, after notice and an opportunity
18 for a hearing, be assessed an administrative penalty of not more than
19 \$5,000.00.

20 (c) A person who, for the purpose of avoiding its obligations under this
21 chapter, provides an individual that is or will be performing services for the

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

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

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

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

15 Sec. 14. 8 V.S.A. § 3661 is amended to read:

16 § 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND
17 PENALTIES

18 * * *

19 (c) An employer who makes a false statement or representation that results
20 in a lower workers’ compensation premium, after notice and opportunity for
21 hearing before the Commissioner, may be assessed an administrative penalty

1 of not more than \$20,000.00 in addition to any other appropriate penalty. In
2 addition, an employer found to have violated this section is prohibited from
3 ~~contracting~~ entering into subsequent contracts, directly or indirectly, with the
4 State or any of its subdivisions for up to three years following the date the
5 employer was found to have made a false statement or misrepresentation, as
6 determined by the Commissioner in consultation with the ~~Commissioner of~~
7 ~~Buildings and General Services or the Secretary of Transportation~~, as
8 appropriate. ~~Either the Secretary or the Commissioner, as appropriate, shall be~~
9 ~~consulted in any appeal relating to prohibiting the employer from contracting~~
10 ~~with the State or its subdivisions~~ Secretary of Administration. The
11 consultation may be informal and shall occur within five business days of the
12 notification by the Commissioner. The outcome of the consultation shall be
13 documented.

14 * * *

15 Sec. 15. 21 V.S.A. § 1314a is amended to read:

16 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;
17 PENALTIES

18 * * *

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

1 Sec. 16. 21 V.S.A. § 708 is amended to read:

2 § 708. PENALTY FOR FALSE REPRESENTATION

3 (a)(1)(A) ~~Action by the Commissioner of Labor. A person who willfully~~ If
4 a person purposefully makes a false statement or representation, ~~for the~~
5 ~~purpose of obtaining~~ to obtain any benefit or payment under the provisions of
6 this chapter, either for herself or himself or for any other person, the
7 Commissioner may, after notice and opportunity for hearing, ~~may be assessed~~
8 assess an administrative penalty of not more than \$20,000.00, ~~and against the~~
9 person.

10 (B) In addition to any penalty imposed pursuant to subdivision (A) of
11 this subdivision (1), the person shall forfeit all or a portion of any right to
12 compensation under the provisions of this chapter, as determined to be
13 appropriate by the Commissioner after a determination by the Commissioner
14 that the person has ~~willfully~~ purposefully made a false statement or
15 representation of a material fact.

16 (2) In addition, an employer found to have violated this section is
17 prohibited from ~~contracting~~ entering into subsequent contracts, directly or
18 indirectly, with the State or any of its subdivisions for up to three years
19 following the date the employer was found to have made a purposeful false
20 statement or misrepresentation of a material fact, as determined by the
21 Commissioner in consultation with the ~~Commissioner of Buildings and~~

1 ~~General Services or the Secretary of Transportation, as appropriate. Either the~~
2 ~~Secretary or the Commissioner, as appropriate, shall be consulted in any~~
3 ~~contest relating to the prohibition of the employer from contracting with the~~
4 ~~State or its subdivisions~~ Secretary of Administration. The consultation may be
5 informal and shall occur within five business days of the notification by the
6 Commissioner. The outcome of the consultation shall be documented.

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

14 * * *

15 Sec. 17. 21 V.S.A. § 1307 is amended to read:

16 § 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

17 The Commissioner of Labor shall administer this chapter. The
18 Commissioner may employ ~~such~~ persons, make ~~such~~ expenditures, require
19 ~~such~~ reports, make ~~such~~ investigations, and take ~~such~~ other action as he or she
20 considers necessary or suitable to that end. In the discharge of his or her duties
21 imposed by this chapter, the Commissioner may administer oaths, take

1 depositions, certify to official acts, and subpoena witnesses and compel the
2 production of books, papers, correspondence, memoranda, and other records
3 necessary and material to the administration of this chapter. In addition, the
4 Commissioner or designee may, upon presenting appropriate credentials, at
5 reasonable times and without unduly disrupting business operations enter and
6 inspect any place of business or employment, question any employee, and
7 investigate any fact, condition, or matter necessary and material to the
8 administration of this chapter. The employer shall, at reasonable times and
9 without unduly disrupting business operations, make its workers available to
10 meet with the Commissioner or designee, as required by the Commissioner.
11 The Commissioner or designee shall inform the employer of the employer's
12 rights to refuse entry and to consult with legal counsel, and of the
13 Commissioner's rights under this section. If entry is refused, the
14 Commissioner may apply to the Civil Division of the Superior Court for an
15 order to enforce the rights given to the Commissioner under this section.

16 Sec. 18. DEPARTMENT OF FINANCIAL REGULATION AND

17 DEPARTMENT OF LABOR; EDUCATION; OUTREACH

18 On or before October 1, 2017, the Commissioners of Financial Regulation
19 and of Labor shall develop an education and outreach program for workers'
20 compensation insurance companies, agents, auditors, and adjusters, as well as
21 employers, workers, attorneys, and tax professionals, regarding:

1 ~~assurance~~ assurances of discontinuance, and conducting civil investigations in
2 accordance with the procedures established in 9 V.S.A. §§ 2458-2461 as
3 though discrimination under this section were an unfair act in commerce.

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

7 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. 21. RULEMAKING

20 [PLACEHOLDER]

