



Vermont Businesses
for Social Responsibility

House Commerce Independent Contractor Bill

House Committee on Commerce and Economic Development
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Testimony by Daniel Barlow VBSR Public Policy Manager

Vermont Businesses for Social Responsibility (VBSR) is a non-profit, statewide business trade organization with a mission to advance business ethics that value multiple bottom lines- economic, social, and environmental. We strive to help members set a high standard for protecting the natural, human and economic environments of the state's residents, while remaining profitable. Founded in 1991, VBSR has more than 750 members across Vermont.

VBSR believes that the ideal job for many Vermonters is still full-time, pays a living wage, and includes employer-sponsored health insurance and other important benefits. Economic models that exploit workers and create unlevel playing fields should be rejected.

Still, our economy is changing and our laws must adapt to allow for an entrepreneurial spirit that challenges conventions. New industries and a younger workforce bring energy, opportunity, and new ideas to our economy. Vermont must respond to that. The economy and workforce succeed when workers have both stability and flexibility – and we should not sacrifice one for the other.

House Commerce Independent Contractor Bill

Sec. 1 Purpose

Strikes right balance between:

- Supporting entrepreneurial spirit of Vermont and the innovative “out of the

box” business thinking that Vermont is known for.

- Protecting the traditional employment system – and the worker benefits and support that come with that system.

Sec. 2 & 3 Definitions

VBSR supports the Independent Contractor test as outlined in the bill because it:

- Considers the totality of the circumstances, no single factor determinative,
- Is modeled closely on the federal “economic realities” test”
- Retains “integral to the business” as a relevant factor in these decisions.,

This combination creates a test that is both flexible to the changing markets and unique employment opportunities and strong enough that it would not lead to more misclassification or reduction in benefits or protections for employees.

Vermont’s Economic Independence test

- Free from direction and control
- Operates separate and distinct business AND work performed NOT integral to business
- Opportunity for profit and loss
- Substantial investment in tools, materials, knowledge
- Work performed requires specialized skills and initiative
- Holds self out as a business for other opportunities
- Not an employee for tax purposes

Open Questions:

- How closely should Vermont's test directly be aligned in both spirit and words to the federal economic realities test to take advantage of relevant judicial guidance and educational materials?

Other sections

Misclassification is a serious concern in our economy because it deprives workers of important rights in the workplace and creates an unlevel playing field for businesses that are following the rules. State resources are limited and should be focused on high-risk or low-wage industries that are known to routinely misclassify employees.

Recommendations:

- Place the Misclassification Task Force into statute with the goal of reducing misclassification in Vermont.
- Vermont Department of Labor needs clear guidance on implementation and enforcement of the new test to ensure accuracy and consistency.
- Other models to increase compliance and reduce misclassification should be explored.
- Legislature should consider how a system of portable benefits would support the creation of innovative business models and change what we view as the traditional employment model.

Daniel Barlow
VBSR Public Policy Manager
danielb@vbsr.org
(802) 355-7461
www.vbsr.org