

SIDE-BY-SIDE OF SELECTED PROVISIONS FROM HOUSE EMPLOYEE CLASSIFICATION BILLS

Prepared By: Damien Leonard, Esq.

Office of Legislative Council

February 24, 2017

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

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

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or an L.L.C. may elect to exclude up to four corporate executive officers or four L.L.C. managers or members from coverage requirements under this chapter. If all officers of the corporation or all managers or members of an L.L.C. make ~~such~~ the election, and receive approval, and the business has no employees, the corporation or L.L.C. shall not be required to purchase workers' compensation coverage. ~~If after election, the officer, manager, or member experiences a personal injury and files a claim under this chapter, the employer shall have all the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded under this section, found to be an employee of the corporation or L.L.C. to recover workers' compensation from either the corporation, L.L.C., or the statutory employer.~~

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

(I) The corporate executive officers or L.L.C. managers or members operate a separate and distinct business that is an independent contractor and is actively registered with the Vermont Secretary of State.

(II) The services are performed pursuant to a written contract or agreement between the corporation or L.L.C. and the person who is providing compensation for the services, and the contract or agreement explicitly states that the corporate executive officers or L.L.C. managers or members are not considered to be employees under this chapter and are working independently. The contract or agreement shall also include information regarding the right of the corporation or L.L.C. to purchase workers' compensation insurance coverage and the right of the corporate executive officers or the L.L.C. managers or members to elect not to exclude themselves from coverage. The contract or agreement shall provide that any claim related to a personal injury arising out of and in the course of the individual or partner owner's employment shall be brought in Vermont Superior Court.

(ii) If, after making an election under this subdivision (14)(H), the corporate officer or L.L.C. manager or member suffers a personal injury arising out of and in the course of his or her employment, he or she may bring an action to recover damages for personal injury against the person who is providing compensation for the services and, in that action, the person who is providing compensation for the services shall have all of the defenses available in a personal injury claim. This

or an L.L.C. may elect to exclude up to four corporate executive officers or four L.L.C. managers or members from coverage requirements under this chapter. If all officers of the corporation or all managers or members of an L.L.C. make such election, receive approval, and the business has no employees, the corporation or L.L.C. shall not be required to purchase workers' compensation coverage. ~~If after election, the officer, manager, or member experiences a personal injury and files a claim under this chapter, the employer shall have all the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded under this section, found to be an employee of the corporation or L.L.C. to recover workers' compensation from either the corporation, L.L.C., or the statutory employer.~~

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

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

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

(ii) If, after making an election under this subdivision (14)(H), the corporate officer or L.L.C. manager or member suffers a personal injury arising out of and in the course of his or her employment, he or she may bring an action to recover damages for personal injury against the person who is providing compensation for the services and, in such action, the person who is providing compensation for the services shall have all of the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded pursuant to this subdivision, who is determined to be an employee of the corporation or L.L.C. from

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		<p><u>election shall not prevent any individual, other than the individual excluded pursuant to this subdivision, who is determined to be an employee of the corporation or L.L.C. from claiming workers' compensation benefits under this chapter from the corporation or L.L.C. or from a statutory employer.</u></p> <p><u>(iii) A corporation or L.L.C. whose executive officers, members, or managers make an election under this subdivision (14)(H) shall document that any person hired to perform services for the corporation or L.L.C. has workers' compensation coverage or is otherwise in compliance with this chapter.</u></p>	<p><u>claiming workers' compensation benefits under this chapter from the corporation or L.L.C. or from a statutory employer.</u></p> <p><u>(iii) A corporation or L.L.C. whose executive officers, members, or managers make an election under this subdivision (14)(H) shall collect and maintain documentation that any other person hired to perform services for the corporation or L.L.C. has workers' compensation coverage, or is otherwise in compliance with this chapter.</u></p>
<p>21 V.S.A. § 601(14)(I)</p>	<p><u>(I) An independent contractor if it can be demonstrated that the independent contractor is free from the essential direction and control of the employing unit, both under the individual's contract and in fact, and the employing unit proves that the individual meets all of the criteria in subdivision (i) and at least two of the criteria in subdivision (ii) of this subdivision (14)(I).</u></p> <p><u>(i) In order for an individual to be an independent contractor, all of the following criteria must be satisfied:</u></p> <p><u>(I) The individual has the essential right to control the means and progress of the work except as to the final results.</u></p> <p><u>(II) The individual is customarily engaged in an independently established trade, occupation, profession, or business.</u></p> <p><u>(III) The individual has a substantive investment in the facilities, tools, instruments, materials, and knowledge used by him or her to complete the work.</u></p> <p><u>(IV) The individual has the opportunity for profit and loss as a result of the services being performed for the employing unit.</u></p> <p><u>(V) The individual hires and pays his or her employees, if any, and supervises the details of the employees' work.</u></p> <p><u>(VI) The individual makes his or her services available to the general public and is able to accept work for entities other than the employing unit, whether or not he or she chooses to do so.</u></p> <p><u>(ii) In order for an individual to be an independent contractor, at least two of the following criteria must be met:</u></p> <p><u>(I) The individual is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work.</u></p> <p><u>(II) The parties have a written contract that</u></p>	<p>N/A</p>	<p><u>(I) An individual who provides services for which he or she receives foster care payments that are specifically excluded from gross income pursuant to Section 131 of the federal Internal Revenue Code, 26 U.S.C. § 131.</u></p>

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	<p><u>defines the relationship and gives the individual contractual rights in the event the contract is terminated by the employing unit prior to completion of the work.</u></p> <p><u>(III) Payment to the individual is based on factors directly related to the work performed and not solely on the amount of time expended by him or her.</u></p> <p><u>(IV) The work is outside the usual course of business of the employing unit for which the service is performed.</u></p> <p><u>(V) The individual has elected to file taxes as an independent contractor with the federal Internal Revenue Service.</u></p>		
<p>21 V.S.A. § 601(31)</p>	<p>N/A</p>	<p><u>(31)(A) “Independent contractor” means a person that is economically independent of the person’s employing unit under the totality of the circumstances based on an assessment of the following factors:</u></p> <p><u>(i) whether the person is free from the direction and control of the employing unit with respect to the means and manner of the services performed, both under the person’s contract of service and in fact;</u></p> <p><u>(ii) whether the person operates a separate and distinct business from that of the employing unit and the extent to which the person is performing work that is not a substantial, essential, and recurring part of the core services, functions, or activities of the employing unit;</u></p> <p><u>(iii) whether the person’s contract of service provides for the performance of specific services for specified amounts of compensation and does not provide that the services will be performed on an ongoing or indefinite basis, and whether the person may realize a profit or suffer a loss under the contract of service;</u></p> <p><u>(iv) the extent of the person’s investment in the resources, assets, or equipment necessary to perform the services contracted for; whether the person possesses specialized skills or knowledge necessary to perform the services contracted for; and whether the person has continuing and recurring business liabilities and obligations;</u></p> <p><u>(v) whether the person holds itself out as in business for itself and offers its services to the general public; and</u></p> <p><u>(vi) whether the person is not treated as an employee for purposes of income or employment taxation with regard to the work performed and either:</u></p> <p><u>(I) holds or has applied for a federal employer identification number; or</u></p> <p><u>(II) has filed business or self-employment tax</u></p>	<p><u>(31)(A) “Independent contractor” means a person that is economically independent of the person’s employing unit under the totality of the circumstances based on an assessment of the following factors:</u></p> <p><u>(i) whether the person is free from the direction and control of the employing unit with respect to the means and manner of the services performed, both under the person’s contract of service and in fact;</u></p> <p><u>(ii) whether the person performs work that is an integral part of the employing unit’s business;</u></p> <p><u>(iii) whether the person’s managerial skills affect its opportunity for profit or loss;</u></p> <p><u>(iv) the nature and extent of the relative investments by the person and the employing unit in the resources, assets, or equipment necessary to perform the services contracted for;</u></p> <p><u>(v) whether the work performed requires the person to exercise specialized business skills, judgment, and initiative;</u></p> <p><u>(vi) whether the person holds itself out as in business for itself and competes to offer its services to the general public in the open market; and</u></p> <p><u>(vii) the degree to which the relationship between the person and the employing unit is permanent or indefinite.</u></p> <p><u>(B) In considering whether a person is economically independent pursuant to subdivision (A) of this subdivision (31), no single factor in and of itself shall be dispositive.</u></p> <p><u>(C) If multiple persons are performing the same work on a project or jobsite, the determination of whether the person is economically independent of the employing unit shall take into account the relationship between the specific services performed by the person and the circumstances of the project or job in relation to which the person is providing services.</u></p> <p><u>(D) An independent contractor shall purchase workers’ compensation coverage for its employees as provided in this</u></p>

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

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		<p><u>contract of service:</u></p> <p><u>(IV) the extent of the individual’s investment in the resources, assets, and equipment, as well as the specialized skills or knowledge necessary to perform the services contracted for, and whether he or she has continuing and recurring business liabilities and obligations;</u></p> <p><u>(V) whether the individual holds himself or herself out as in business for himself or herself and offers his or her services to the general public; and</u></p> <p><u>(VI) whether the individual is not treated as an employee for purposes of income or employment taxation with regard to the work performed and either:</u></p> <p><u>(aa) holds or has applied for a federal employer identification number; or</u></p> <p><u>(bb) has filed business or self-employment tax returns with the federal Internal Revenue Service within the past year or will file business or self-employment tax returns with the federal Internal Revenue Service for the current year.</u></p> <p><u>(ii) In considering whether an individual is economically independent pursuant to subdivision (i) of this subdivision (6)(B), no single factor in and of itself shall be dispositive.</u></p> <p><u>(iii) If multiple individuals are performing the same work on a project or jobsite, the determination of whether an individual is economically independent of the employing unit shall take into account the relationship between the specific services performed by the individual and the circumstances of the project or job in relation to which he or she is providing services.</u></p>	<p><u>initiative:</u></p> <p><u>(VI) whether the individual holds himself or herself out as in business for himself or herself and competes to offer his or her services to the general public in the open market; and</u></p> <p><u>(VII) the degree to which the relationship between the individual and the employing unit is permanent or indefinite.</u></p> <p><u>(ii) In considering whether an individual is economically independent pursuant to subdivision (i) of this subdivision (6)(B), no single factor in and of itself shall be dispositive.</u></p> <p><u>(iii) If multiple individuals are performing the same work on a project or jobsite, the determination of whether an individual is economically independent of the employing unit shall take into account the relationship between the specific services performed by the individual and the circumstances of the project or job in relation to which he or she is providing services.</u></p>
<p>21 V.S.A. § 1301(6)(C)</p>	<p>(C) The term “employment” shall not include: * * *</p> <p><u>(xxii) Services performed by an independent contractor, if it can be demonstrated that the independent contractor is free from the essential direction and control of the person for whom the services are performed, both under the individual’s contract and in fact, and the person for whom the services are performed proves that the individual satisfies all of the criteria in subdivision (I) and at least two of the criteria in subdivision (II) of this subdivision (6)(C)(xxii).</u></p> <p><u>(I) In order for an individual to be an independent contractor, the following criteria must be satisfied:</u></p> <p><u>(aa) The individual has the essential right to control the means and progress of the work except as to the final results.</u></p> <p><u>(bb) The individual is customarily engaged in</u></p>	<p>N/A</p>	<p>N/A</p>

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

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		<p><u>(2) the Attorney General or designee;</u> <u>(3) the Secretary of Transportation or designee;</u> <u>(4) the Commissioner of Buildings and General Services or designee;</u> <u>(5) the Commissioner of Labor or designee;</u> <u>(6) the Commissioner of Financial Regulation or designee;</u> <u>(7) the Secretary of Human Services or designee;</u> <u>(8) the Commissioner of Taxes or designee;</u> <u>(9) the Commissioner of Liquor Control or designee; and</u> <u>(10) the Secretary, Commissioner, or designee of any other State licensing agency or department as determined by the Secretary of Administration.</u></p> <p><u>(c)(1) The Task Force shall meet at least six times per year.</u> <u>(2) The Secretary of Administration or designee and the Attorney General or designee shall be Co-Chairs of the Task Force.</u></p> <p><u>(d) The Secretary of Administration shall ensure that all State agencies do the following:</u> <u>(1) coordinate their efforts to combat employee misclassification in a manner that increases the efficiency and effectiveness of those efforts; and</u> <u>(2) In a central database accessible to all State agencies and departments, share information concerning any employer determined to have misclassified one or more employees as independent contractors.</u></p> <p><u>(e) The Secretary shall adopt rules and procedures necessary to carry out the duties set forth in subsection (d) of this section.</u></p> <p><u>(f) The Secretary of Administration shall report annually on or before January 15 of each year to the House Committees on Commerce and Economic Development and on Ways and Means and the Senate Committee on Finance regarding activities that he or she has undertaken pursuant to this section and any additional tax revenue and unemployment insurance contributions, as well as any reduction in workers' compensation premiums and costs, realized as a result of the efforts undertaken by the Secretary pursuant to this section. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.</u></p>	<p><u>(3) the Secretary of Transportation or designee;</u> <u>(4) the Commissioner of Buildings and General Services or designee;</u> <u>(5) the Commissioner of Financial Regulation or designee;</u> <u>(6) the Secretary of Human Services or designee;</u> <u>(7) the Commissioner of Taxes or designee;</u> <u>(8) the Attorney General or designee; and</u> <u>(9) the Commissioner of Liquor Control or designee.</u></p> <p><u>(c) Meetings.</u> <u>(1) The Task Force shall meet at least six times per year.</u> <u>(2) The Secretary of Administration or designee shall be the Chair.</u> <u>(3) A majority of the membership of the Task Force shall constitute a quorum.</u></p> <p><u>(d) Duties.</u> <u>(1) The Task Force shall have the following duties:</u> <u>(A) to develop and implement an ongoing outreach program to educate and inform employers, workers, and the general public about the proper classification of employees and independent contractors;</u> <u>(B) to examine and evaluate existing misclassification enforcement by State agencies and departments;</u> <u>(C) to develop and implement strategies to improve coordination, cooperation, and information sharing among State agencies and departments in relation to the investigation and enforcement of employee misclassification;</u> <u>(D) to review and establish reasonable mechanisms to accept complaints and reports of noncompliance;</u> <u>(E) to ensure that State agencies and departments are engaged in timely enforcement;</u> <u>(F) to ensure that penalties and debarment periods are posted on a publicly available website in a timely manner, to the extent permitted by law;</u> <u>(G) to review and recommend additional methods to provide public notice and share information regarding enforcement, penalties, and debarment periods;</u> <u>(H) to develop strategies and programs to assist businesses in complying with Vermont's requirements for the proper classification of employees and independent contractors, and to reduce the frequency of employee misclassification; and</u> <u>(I) to recommend legislative, regulatory, and administrative measures to reduce the frequency of employee misclassification.</u></p> <p><u>(2) The Task Force shall consult and collaborate with businesses, labor, and other interested stakeholders to accomplish</u></p>
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			<p><u>the duties set forth in subdivision (1) of this subsection, and may appoint representatives of business, labor, and other interested stakeholders to subcommittees as the Task Force deems appropriate.</u></p> <p><u>(e) Reports.</u></p> <p><u>(1) The Task Force shall report annually on or before January 15 to the House Committee on Commerce and Economic Development and the Senate Committee on Finance regarding the activities that it has undertaken pursuant to this section, the progress of the Task Force's ongoing education and outreach programs, the number and results of the employer audits conducted during the previous calendar year, and any barriers or impediments to the proper classification of employees and independent contractors that the Task Force has identified. The report may recommend legislative, regulatory, and administrative measures to reduce the frequency of employee misclassification. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.</u></p> <p><u>(2) The Task Force shall examine the issue of comprehensive enforcement of employee misclassification within Vermont's workers' compensation system and potential measures to improve the efficacy of the State's misclassification enforcement mechanisms, including by transferring the responsibility for the investigation and enforcement of misclassification to the Office of the Attorney General. The Task Force shall develop and establish performance measures to evaluate the efficacy of efforts to enforce the requirements for classification of employees and independent contractors, and any improvement in the outcomes of the State's enforcement efforts over time. On or before February 15, 2018, the Task Force shall report to the House Committee on Commerce and Economic Development and the Senate Committee on Finance with a recommendation for a comprehensive plan to improve the State's misclassification enforcement mechanisms and any legislative, regulatory, or administrative measures necessary to implement the plan.</u></p> <p><u>(3) The Task Force shall study the use of multiple independent contractors to perform the same work on a project or jobsite to determine how often employee misclassification occurs in such situations. In performing its study, the Task Force shall review documented instances of misclassification and may consult with businesses, labor, and other interested stakeholders. On or before February 15, 2018, the Task Force shall submit a written report to the General Assembly with its findings and any</u></p>
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			<p><u>recommendations for legislative action.</u></p> <p><u>(4) The Task Force shall examine the issue of whether all workers in certain industries should be required to be covered by workers' compensation insurance. On or before February 15, 2018, the Task Force shall submit a written report to the General Assembly with its findings and any recommendations for legislative action.</u></p> <p><u>(f) Definition. As used in this section, "employee misclassification" means the improper classification of employees as independent contractors.</u></p>
<p>21 V.S.A. § 692</p>	<p>N/A</p>	<p>§ 692. PENALTIES; FAILURE TO INSURE; STOP WORK STOP-WORK <u>ORDERS</u></p> <p>(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.</p> <p>(2) Purposeful violation. <u>If the Commissioner determines that the employer purposefully violated section 687 of this title:</u></p> <p>(A) <u>any penalties assessed pursuant to subdivision (1) of this subsection shall be doubled; and</u></p> <p>(B) <u>the employer may be liable for punitive damages in an amount equal to any penalties assessed pursuant to this subsection in an action related to the employer's purposeful violation of section 687 that is brought pursuant to section 712 of this chapter.</u></p> <p>(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 <u>may</u> 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, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than \$250.00 for every day that the employer fails to secure workers' compensation coverage after the Commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than \$250.00 for each employee for every day that the employer fails to secure workers' compensation</p>	<p>§ 692. PENALTIES; FAILURE TO INSURE; STOP WORK STOPWORK <u>ORDERS</u></p> <p align="center">* * *</p> <p>(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 <u>may</u> 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, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than \$250.00 for every day that the employer fails to secure workers' compensation coverage after the Commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than \$250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. When a stop-work order is issued, the Commissioner shall post a notice at a conspicuous place on the work site of the employer informing the employees that their employer failed to comply with the provisions of section 687 of this title and that work at the work site has been ordered to cease until workers' compensation insurance is secured. <u>If an employer fails to comply with a stop-work order, the Commissioner may seek an order from the Civil Division of the Superior Court to enjoin the employer from employing any individual.</u> The stop-work order shall be rescinded as soon as the Commissioner determines that the employer is in compliance with section 687 of this title.</p> <p>(c) Debarment. An employer against whom a stop-work order has been issued who has not been in compliance with section 687 of this chapter, unless the Commissioner determines</p>

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

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		<p>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. <u>The employer shall provide the compliance statement to the Commissioner within 30 days of the request.</u> 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:</p> <p align="center">* * *</p> <p>(2)(A) Any <u>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.</u></p> <p>(B) <u>The Commissioner may also seek injunctive relief in Washington Superior Court.</u></p> <p>(C) <u>If the Commissioner determines that the employer has purposefully failed to comply with this subsection or purposefully falsified information on the compliance statement, any penalties assessed pursuant to subdivision (b)(2)(A) of this subsection shall be doubled.</u></p> <p align="center">* * *</p> <p>(c) <u>Upon receiving written authorization from an employer to release information to the Commissioner, the employer's agent or broker or the authorized representative of an insurance or guarantee company shall provide within five business days any contract or policy information, including an insurance application, binder, or reported payroll, that is requested by the Commissioner pursuant to this section.</u></p> <p>(d) <u>The Commissioner shall be represented by the Attorney General in any action related to a purposeful violation of the provisions of this section.</u></p>	<p>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. <u>The employer shall provide the compliance statement to the Commissioner within 30 days of the request.</u> 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:</p> <p align="center">* * *</p> <p>(c) <u>Upon receiving written authorization from an employer to release information to the Commissioner, the employer's agent or broker or the authorized representative of an insurance or guarantee company shall provide within five business days any contract or policy information, including an insurance application, binder, or reported payroll, that is requested by the Commissioner pursuant to this section.</u></p>
<p>21 V.S.A. § 625</p>	<p>N/A</p>	<p><u>§ 625. CONTRACTING OUT FORBIDDEN; PROHIBITED ACTS; PENALTIES</u></p> <p>(a) An <u>Except as provided in subdivisions 601(3) and (14) of this chapter, an employer shall not be relieved in whole or in part from liability created by the provisions of this chapter by any contract, rule, regulation, or device whatsoever.</u></p> <p>(b) <u>The Commissioner may investigate complaints that an employee has been improperly classified and determine whether a person meets the requirements to be an independent contractor as set forth in subdivision 601(31) of this title.</u></p> <p>(c) <u>Unless the improper classification was inadvertent or due</u></p>	<p><u>§ 625. CONTRACTING OUT FORBIDDEN; PROHIBITED ACTS; PENALTIES</u></p> <p>(a) An <u>Except as provided in subdivisions 601(3) and (14) of this chapter, an employer shall not be relieved in whole or in part from liability created by the provisions of this chapter by any contract, rule, regulation, or device whatsoever.</u></p> <p>(b) <u>The Commissioner may investigate complaints and determine whether the requirements to be an independent contractor set forth in subdivision 601(31) of this title are met. Unless the Commissioner determines that the improper classification was inadvertent or excusable, any person that, for</u></p>

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		<p><u>to excusable neglect, any person that, for the purpose of avoiding its obligations under this title, improperly classifies an employee as an independent contractor:</u></p> <p><u>(A) shall be subject to an administrative penalty of not more than \$5,000.00; and</u></p> <p><u>(B) may be liable for punitive damages in an amount equal to any penalties assessed pursuant to this subsection in an action related to the improper classification of the employee that is brought pursuant to section 712 of this chapter.</u></p> <p><u>(d)(1) If, following an investigation, the Commissioner determines that a person has improperly classified an employee as an independent contractor, the Commissioner shall notify the Commissioners of Financial Regulation and of Taxes of the determination.</u></p> <p><u>(2) Upon receiving notification of the determination, the Commissioners of Financial Regulation and of Taxes shall conduct an investigation to determine whether the person has also misclassified the employee pursuant to the applicable provisions of law under his or her jurisdiction.</u></p> <p><u>(e) Any person who, for the purpose of avoiding its obligations under this title, coerces an employee or prospective employee into becoming an independent contractor, after notice and an opportunity for a hearing, may be assessed an administrative penalty of not more than \$5,000.00 and may be liable to the employee or prospective employee for punitive damages in an amount equal to any penalty assessed pursuant to this subdivision in an action brought pursuant to section 712 of this chapter.</u></p>	<p><u>the purpose of avoiding its obligations under this title, improperly classifies an employee as an independent contractor may, after notice and an opportunity for a hearing, be assessed an administrative penalty of not more than \$5,000.00.</u></p> <p><u>(c) A person who, for the purpose of avoiding its obligations under this chapter, provides an individual that is or will be performing services for the person with substantial and material assistance related to the establishment of an independent business, including the registration of an unincorporated business with the Vermont Secretary of State, the establishment of a corporation or L.L.C., or the acquisition of a federal Employer Identification Number, may, after notice and an opportunity for a hearing, be assessed an administrative penalty of not more than \$5,000.00. As used in this subsection, “substantial and material assistance” does not include:</u></p> <p><u>(1) inquiring about whether an unincorporated business, corporation, or L.L.C. is actively registered with the Secretary of State;</u></p> <p><u>(2) inquiring about whether an individual that is or will be performing services operates an unincorporated business, corporation, or L.L.C.; or</u></p> <p><u>(3) referring an individual to a State agency, department, or website related to the registration or establishment of an unincorporated business, corporation, or L.L.C.</u></p>
<p>21 V.S.A. § 708</p>	<p>N/A</p>	<p>§ 708. PENALTY FOR FALSE REPRESENTATION</p> <p>(a)(1)(A) Action by the Commissioner of Labor. A person who willfully <u>If a person purposefully</u> makes a false statement or representation, for the purpose of obtaining to obtain any benefit or payment under the provisions of this chapter, either for herself or himself or for any other person, <u>the Commissioner may, after notice and opportunity for hearing, assess an administrative penalty of not more than \$20,000.00, and against the person.</u></p> <p><u>(B) In addition to any penalty imposed pursuant to subdivision (1)(A) of this subsection (a), the person shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the Commissioner after a determination by the Commissioner that the person has willfully purposefully made a false statement or representation of a material fact.</u></p> <p><u>(2)(A) In addition, an employer found to have violated this</u></p>	<p>§ 708. PENALTY FOR FALSE REPRESENTATION</p> <p>(a) Action by the Commissioner of Labor. A person who willfully purposefully makes a false statement or representation, for the purpose of obtaining to obtain any benefit or payment under the provisions of this chapter, either for herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than \$20,000.00, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the Commissioner after a determination by the Commissioner that the person has willfully purposefully made a false statement or representation of a material fact. In addition, an employer found to have violated this section is prohibited from contracting <u>entering into subsequent contracts</u>, directly or indirectly, with the State or any of its subdivisions for up to three years following the date the employer was found to have made a <u>purposeful</u> false statement or misrepresentation of a</p>

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		<p>section is prohibited from contracting <u>entering into subsequent contracts</u>, directly or indirectly, with the State or any of its subdivisions for up to three years following the date the employer was found to have made a <u>purposeful</u> false statement or misrepresentation of a material fact, as determined by the Commissioner in consultation with the Commissioner of Buildings and General Services or the Secretary of Transportation, as appropriate. <u>Either the Secretary or the Commissioner, as appropriate, shall be consulted in any contest relating to the prohibition of the employer from contracting with the State or its subdivisions Secretary of Administration. The consultation may be informal and shall occur within five business days of the notification by the Commissioner. The outcome of the consultation shall be documented.</u></p> <p align="center">(B) <u>The employer may also be liable for punitive damages in an amount equal to any administrative penalty assessed pursuant to subsection (a) of this section in an action related to the employer's violation of this section that is brought pursuant to section 712 of this chapter.</u></p> <p>(b) When <u>In addition to any penalties assessed pursuant to subsection (a) of this section, when the Department Commissioner of Labor has sufficient reason to believe that an employer has purposefully made a false statement or representation for the purpose of obtaining to obtain a lower workers' compensation premium, the Department Commissioner shall refer the alleged violation to the Commissioner of Financial Regulation for the Commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).</u></p> <p align="center">* * *</p>	<p>material fact, as determined by the Commissioner in consultation with the Commissioner of Buildings and General Services or the Secretary of Transportation, as appropriate. <u>Either the Secretary or the Commissioner, as appropriate, shall be consulted in any contest relating to the prohibition of the employer from contracting with the State or its subdivisions Secretary of Administration. The consultation may be informal and shall occur within five business days of the notification by the Commissioner. The outcome of the consultation shall be documented.</u></p> <p>(b) When <u>In addition to any penalties assessed pursuant to subsection (a) of this section, when the Department of Labor has sufficient reason to believe that an employer has purposefully made a false statement or representation for the purpose of obtaining to obtain a lower workers' compensation premium, the Department shall refer the alleged violation to the Commissioner of Financial Regulation for the Commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).</u></p>
<p>21 V.S.A. § 710</p>	<p>N/A</p>	<p>§ 710. UNLAWFUL DISCRIMINATION</p> <p align="center">* * *</p> <p>(b) No person shall discharge <u>from employment</u> or <u>retaliate or</u> discriminate against an employee from employment because such <u>the</u> employee asserted or attempted to assert a claim for benefits under this chapter or under the law of any state or under the United States.</p> <p align="center">* * *</p> <p>(d) An employer shall not retaliate or take any other negative action against an individual because the employer knows or suspects that the individual has filed a complaint with the Department or other authority, or reported a violation of this chapter, or cooperated in an investigation of misclassification, discrimination, or other violation of this chapter, <u>or testified in a proceeding related to a violation of this chapter.</u></p> <p>(e) The Attorney General or a State's Attorney may enforce</p>	<p>N/A</p>

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		<p>the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurance <u>assurances of discontinuance</u>, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458-2461 as though discrimination under this section were an unfair act in commerce.</p> <p>(f) The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this subchapter.</p>	
21 V.S.A. § 712	N/A	<p><u>§ 712. PRIVATE RIGHT OF ACTION</u></p> <p>(a) <u>If an employer fails to comply with the provisions of sections 603, 625, 692, 708, or 710 of this chapter, a person harmed by the employer's failure may bring an action in the Civil Division of the Superior Court seeking:</u></p> <ul style="list-style-type: none"> <u>(1) compensatory damages;</u> <u>(2) punitive damages,</u> <u>(3) additional damages not more than \$500.00 for each violation of sections 603, 625, 692, 708, and 710 of this chapter;</u> <u>(4) equitable relief, including restraint of prohibited acts and reinstatement;</u> <u>(5) restitution of wages, benefits, and other compensation;</u> <u>(6) costs and reasonable attorney's fees;</u> <u>(7) and any other appropriate relief.</u> <p>(b) <u>An action pursuant to this section may be brought by one or more persons on behalf of themselves and other persons similarly situated.</u></p> <p>(c) <u>An action under this section must be brought within three years after the final date on which the person performed services for the employer.</u></p>	N/A
21 V.S.A. § 713	N/A	<p><u>§ 713. INDIVIDUAL LIABILITY OF OFFICERS AND AGENTS</u></p> <p><u>An officer or agent of an employer that knowingly permits the employer to violate the provisions of sections 603, 625, 692, 708, or 710 of this chapter may be held individually liable for each violation and any penalties assessed for that violation.</u></p>	N/A
2010 Acts and Resolves No. 142, Sec. 7	N/A	<p>2010 Acts and Resolves No. 142, Sec. 7 is amended to read:</p> <p>Sec. 7. DEPARTMENT OF LABOR; EMPLOYEE MISCLASSIFICATION REPORTING SYSTEM</p> <p>The department of labor <u>Department of Labor</u> shall create and maintain an online employee misclassification reporting system. The system shall be designed to allow individuals to report suspected cases of employee misclassification, failure to have appropriate insurance coverage, and claimant fraud to the department <u>Department</u> to ensure that this information is distributed to appropriate departments and agencies, <u>including</u></p>	N/A

SIDE-BY-SIDE OF SELECTED PROVISIONS FROM HOUSE EMPLOYEE CLASSIFICATION BILLS

Prepared By: Damien Leonard, Esq.

Office of Legislative Council

February 24, 2017

		<p><u>the Office of the Attorney General. The department Department and any agency or department that the information is distributed to, including the Office of the Attorney General, shall keep the name of the complainant confidential.</u></p>	
<p>DFR and DOL Education and Outreach</p>	<p>N/A</p>	<p>N/A</p>	<p>DEPARTMENT OF FINANCIAL REGULATION AND DEPARTMENT OF LABOR; EDUCATION; OUTREACH <u>On or before October 1, 2017, the Commissioners of Financial Regulation and of Labor shall develop an education and outreach program for workers' compensation insurance companies, agents, auditors, and adjusters, as well as employers, workers, attorneys, and tax professionals, regarding:</u> <u>(1) the definition of "independent contractor" that is added to 21 V.S.A. §§ 601 and 1301 by this act; and</u> <u>(2) how to determine whether a person should be classified as an independent contractor under "the totality of the circumstances" pursuant to those definitions.</u></p>