

1 S.108

2 Introduced by Senator Pearson

3 Referred to Committee on Economic Development, Housing and General
4 Affairs

5 Date: February 19, 2019

6 Subject: Labor; workers' compensation; unemployment insurance; employee
7 misclassification

8 Statement of purpose of bill as introduced: This bill proposes to permit the
9 Attorney General to enforce complaints of employee misclassification under
10 the workers' compensation and unemployment insurance laws.

11 An act relating to employee misclassification

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

13 ~~Sec. 1. 21 V.S.A. § 712 is added to read:~~

14 § 712. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY

15 ATTORNEY GENERAL

16 (a) In addition to any other remedies provided under this chapter, an
17 individual who is misclassified by an employer or harmed by an employer's
18 misclassification of an employee as an independent contractor may file a
19 complaint with the Attorney General of the misclassification and any related
20 violations of the provisions of this chapter.

1 ~~(b) The Attorney General shall investigate the complaint and may enforce~~
2 the provisions of this chapter by restraining prohibited acts, seeking civil
3 penalties, obtaining assurances of discontinuance, and conducting civil
4 investigations in accordance with the procedures established in 9 V.S.A.
5 §§ 2458–2461 as though the misclassification of an employee and any related
6 violations of the provisions of this chapter were unfair acts in commerce.

7 (c) If, following the investigation, the Attorney General determines that an
8 employee has been misclassified as an independent contractor, the Attorney
9 General shall notify the Commissioners of Labor, of Financial Regulation, and
10 of Taxes of the determination, and these Commissioners shall review whether
11 the employer is in compliance with the laws related to employee classification
12 that are under their jurisdiction.

13 Sec. 2. 21 V.S.A. § 1379 is added to read:

14 § 1379. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY
15 ATTORNEY GENERAL

16 (a) In addition to any other remedies provided under this chapter, an
17 individual that is misclassified by an employing unit or harmed by an
18 employing unit’s misclassification of an employee as an independent
19 contractor may file a complaint of the misclassification and any related
20 violations of the provisions of this chapter with the Attorney General.

1 ~~(b) The Attorney General shall investigate the complaint and may enforce~~
2 the provisions of this chapter by restraining prohibited acts, seeking civil
3 penalties, obtaining assurances of discontinuance, and conducting civil
4 investigations in accordance with the procedures established in 9 V.S.A.
5 §§ 2458–2461 as though the misclassification of an employee and any related
6 violations of the provisions of this chapter were unfair acts in commerce.

7 (c) If, following the investigation, the Attorney General determines that an
8 employee has been misclassified as an independent contractor, the Attorney
9 General shall notify the Commissioners of Labor, of Financial Regulation, and
10 of Taxes of the determination, and those Commissioners shall review whether
11 the employer is in compliance with the laws related to employee classification
12 that are under their jurisdiction.

13 Sec. 3. EFFECTIVE DATE

14 ~~This act shall take effect on July 1, 2019.~~

~~§ 712. 21 V.S.A. § 712 is added to read:~~

§ 712. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY
ATTORNEY GENERAL

(a) In addition to any other remedies provided under this chapter, an
individual may file a complaint with the Attorney General that an employer
has committed a violation of section 687 or 708 of this chapter by claiming
that it is not an employer as defined pursuant to subdivision 601(3) of this
chapter or that an individual is not a worker or employee as defined pursuant
to subdivision 601(14) of this chapter.

(b) The Attorney General may investigate the complaint and may enforce
the provisions of section 687 or 708 of this chapter by restraining prohibited
acts, seeking civil penalties, obtaining assurances of discontinuance, and
conducting civil investigations in accordance with the procedures established

~~9 V.S.A. §§ 2458–2461 as though a violation of section 687 or 708 of this chapter and any related violations of the provisions of this chapter were unfair acts in commerce. Any employer, employment agency, or labor organization complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for a violation of section 687 or 708 of this chapter and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.~~

~~(c) If, following the investigation, the Attorney General determines that an employer has committed a violation of section 687 or 708 of this chapter, the Attorney General shall notify the Commissioners of Labor, of Financial Regulation, and of Taxes of the determination, and those Commissioners shall review whether the employer is in compliance with the laws related to employee classification that are under their jurisdiction.~~

Sec. 2. 21 V.S.A. § 1379 is added to read:

§ 1379. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY ATTORNEY GENERAL

~~(a) In addition to any other remedies provided under this chapter, an individual that is misclassified by an employing unit or harmed by an employing unit's misclassification of an employee as an independent contractor may file a complaint of the misclassification and any related violations of the provisions of this chapter with the Attorney General.~~

~~(b) The Attorney General may investigate the complaint and may enforce the provisions of this chapter by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though the misclassification of an employee and any related violations of the provisions of this chapter were unfair acts in commerce. Any employer, employment agency, or labor organization complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for the misclassification of an employee and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of~~

~~an employee and may order reinstatement and other appropriate relief on behalf of an employee.~~

~~(c) If, following the investigation, the Attorney General determines that an employee has been misclassified as an independent contractor, the Attorney General shall notify the Commissioners of Labor, of Financial Regulation, and of Taxes of the determination, and those Commissioners shall review whether the employer is in compliance with the laws related to employee classification that are under their jurisdiction.~~

~~Sec. 3. 21 V.S.A. § 346 is added to read:~~

~~§ 346. ENFORCEMENT BY ATTORNEY GENERAL; EMPLOYEE MISCLASSIFICATION~~

~~(a) In addition to any other remedies provided under this subchapter, an individual may file a complaint with the Attorney General that an employer has committed a violation of section 342, 343, 348, 482, or 483 of this chapter by misclassifying an employee as an independent contractor.~~

~~(b) The Attorney General may investigate a complaint of a violation of section 342, 343, 348, 482, or 483 of this chapter that is related to the misclassification of an employee as an independent contractor and may enforce those provisions by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though the misclassification of an employee and any related violations of the provisions of section 342, 343, 348, 482, or 483 of this chapter were unfair acts in commerce. Any employer complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for the misclassification of an employee and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.~~

~~(c) If, following the investigation, the Attorney General determines that an employer committed a violation of section 342, 343, 348, 482, or 483 of this chapter by misclassifying an employee as an independent contractor, the Attorney General shall notify the Commissioners of Labor, of Financial Regulation, and of Taxes of the determination, and those Commissioners shall~~

~~review whether the employer is in compliance with the laws related to employee classification that are under their jurisdiction.~~

~~Sec. 4. 21 V.S.A. § 387 is added to read:~~

~~§ 387. ENFORCEMENT BY ATTORNEY GENERAL; EMPLOYEE
MISCLASSIFICATION~~

~~(a) In addition to any other remedies provided under this subchapter, an individual may file a complaint with the Attorney General that an employer has committed a violation of this subchapter by misclassifying an employee as an independent contractor.~~

~~(b) The Attorney General may investigate a complaint of a violation of this subchapter that is related to the misclassification of an employee as an independent contractor and may enforce the provisions of this subchapter by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though the misclassification of an employee and any related violations of the provisions of this subchapter were unfair acts in commerce. Any employer complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for the misclassification of an employee and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.~~

~~(c) If, following the investigation, the Attorney General determines that an employer has violated this subchapter by misclassifying an employee as an independent contractor, the Attorney General shall notify the Commissioners of Labor, of Financial Regulation, and of Taxes of the determination, and those Commissioners shall review whether the employer is in compliance with the laws related to employee classification that are under their jurisdiction.~~

~~Sec. 5. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2019.~~

** * * Employee Misclassification * * **

Sec. 1. 21 V.S.A. § 712 is added to read:

§ 712. ENFORCEMENT BY ATTORNEY GENERAL

(a) Following the referral of a complaint by the Commissioner of Labor pursuant to the provisions of section 3 of this title, the Attorney General may investigate a complaint that an employer has committed a willful, substantial, or systemic violation of section 687 or 708 of this chapter by claiming that it is not an employer as defined pursuant to subdivision 601(3) of this chapter or that an individual is not a worker or employee as defined pursuant to subdivision 601(14) of this chapter and may enforce those provisions by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though an employer that violates section 687 or 708 of this chapter by claiming that it is not an employer as defined pursuant to subdivision 601(3) of this chapter or that an individual is not a worker or employee as defined pursuant to subdivision 601(14) of this chapter is committing an unfair act in commerce. Any employer, employment agency, or labor organization complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Court may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for a violation of section 687 or 708 of this chapter and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Court may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(b)(1) The Attorney General shall share information and coordinate investigatory and enforcement resources with the Departments of Financial Regulation, of Labor, and of Taxes pursuant to the provisions of section 3 of this title.

(2) Upon receiving notice that the Attorney General has determined that an employer committed a violation of section 687 or 708 of this chapter by claiming that it was not an employer as defined pursuant to subdivision 601(3) of this chapter or that an individual was not a worker or employee as defined pursuant to subdivision 601(14) of this chapter, the Commissioners of Financial Regulation and of Taxes shall review whether the employer is in compliance with the insurance or tax laws that are under their jurisdiction.

Sec. 2. 21 V.S.A. § 1379 is added to read:

§ 1379. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY
ATTORNEY GENERAL

(a) Following the referral of a complaint by the Commissioner of Labor pursuant to the provisions of section 3 of this title, the Attorney General may investigate a complaint that an employing unit or employer has committed a willful, substantial, or systemic violation of section 1314a of this chapter by failing to properly classify one or more employees and may enforce the provisions of this chapter by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though the misclassification of an employee is an unfair act in commerce. Any employing unit or employer complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Court may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for the misclassification of an employee and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Court may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(b)(1) The Attorney General shall share information and coordinate investigatory and enforcement resources with the Departments of Financial Regulation, of Labor, and of Taxes pursuant to the provisions of section 3 of this title.

(2) Upon receiving notice that the Attorney General has determined that an employing unit or employer has committed a violation of section 1314a of this chapter by failing to properly classify one or more employees, the Commissioners of Financial Regulation and of Taxes shall review whether the employing unit or employer is in compliance with the insurance or tax laws that are under their jurisdiction.

Sec. 3. 21 V.S.A. § 1314 is amended to read:

§ 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;
DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT
EMPLOYMENT INFORMATION; DISCLOSURE OF
INFORMATION TO OTHER STATE AGENCIES TO
INVESTIGATE MISCLASSIFICATION OR MISCODING

* * *

(d)(1) Except as otherwise provided in this chapter, information obtained from any employing unit or individual in the administration of this chapter, and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or open to public inspection in any manner revealing the individual's or employing unit's identity, nor be admissible in evidence in any action or proceeding other than one arising out of this chapter, or to support or facilitate an investigation by a public agency identified in subdivision (e)(1) of this section.

** * **

(e)(1) Subject to such restrictions as the Board may by regulation prescribe, information from unemployment insurance records may be made available to any public officer or public agency of this or any other state or the federal government dealing with the administration or regulation of relief, public assistance, unemployment compensation, a system of public employment offices, wages and hours of employment, workers' compensation, misclassification or miscoding of workers, occupational safety and health, or a public works program for purposes appropriate to the necessary operation of those offices or agencies. The Commissioner may also make information available to colleges, universities, and public agencies of the State for use in connection with research projects of a public service nature, and to the Vermont Economic Progress Council with regard to the administration of 32 V.S.A. chapter 105, subchapter 2; but no person associated with those institutions or agencies may disclose that information in any manner that would reveal the identity of any individual or employing unit from or concerning whom the information was obtained by Commissioner.

** * **

(8) The Department of Labor shall disclose, upon request:

(A) to the Attorney General and employees of the Office of the Attorney General, information necessary for the Attorney General to investigate a complaint and enforce the provisions of this chapter as provided pursuant to section 1379 of this chapter; and

(B) to the Commissioners of Financial Regulation and of Taxes and employees of the Departments of Financial Regulation and of Taxes, information necessary to investigate misclassification or miscoding of workers under the insurance and tax laws that are under their jurisdiction.

** * **

Sec. 4. 21 V.S.A. § 346 is added to read:

§ 346. ENFORCEMENT BY ATTORNEY GENERAL; EMPLOYEE
MISCLASSIFICATION

(a) Following the referral of a complaint by the Commissioner of Labor pursuant to the provisions of section 3 of this title, the Attorney General may investigate a complaint that an employer has committed a willful, substantial, or systemic violation of section 342, 343, 348, 482, or 483 of this chapter by misclassifying an employee as an independent contractor and may enforce those provisions by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though the misclassification of an employee is an unfair act in commerce. Any employer complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Court may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for the misclassification of an employee and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Court may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(b)(1) The Attorney General shall share information and coordinate investigatory and enforcement resources with the Departments of Financial Regulation, of Labor, and of Taxes pursuant to the provisions of section 3 of this title.

(2) Upon receiving notice that the Attorney General has determined that an employing unit has committed a violation of section 342, 343, 348, 482, or 483 of this chapter by misclassifying an employee as an independent contractor, the Commissioners of Financial Regulation and of Taxes shall review whether the employer is in compliance with the insurance or tax laws that are under their jurisdiction.

Sec. 5. 21 V.S.A. § 342a is amended to read:

§ 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

* * *

(h) Information obtained from any employer, employee, or witness in the course of investigating a complaint of unpaid wages shall be confidential and shall not be disclosed or open to public inspection in any manner that reveals the employee's or employer's identity or be admissible in evidence in any action or proceeding other than one arising under this subchapter. However,

such information may be released to any public official for the purposes provided in subdivision 1314(e)(1) of this title or to the Attorney General in relation to investigations conducted pursuant to section 346 of this subchapter as provided pursuant to the terms of the memorandum of understanding between the Attorney General and the Commissioner of Labor executed pursuant to section 3 of this title.

Sec. 6. 21 V.S.A. § 387 is added to read:

§ 387. ENFORCEMENT BY ATTORNEY GENERAL; EMPLOYEE MISCLASSIFICATION

(a) Following the referral of a complaint by the Commissioner of Labor pursuant to the provisions of section 3 of this title, the Attorney General may investigate a complaint that an employer has committed a willful, substantial, or systemic violation of this subchapter by misclassifying an employee as an independent contractor and may enforce the provisions of this subchapter by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as though the misclassification of an employee is an unfair act in commerce. Any employer complained against shall have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The Superior Court may impose the same civil penalties and investigation costs and order other relief to the State of Vermont or an aggrieved employee for the misclassification of an employee and any related violations of the provisions of this chapter as they are authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the Superior Court may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(b)(1) The Attorney General shall share information and coordinate investigatory and enforcement resources with the Departments of Financial Regulation, of Labor, and of Taxes pursuant to the provisions of section 3 of this title.

(2) Upon receiving notice that the Attorney General has determined that an employing unit has committed a violation of this subchapter by misclassifying an employee as an independent contractor, the Commissioners of Financial Regulation and of Taxes shall review whether the employer is in compliance with the insurance or tax laws that are under their jurisdiction.

Sec. 7. 32 V.S.A. § 3102 is amended to read:

§ 3102. CONFIDENTIALITY OF TAX RECORDS

* * *

(d) The Commissioner shall disclose a return or return information:

* * *

(5) to the Attorney General, if such return or return information relates to chapter 205 of this title or 33 V.S.A. chapter 19, subchapters 1A and 1B, for purposes of investigating potential violations of and enforcing 7 V.S.A. chapter 40, 20 V.S.A. chapter 173, subchapter 2A, ~~and~~ 33 V.S.A. chapter 19, subchapters 1A and 1B, and 21 V.S.A. §§ 346, 387, 712, and 1379;

* * *

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

§ 3. COOPERATION WITH ATTORNEY GENERAL AND
COMMISSIONERS OF FINANCIAL REGULATIONS AND OF
TAXES; MEMORANDA OF UNDERSTANDING

(a) The Attorney General and the Commissioner of Labor shall enter into a memorandum of understanding to establish a process for the referral of complaints received by the Commissioner of Labor to the Attorney General, the sharing of information, and the coordination of investigatory and enforcement resources in relation to the provisions of sections 346, 387, 712, and 1379 of this title. Notwithstanding any provision of 9 V.S.A. § 2460(a) to the contrary, the memorandum shall, at a minimum, provide for:

(1) notice from the Attorney General to the Commissioner of Labor regarding complaints received by the Attorney General that relate to a possible violation of the laws under the jurisdiction of the Commissioner;

(2) a procedure for the Commissioner of Labor to refer a complaint to the Attorney General if the employer complained of appears to be engaging in willful, substantial, or systemic violations of the provisions of chapter 5, subchapter 2 or 3 of this title, or chapter 9 or 17 of this title through the misclassification of employees;

(3) a requirement that the Commissioner of Labor shall, upon receiving a complaint against an employer that has been determined to have engaged in employee misclassification on two separate occasions during the past five years or is alleged to have misclassified five or more employees, refer the complaint to the Attorney General and coordinate with the Attorney General to investigate the complaint and, depending on the outcome of the investigation, seek any appropriate penalties pursuant to the provisions of this title and 9 V.S.A. §§ 2458–2461;

(4) the exchange of information and coordination of investigatory and enforcement resources between the Commissioner of Labor and the Attorney General; and

(5) compliance with the requirements of 20 C.F.R. Part 603 in relation to any information disclosed pursuant to section 1314 of this title.

(b) The Commissioner of Labor shall enter into separate memoranda of understanding with the Commissioner of Financial Regulation and the Commissioner of Taxes to establish a process for sharing information related to investigations of the misclassification and miscoding of workers pursuant to the laws under their jurisdiction. The memoranda shall provide, at a minimum, that any disclosure of information pursuant to section 1314 of this title shall comply with the requirements of 20 C.F.R. Part 603.

(c) The Attorney General shall enter into separate memoranda of understanding with the Commissioner of Financial Regulation and the Commissioner of Taxes to establish a process for sharing information related to an investigation by the Attorney General pursuant to sections 346, 387, 712, and 1379 of this title. Notwithstanding any provision of 9 V.S.A. § 2460(a) to the contrary, each memorandum shall, at a minimum, provide for the disclosure by the Attorney General of any instance in which he or she has determined that an employer has, through the misclassification of an employee, violated the provisions of chapter 5, subchapter 2 or 3 of this title or chapter 9 or 17 of this title and the basis for that determination.

(d) Nothing in this section shall be construed to prevent the Commissioner of Labor from investigating complaints of violations of the laws under his or her jurisdiction or enforcing those laws pursuant to the applicable provisions of this title.

(e) Information shared pursuant to this section shall be exempt from public inspection and copying under the Public Records Act and shall be kept confidential. Notwithstanding 1 V.S.A. § 317(e), the Public Records Act exemption created in this section shall continue in effect and shall not be repealed through the operation of 1 V.S.A. § 317(e).

**Sec. 9. EMPLOYEE MISCLASSIFICATION; ENFORCEMENT BY
ATTORNEY GENERAL; REPORTS**

(a)(1) On or before January 15, 2022, the Attorney General and the Commissioner of Labor shall submit a written report to the House Committees on Commerce and Economic Development and on General, Housing, and Military Affairs and the Senate Committees on Economic Development, Housing and General Affairs and on Finance regarding the enforcement of employment laws related to employee misclassification pursuant to 21 V.S.A. §§ 346, 387, 712, and 1379 and by the Commissioner of Labor pursuant to 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17.

(2)(A) The report shall include for both the Office of the Attorney General and the Department of Labor in calendar years 2020 and 2021:

(i) the number of complaints received in relation to violations of 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17 that involved employee misclassification;

(ii) the number and percentage of complaints received that were referred to the other entity;

(iii) the number of investigations initiated;

(iv) the average number of days between the receipt of a complaint, the start of an investigation, and the completion of an investigation;

(v) the number and percentage of investigations that resulted in, for the Office of the Attorney General, the imposition of a civil penalty, an assurance of discontinuance, or the imposition of injunctive relief, and, for the Department of Labor, the imposition of a penalty;

(vi) the number and percentage of investigations that resulted in a determination that the employer had engaged in employee misclassification;

(vii) the number and percentage of investigations that resulted in the imposition of debarment pursuant to 21 V.S.A. §§ 692, 708, or 1314a; and

(viii) the number of investigations related to employers who had previously violated the provisions of 21 V.S.A. chapter 5, subchapter 2 or 3, or 21 V.S.A. chapter 9 or 17; and

(B) any recommendations for legislative action to improve the effectiveness of the provisions of 21 V.S.A. §§ 346, 387, 712, and 1379.

(b)(1) On or before January 15, 2024, the Attorney General, in consultation with the Commissioners of Financial Regulation, of Labor, and of Taxes, shall submit a written report to the House Committees on Commerce and Economic Development and on General, Housing, and Military Affairs and the Senate Committees on Economic Development, Housing and General Affairs and on Finance regarding the enforcement of employment laws related to employee misclassification by the Attorney General pursuant to 21 V.S.A. §§ 346, 387, 712, and 1379 and by the Commissioner of Labor pursuant to 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17.

(A) The report shall include for both the Office of the Attorney General and the Department of Labor in calendar years 2020 through 2023:

(i) the number of complaints received in relation to violations of 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17 that involved employee misclassification;

(ii) the number and percentage of complaints received that were referred to the other entity;

(iii) the number of investigations initiated;

(iv) the average number of days between the receipt of a complaint, the start of an investigation, and the completion of an investigation;

(v) the number and percentage of investigations that resulted in, for the Office of the Attorney General, the imposition of a civil penalty, an assurance of discontinuance, or the imposition of injunctive relief and, for the Department of Labor, the imposition of a penalty;

(vi) the number and percentage of investigations that resulted in a determination that the employer had engaged in employee misclassification;

(vii) the number and percentage of investigations that resulted in the imposition of debarment pursuant to 21 V.S.A. § 692, 708, or 1314a; and

(viii) the number of investigations related to employers who had previously violated the provisions of 21 V.S.A. chapter 5, subchapter 2 or 3, or 21 V.S.A. chapter 9 or 17; and

(B) a recommendation regarding whether to delay or eliminate the repeal of 21 V.S.A. §§ 346, 387, 712, and 1379, and if a delay or elimination of the repeal is proposed, any recommendations for legislative action related to those sections.

(c) As used in this section, “employee misclassification” means:

(1) the misclassification of an employee as an independent contractor;

or

(2) a violation of 21 V.S.A. § 687 or 708 that results from an employer claiming that it is not an employer as defined pursuant to 21 V.S.A. § 601(3) or that an individual is not a worker or employee as defined pursuant to 21 V.S.A. § 601(14).

Sec. 10. 3 V.S.A. § 2222d is added to read:

§ 2222d. EMPLOYEE MISCLASSIFICATION TASK FORCE

(a) As used in this section, “employee misclassification” means:

(1) the misclassification of an employee as an independent contractor;

or

(2) a violation of 21 V.S.A. § 687 or 708 that results from an employer claiming that it is not an employer as defined pursuant to 21 V.S.A. § 601(3) or that an individual is not a worker or employee as defined pursuant to 21 V.S.A. § 601(14).

(b) The Employee Misclassification Task Force is created 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 Office of the Attorney General and shall be composed of the following members:

(1) the Attorney General or designee;

(2) the Secretary of Administration or designee;

(3) the Secretary of Transportation or designee;

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

(5) the Commissioner of Labor or designee;

(6) the Commissioner of Financial Regulation or designee;

(7) the Secretary of Human Services or designee;

(8) the Commissioner of Taxes or designee; and

(9) the Commissioner of Liquor and Lottery or designee.

(c)(1) The Task Force shall meet at least quarterly.

(2) The Attorney General or designee shall be the Chair of the Task Force.

(d) The Task Force shall ensure that all State agencies coordinate their efforts to combat employee misclassification in a manner that increases the efficiency and effectiveness of those efforts.

(e)(1) The Attorney General 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 Committees on Economic Development, Housing and General Affairs and on Finance regarding activities 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 pursuant to this section.

(2) 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.

(f) On or before January 15, 2022, the Task Force shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs regarding ways to improve the effectiveness and efficiency of the system of joint enforcement by the Commissioner of Labor and the Attorney General of the laws related to employee misclassification that is established pursuant to

21 V.S.A. §§ 3, 346, 387, 712, and 1379. In particular, the Report shall examine:

(1) potential legislative changes to address shortcomings or difficulties identified by the Task Force in relation to the system of joint enforcement;

(2) potential legislative changes to enable either the Commissioner of Labor or the Attorney General to seek the full, combined range of penalties and remedies that are currently available to them through joint enforcement;

(3) whether to expand the joint enforcement of the laws related to employee misclassification to include additional agencies or departments of the State and potential legislative changes to accomplish such an expansion;

(4) the possibility of creating a private right of action to enforce the provisions of 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17 that relate to employee misclassification; and

(5) the possibility of creating a private attorneys general act modeled on California law for the enforcement of the provisions of 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17 that relate to employee misclassification.

Sec. 11. REPEALS

(a) 3 V.S.A. § 2222d is repealed.

(b) 21 V.S.A. §§ 346, 387, 712, and 1379 are repealed.

Sec. 12. 21 V.S.A. § 1314 is amended to read:

*§ 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;
DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT
EMPLOYMENT INFORMATION; DISCLOSURE OF
INFORMATION TO OTHER STATE AGENCIES TO
INVESTIGATE MISCLASSIFICATION OR MISCODING*

** * **

(e)(1) Subject to such restrictions as the Board may by regulation prescribe, information from unemployment insurance records may be made available to any public officer or public agency of this or any other state or the federal government dealing with the administration or regulation of relief, public assistance, unemployment compensation, a system of public employment offices, wages and hours of employment, workers' compensation, misclassification or miscoding of workers, occupational safety and health, or a public works program for purposes appropriate to the necessary operation of those offices or agencies. The Commissioner may also make information available to colleges, universities, and public agencies of the State for use in

connection with research projects of a public service nature, and to the Vermont Economic Progress Council with regard to the administration of 32 V.S.A. chapter 105, subchapter 2; but no person associated with those institutions or agencies may disclose that information in any manner that would reveal the identity of any individual or employing unit from or concerning whom the information was obtained by Commissioner.

* * *

(8) ~~The Department of Labor shall disclose, upon request, to the Attorney General and employees of the Office of the Attorney General information necessary for the Attorney General to investigate a complaint and enforce the provisions of this chapter as provided pursuant to section 1379 of this chapter. [Repealed.]~~

* * *

Sec. 13. 21 V.S.A. § 342a is amended to read:

§ 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

* * *

(h) Information obtained from any employer, employee, or witness in the course of investigating a complaint of unpaid wages shall be confidential and shall not be disclosed or open to public inspection in any manner that reveals the employee's or employer's identity or be admissible in evidence in any action or proceeding other than one arising under this subchapter. However, such information may be released to any public official for the purposes provided in subdivision 1314(e)(1) of this title ~~or to the Attorney General pursuant to the terms of a memorandum of understanding between the Commissioner and the Attorney General that was agreed to in relation to investigations conducted pursuant to section 346 of this subchapter.~~

Sec. 14. 32 V.S.A. § 3102 is amended to read:

§ 3102. CONFIDENTIALITY OF TAX RECORDS

* * *

(d) The Commissioner shall disclose a return or return information:

* * *

(5) to the Attorney General, if such return or return information relates to chapter 205 of this title or 33 V.S.A. chapter 19, subchapters 1A and 1B, for purposes of investigating potential violations of and enforcing 7 V.S.A. chapter 40, 20 V.S.A. chapter 173, subchapter 2A, and 33 V.S.A. chapter 19, subchapters 1A and 1B, ~~and 21 V.S.A. §§ 346, 387, 712, and 1379;~~

* * *

Sec. 15. EDUCATION AND OUTREACH

(a) On or before September 15, 2020, the Commissioner of Labor and the Attorney General shall develop and disseminate informational materials for employers and employees that informs them:

(1) that the Attorney General has been granted investigation and enforcement authority in relation to complaints of employee misclassification pursuant to the provisions of 21 V.S.A. §§ 346, 387, 712, and 1379;

(2) of the requirements related to proper employee classification; and

(3) about how to file a complaint regarding employee misclassification.

(b) The methods of disseminating the informational materials shall include:

(1) posting the information on the Attorney General's and the Department of Labor's websites; and

(2) e-mailing or otherwise providing written notice to employer and employee organizations.

* * * *Workers' Compensation* * * *

Sec. 16. STATE EMPLOYEES; WORKERS' COMPENSATION; POST-TRAUMATIC STRESS DISORDER; MENTAL CONDITIONS; STUDY; REPORT

On or before January 15, 2021, the Agency of Administration, Office of Risk Management, in consultation with the Agency of Human Services, the Department for Children and Families, and the Departments of Human Resources and of Labor, shall submit a written report on the workers' compensation claims submitted by State employees in relation to post-traumatic stress disorder and other mental conditions to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs. The report shall:

(1) examine the occurrence and frequency of workers' compensation claims submitted by State employees in relation to post-traumatic stress disorder and other mental conditions that are caused or aggravated by workplace stressors or workplace violence;

(2) identify professions and occupations in State government that have a heightened risk of exposure to traumatic situations or stress that could cause post-traumatic stress disorder or other mental conditions;

(3) include an inventory of currently existing prevention and education plans related to the occurrence of post-traumatic stress disorder and other mental conditions among State employees;

(4) identify various approaches for preventing the occurrence of post-traumatic stress disorder and other mental conditions among State employees, including specific actions and methods to reduce the likelihood of job-related stressors or workplace violence; and

(5) identify specific training and educational activities and materials that can be implemented to:

(A) enable State employees to better recognize situations, incidents, and other occurrences that may result in a stressful situation or violent interaction;

(B) enable State employees to better recognize the symptoms of post-traumatic stress disorder and other common mental conditions in themselves and their coworkers;

(C) identify the resources available to employees following a stressful or traumatic incident, including the Employee Assistance Program and counseling; and

(D) educate State employees regarding how to file and pursue a workers' compensation claim for work-related post-traumatic stress disorder or another work-related mental condition that requires treatment or has become disabling.

**Sec. 17. WORKERS' COMPENSATION; COMPENSATION FOR
PRESCRIBED OVER-THE-COUNTER MEDICATIONS;
OUTREACH**

On or before October 15, 2020, the Commissioner of Labor shall develop and disseminate informational materials to educate workers and employers regarding the ability of a worker to receive compensation for the cost of prescribed over-the-counter medications. The methods of disseminating the materials shall include:

(1) posting the information on the Department's website;

(2) e-mailing or otherwise providing written notice to insurance carriers that offer workers' compensation insurance in Vermont; and

(3) ensuring, in coordination with the Department of Health and the appropriate professional licensing boards and professional membership associations, that the information is made available to all licensed health care

professionals who are authorized to prescribe medications and to all licensed pharmacists in Vermont.

Sec. 18. 21 V.S.A. § 650 is amended to read:

§ 650. PAYMENT; AVERAGE WAGE; COMPUTATION

* * *

(f) When benefits have been awarded or are not in dispute as provided in subsection (e) of this section, the employer shall establish a weekday on which payment shall be mailed or deposited and notify the claimant and the Department of that day. The employer shall ensure that each weekly payment is mailed or deposited on or before the day established. Payment shall be made by direct deposit to a claimant who elects that payment method. The employer shall notify the claimant of his or her right to payment by direct deposit. If the benefit payment is not mailed or deposited on the day established, the employer shall pay to the claimant a late fee of \$10.00 or five percent of the benefit amount, whichever is greater, for each weekly payment that is made after the established day. For the purposes of As used in this subsection, "paid" means the payment is mailed to the claimant's mailing address or, in the case of direct deposit, transferred into the designated account. In the event of a dispute, proof of payment shall be established by affidavit.

* * * Required Notice for Unemployment Insurance * * *

Sec. 19. 21 V.S.A. § 1346 is amended to read:

§ 1346. CLAIMS FOR BENEFITS; REGULATIONS RULES; NOTICE

(a) ~~Claims for benefits shall be made in accordance with such regulations as rules adopted by the Board may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his or her service and shall make available to each such individual, at the time he or she becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the Commissioner to each employer without cost to him or her.~~

(b) Every person making a claim shall certify that he or she has not, during the week with respect to which waiting period credit or benefits are claimed, earned or received wages or other remuneration for any employment, whether subject to this chapter or not, otherwise than as specified in his or her claim. All benefits shall be paid in accordance with such regulations as the rules adopted by the Board may prescribe.

(c) An employer shall post notice of how an unemployed individual can seek unemployment benefits in a form provided by the Commissioner in a place

conspicuous to individuals performing services for the employer. The notice shall also advise individuals of their rights under the Domestic and Sexual Violence Survivor's Transitional Employment Program, established pursuant to chapter 16A of this title. The Commissioner shall provide a copy of the notice to an employer upon request without cost to the employer.

* * * Short-Time Compensation Program * * *

Sec. 20. 21 V.S.A. § 1462 is added to read:

§ 1462. PERIOD OF DORMANCY

On July 1, 2020, the Short-Time Compensation Program established pursuant to sections 1451–1461 of this subchapter shall cease operation and shall not resume operation unless directed to do so by enactment of the General Assembly or, if the General Assembly is not in session, by order of the Joint Fiscal Committee. The Joint Fiscal Committee shall issue such order only upon finding that, due to a change in circumstances, resumption of the Short-Time Compensation Program would be the most effective way to assist employers in avoiding layoffs. Upon the effective date of such an enactment or order, the Short-Time Compensation Program shall resume operation pursuant to the provisions of sections 1451–1461 of this subchapter.

* * * Self-Employment Assistance Program * * *

Sec. 21. 21 V.S.A. § 1340a is added to read:

§ 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

(a) As used in this section:

(1) “Full-time basis” means that the individual is devoting the necessary time as determined by the Commissioner to establish a business that will serve as a full-time occupation for that individual.

(2) “Regular benefits” shall have the same meaning as in subdivision 1421(5) of this title.

(3) “Self-employment assistance activities” means activities approved by the Commissioner in which an individual participates for the purpose of establishing a business and becoming self-employed, including entrepreneurial training, business counseling, and technical assistance.

(4) “Self-employment assistance allowance” means an allowance payable in lieu of regular benefits from the Unemployment Compensation Trust Fund to an individual who meets the requirements of this section.

(5) “Self-Employment Assistance Program” means the program under which an individual who meets the requirements of subsection (d) of this

section is eligible to receive an allowance in lieu of regular benefits for the purpose of assisting that individual in establishing a business and becoming self-employed.

(b) The weekly amount of the self-employment assistance allowance payable to an individual shall be equal to the weekly benefit amount for regular benefits otherwise payable pursuant to this title.

(c) The maximum amount of the self-employment assistance allowance paid pursuant to this section shall not exceed the maximum amount of benefits established pursuant to section 1340 of this title with respect to any benefit year.

(d)(1) An individual may receive a self-employment assistance allowance if that individual:

(A) is eligible to receive regular benefits or would be eligible to receive regular benefits except for the requirements described in subdivisions (2)(A) and (B) of this subsection (d);

(B) is identified by a worker profiling system as an individual likely to exhaust regular benefits;

(C) has received the approval of the Commissioner to participate in a program providing self-employment assistance activities;

(D) is engaged actively on a full-time basis in activities that may include training related to establishing a business and becoming self-employed; and

(E) has filed a weekly claim for the self-employment assistance allowance and provided the information the Commissioner requires.

(2) A self-employment allowance shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular benefits pursuant to this chapter, except:

(A) the requirements of section 1343 of this title, relating to availability for work, efforts to secure work, and refusal to accept work, are not applicable to the individual; and

(B)(i) the individual is not considered to be self-employed pursuant to subdivision 1301(24) of this title;

(ii) an individual who meets the requirements of this section shall be considered to be unemployed pursuant to section 1338 of this title; and

(iii) an individual who fails to participate in self-employment assistance activities or who fails to engage actively on a full-time basis in

activities, including training, relating to the establishment of a business and becoming self-employed shall be disqualified from receiving an allowance for the week in which the failure occurs.

(e) The self-employment assistance allowance may be paid to up to 35 qualified individuals at any time, provided that the number of qualified individuals receiving a self-employment assistance allowance at any time shall not exceed five percent of the total number of individuals receiving regular benefits at that time.

(f)(1) The self-employment assistance allowance shall be charged to the Unemployment Compensation Trust Fund.

(2) In the event that the self-employment assistance allowance cannot be charged to the Unemployment Compensation Trust Fund pursuant to subdivision (1) of this subsection, the allowance shall be charged in accordance with section 1325 of this title.

(g) The Commissioner may approve a program upon determining that it will provide self-employment assistance activities to qualified individuals.

(h)(1) The Commissioner shall adopt rules to implement this section.

(2) The rules adopted pursuant to this subsection shall include a detailed explanation of how an individual may apply for and establish eligibility for the Self-Employment Assistance Program and any criteria that the Commissioner will consider in determining whether to approve a program.

(i) The Commissioner may suspend the Self-Employment Assistance Program with approval of the Secretary of Administration and notice to the House Committee on Commerce and Economic Development and the Senate Committee on Finance in the event that the Program presents unintended adverse consequences to the Unemployment Compensation Trust Fund.

(j) The Self-Employment Assistance Program may not result in any cost to the Unemployment Trust Fund in excess of the cost that would be incurred by the State and charged to the Fund if the Program were not in operation.

**Sec. 22. USE OF SELF-EMPLOYMENT ASSISTANCE PROGRAM;
REPORT**

On or before January 15, 2022, the Commissioner of Labor shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs regarding the utilization of the Self-Employment Assistance Program during the previous 18 months, including the number of applications received, programs approved, and programs completed, and any recommendations for legislative action to improve the utilization of the Self-

Employment Assistance Program. The Commissioner shall also present the report in person to both Committees.

* * * Unemployment Insurance Experience Ratings * * *

Sec. 23. MITIGATING IMPACT OF EXPERIENCE RATING SYSTEM ON
SMALL BUSINESSES; REPORT

On or before January 15, 2021, the Commissioner of Labor shall submit a written report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs regarding potential approaches to mitigate the impact of a single separation from employment on a small employer's unemployment insurance experience rating and contribution rate. The report shall specifically identify and describe provisions in other states' laws that reduce the impact of a single separation from employment on small employers' unemployment insurance experience ratings and contribution rates, and any resulting effect on the state's unemployment insurance trust fund. The report shall also identify any amendments to the Vermont Statutes Annotated that could reduce the impact of a single separation from employment on a small employer's unemployment insurance experience rating and contribution rate and, if possible, make a recommendation for legislative action to accomplish that goal.

* * * Effective Dates * * *

Sec. 24. EFFECTIVE DATES

(a) Sec. 8 of this act shall take effect on passage, and the memoranda of understanding required pursuant to that section shall be executed not more than 90 days after the date of passage.

(b) Secs. 11, 12, 13, and 14 of this act shall take effect on July 1, 2026.

(c) Sec. 18 of this act shall take effect on January 1, 2021, and shall apply to injuries incurred on or after that date.

(d) This section and the remaining sections of this act shall take effect on passage.