

1 S.108

2 Introduced by Senator Pearson

3 Referred to Committee on Econ. Dev., Housing and General Affairs

4 Date:February 19, 2019

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

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

10 An act relating to employee misclassification

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

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

13 ~~§ 712. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY~~

14 ~~ATTORNEY GENERAL~~

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

Sec. 1. 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

in 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.