

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was  
3 referred Senate Bill No. 108 entitled “An act relating to employee  
4 misclassification” respectfully reports that it has considered the same and  
5 recommends that the House propose to the Senate that the bill be amended by  
6 striking out all after the enacting clause and inserting in lieu thereof the  
7 following:

8 \* \* \* Employee Misclassification \* \* \*

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

10 § 712. ENFORCEMENT BY ATTORNEY GENERAL

11 (a) Following the referral of a complaint by the Commissioner of Labor  
12 pursuant to the provisions of section 3 of this title, the Attorney General may  
13 investigate a complaint that an employer has committed a willful, substantial,  
14 or systemic violation of section 687 or 708 of this chapter by claiming that it is  
15 not an employer as defined pursuant to subdivision 601(3) of this chapter or  
16 that an individual is not a worker or employee as defined pursuant to  
17 subdivision 601(14) of this chapter and may enforce those provisions by  
18 restraining prohibited acts, seeking civil penalties, obtaining assurances of  
19 discontinuance, and conducting civil investigations in accordance with the  
20 procedures established in 9 V.S.A. §§ 2458–2461 as though an employer that  
21 violates section 687 or 708 of this chapter by claiming that it is not an

1 employer as defined pursuant to subdivision 601(3) of this chapter or that an  
2 individual is not a worker or employee as defined pursuant to subdivision  
3 601(14) of this chapter is committing an unfair act in commerce. Any  
4 employer, employment agency, or labor organization complained against shall  
5 have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The  
6 Superior Courts may impose the same civil penalties and investigation costs  
7 and order other relief to the State of Vermont or an aggrieved employee for a  
8 violation of section 687 or 708 of this chapter and any related violations of the  
9 provisions of this chapter as they are authorized to impose or order under the  
10 provisions of 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In  
11 addition, the Superior Courts may order restitution of wages or other benefits  
12 on behalf of an employee and may order reinstatement and other appropriate  
13 relief on behalf of an employee.

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

18 (2) Upon receiving notice that the Attorney General has determined that  
19 an employer committed a violation of section 687 or 708 of this chapter by  
20 claiming that it was not an employer as defined pursuant to subdivision 601(3)  
21 of this chapter or that an individual was not a worker or employee as defined

1 pursuant to subdivision 601(14) of this chapter, the Commissioners of  
2 Financial Regulation and of Taxes shall review whether the employer is in  
3 compliance with the insurance or tax laws that are under their jurisdiction.

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

5 § 1379. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY  
6 ATTORNEY GENERAL

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

1 2461 in an unfair act in commerce. In addition, the Superior Courts may order  
2 restitution of wages or other benefits on behalf of an employee and may order  
3 reinstatement and other appropriate relief on behalf of an employee.

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

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

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

15 § 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;  
16 DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT  
17 EMPLOYMENT INFORMATION; DISCLOSURE OF  
18 INFORMATION TO OTHER STATE AGENCIES TO  
19 INVESTIGATE MISCLASSIFICATION OR MISCODING

20 \* \* \*

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

9 \* \* \*

10 (e)(1) Subject to such restrictions as the Board may by regulation prescribe,  
11 information from unemployment insurance records may be made available to  
12 any public officer or public agency of this or any other state or the federal  
13 government dealing with the administration or regulation of relief, public  
14 assistance, unemployment compensation, a system of public employment  
15 offices, wages and hours of employment, workers' compensation,  
16 misclassification or miscoding of workers, occupational safety and health, or a  
17 public works program for purposes appropriate to the necessary operation of  
18 those offices or agencies. The Commissioner may also make information  
19 available to colleges, universities, and public agencies of the State for use in  
20 connection with research projects of a public service nature, and to the  
21 Vermont Economic Progress Council with regard to the administration of

1 32 V.S.A. chapter 105, subchapter 2; but no person associated with those  
2 institutions or agencies may disclose that information in any manner that  
3 would reveal the identity of any individual or employing unit from or  
4 concerning whom the information was obtained by Commissioner.

5 \* \* \*

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

11 \* \* \*

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

13 § 346. ENFORCEMENT BY ATTORNEY GENERAL; EMPLOYEE

14 MISCLASSIFICATION

15 (a) Following the referral of a complaint by the Commissioner of Labor  
16 pursuant to the provisions of section 3 of this title, the Attorney General may  
17 investigate a complaint that an employer has committed a willful, substantial,  
18 or systemic violation of section 342, 343, 348, 482, or 483 of this chapter by  
19 misclassifying an employee as an independent contractor and may enforce  
20 those provisions by restraining prohibited acts, seeking civil penalties,  
21 obtaining assurances of discontinuance, and conducting civil investigations in

1 accordance with the procedures established in 9 V.S.A. §§ 2458–2461 as  
2 though the misclassification of an employee is an unfair act in commerce. Any  
3 employer complained against shall have the same rights and remedies as  
4 specified in 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the  
5 same civil penalties and investigation costs and order other relief to the State of  
6 Vermont or an aggrieved employee for the misclassification of an employee  
7 and any related violations of the provisions of this chapter as they are  
8 authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and  
9 2461 in an unfair act in commerce. In addition, the Superior Courts may order  
10 restitution of wages or other benefits on behalf of an employee and may order  
11 reinstatement and other appropriate relief on behalf of an employee.

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





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

2 § 387. ENFORCEMENT BY ATTORNEY GENERAL; EMPLOYEE

3 MISCLASSIFICATION

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

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

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

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

11      § 3102. CONFIDENTIALITY OF TAX RECORDS

12                                      \* \* \*

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

14                                      \* \* \*

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

20                                      \* \* \*

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

2 § 3. COOPERATION WITH ATTORNEY GENERAL; MEMORANDUM  
3 OF UNDERSTANDING

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

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

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

19 (3) a requirement that the Commissioner of Labor shall, upon receiving  
20 a complaint against an employer that has been determined to have engaged in  
21 employee misclassification on three separate occasions during the past

1     10 years or is alleged to have misclassified 10 or more employees, refer the  
2     complaint to the Attorney General and coordinate with the Attorney General to  
3     investigate the complaint and, depending on the outcome of the investigation,  
4     seek any appropriate penalties pursuant to the provisions of this title and 9  
5     V.S.A. §§ 2458–2461;

6             (4) the exchange of information and coordination of investigatory and  
7     enforcement resources between the Commissioner of Labor and the Attorney  
8     General.

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

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

1 violated the provisions of chapter 5, subchapter 2 or 3 of this title or chapter 9  
2 or 17 of this title and the basis for that determination.

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

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

10 (a)(1) On or before January 15, 2021, the Attorney General and the  
11 Commissioner of Labor shall submit a written report to the House Committees  
12 on Commerce and Economic Development and on General, Housing, and  
13 Military Affairs and the Senate Committees on Economic Development,  
14 Housing and General Affairs and on Finance regarding the enforcement of  
15 employment laws related to employee misclassification pursuant to 21 V.S.A.  
16  §§ 346, 387, 712, and 1379 and by the Commissioner of Labor pursuant to 21  
17 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17.

18 (2)(A) The report shall include for both the Office of the Attorney  
19 General and the Department of Labor in each calendar year:

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

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

6           (iii) the number of investigations initiated;

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

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

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

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

17          (viii) the number of investigations related to employers who had  
18          previously violated the provisions of 21 V.S.A. chapter 5, subchapter 2 or 3, or  
19          21 V.S.A. chapter 9 or 17; and

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

1        (b)(1) On or before January 15, 2023, the Attorney General, in consultation  
2        with the Commissioners of Financial Regulation, of Labor, and of Taxes, shall  
3        submit a written report to the House Committees on Commerce and Economic  
4        Development and on General, Housing, and Military Affairs and the Senate  
5        Committees on Economic Development, Housing and General Affairs and on  
6        Finance regarding the enforcement of employment laws related to employee  
7        misclassification by the Attorney General pursuant to 21 V.S.A. §§ 346, 387,  
8        712, and 1379 and by the Commissioner of Labor pursuant to 21 V.S.A.  
9        chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17.

10        (A) The report shall include for both the Office of the Attorney  
11        General and the Department of Labor in each calendar year:

12                (i) the number of complaints received in relation to violations of  
13        21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17 that  
14        involved employee misclassification;

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

17                (iii) the number of investigations initiated;

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

20                (v) the number and percentage of investigations that resulted in,  
21        for the Office of the Attorney General, the imposition of a civil penalty, an

1 assurance of discontinuance, or the imposition of injunctive relief, and, for the  
2 Department of Labor, the imposition of a penalty;

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

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

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

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

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

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

16 (2) a violation of 21 V.S.A. § 687 or 708 that results from an employer  
17 claiming that it is not an employer as defined pursuant to 21 V.S.A. § 601(3) or  
18 that an individual is not a worker or employee as defined pursuant to 21 V.S.A.  
19 § 601(14).

20 Sec. 10. REPEAL

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



1 Sec. 11. 21 V.S.A. § 1314 is amended to read:

2 § 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;  
3 DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT  
4 EMPLOYMENT INFORMATION; DISCLOSURE OF  
5 INFORMATION TO OTHER STATE AGENCIES TO  
6 INVESTIGATE MISCLASSIFICATION OR MISCODING

7 \* \* \*

8 (e)(1) Subject to such restrictions as the Board may by regulation prescribe,  
9 information from unemployment insurance records may be made available to  
10 any public officer or public agency of this or any other state or the federal  
11 government dealing with the administration or regulation of relief, public  
12 assistance, unemployment compensation, a system of public employment  
13 offices, wages and hours of employment, workers' compensation,  
14 misclassification or miscoding of workers, occupational safety and health, or a  
15 public works program for purposes appropriate to the necessary operation of  
16 those offices or agencies. The Commissioner may also make information  
17 available to colleges, universities, and public agencies of the State for use in  
18 connection with research projects of a public service nature, and to the  
19 Vermont Economic Progress Council with regard to the administration of  
20 32 V.S.A. chapter 105, subchapter 2; but no person associated with those  
21 institutions or agencies may disclose that information in any manner that

1 would reveal the identity of any individual or employing unit from or  
2 concerning whom the information was obtained by Commissioner.

3 \* \* \*

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

9 \* \* \*

10 Sec. 12. 21 V.S.A. § 342a is amended to read:

11 § 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

12 \* \* \*

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

1 ~~Commissioner and the Attorney General that was agreed to in relation to~~  
2 ~~investigations conducted pursuant to section 346 of this subchapter.~~

3 Sec. 13. 32 V.S.A. § 3102 is amended to read:

4 § 3102. CONFIDENTIALITY OF TAX RECORDS

5 \* \* \*

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

7 \* \* \*

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

13 \* \* \*

14 Sec. 14. EDUCATION AND OUTREACH

15 (a) On or before September 15, 2019, the Commissioner of Labor and the  
16 Attorney General shall develop and disseminate informational materials for  
17 employers and employees that informs them:

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

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

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

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

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

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

7                                   \* \* \* Workers’ Compensation \* \* \*

8           Sec. 15. 21 V.S.A. § 711 is amended to read:

9           § 711. WORKERS’ COMPENSATION ADMINISTRATION FUND

10           (a) The Workers’ Compensation Administration Fund is created pursuant  
11 to 32 V.S.A. chapter 7, subchapter 5 to be expended by the Commissioner for  
12 the administration of the workers’ compensation and for costs of the  
13 occupational ~~disease~~ safety and health programs that are not funded by federal  
14 OSHA grants and matching State General Fund appropriations. The Fund  
15 shall consist of contributions from employers made at a rate of 1.4 percent of  
16 the direct calendar year premium for workers’ compensation insurance, one  
17 percent of self-insured workers’ compensation losses, and one percent of  
18 workers’ compensation losses of corporations approved under this chapter.  
19 Disbursements from the Fund shall be on warrants drawn by the Commissioner  
20 of Finance and Management in anticipation of receipts authorized by this  
21 section.

1 \* \* \*

2 Sec. 16. WORKERS' COMPENSATION EXEMPTION FOR EQUINE  
3 CARE AND MANAGEMENT; REPORT

4 (a) On or before January 15, 2020, the Commissioners of Agriculture and  
5 of Labor shall report to the House Committee on Commerce and Economic  
6 Development and the Senate Committee on Economic Development, Housing  
7 and General Affairs regarding whether certain activities related to equine care  
8 and management should be excluded from the definition of "worker" and  
9 "employee" pursuant to 21 V.S.A. § 601(14).

10 (b) The report shall specifically address the following:

11 (1) an appropriate definition for the terms "agriculture" and "farm  
12 employment" as those terms are used in 21 V.S.A. § 601(14)(C);

13 (2) whether any activities related to equine care and management would  
14 fall within the definitions of "agriculture" and "farm employment" determined  
15 pursuant to subdivision (1) of this subsection;

16 (3) what activities related to equine care and management, if any, should  
17 be included in the exemptions from the definition of "worker" and  
18 "employee"; and

19 (4) what the potential impact of excluding the activities identified  
20 pursuant to subdivision (3) of this subsection from the definition of "worker"  
21 and "employee" would be with respect to workers' compensation premiums,

1 worker safety, and potential liability for employers that have equine care and  
2 management operations.

3 (c) The report may include a recommendation for legislative action.

4 Sec. 17. STATE EMPLOYEES; WORKERS' COMPENSATION; POST-  
5 TRAUMATIC STRESS DISORDER; MENTAL DISORDERS;  
6 STUDY; REPORT

7 On or before January 15, 2020, the Agency of Administration, Office of  
8 Risk Management, in consultation with the Agency of Human Services, the  
9 Department for Children and Families, and the Departments of Human  
10 Resources and of Labor, shall submit a written report on the workers'  
11 compensation claims submitted by State employees in relation to post-  
12 traumatic stress disorder and other mental conditions to the House Committee  
13 on Commerce and Economic Development and the Senate Committee on  
14 Economic Development, Housing and General Affairs. The report shall:

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

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

- 1           (3) include an inventory of currently existing prevention and education  
2           plans related to the occurrence of post-traumatic stress disorder and other  
3           mental conditions among State employees;
- 4           (4) identify various approaches for preventing the occurrence of post-  
5           traumatic stress disorder and other mental conditions among State employees,  
6           including specific actions and methods to reduce the likelihood of job-related  
7           stressors or workplace violence; and
- 8           (5) identify specific training and educational activities and materials that  
9           can be implemented to:
- 10           (A) enable State employees to better recognize situations, incidents,  
11           and other occurrences that may result in a stressful situation or violent  
12           interaction;
- 13           (B) enable State employees to better recognize the symptoms of post-  
14           traumatic stress disorder and other common mental conditions in themselves  
15           and their coworkers;
- 16           (C) identify the resources available to employees following a  
17           stressful or traumatic incident, including the Employee Assistance Program  
18           and counseling; and
- 19           (D) educate State employees regarding how to file and pursue a  
20           workers' compensation claim for work-related post-traumatic stress disorder or

1 another work-related mental condition that requires treatment or has become  
2 disabling.

3 Sec. 18. WORKERS' COMPENSATION; COMPENSATION FOR  
4 PRESCRIBED OVER-THE-COUNTER MEDICATIONS;  
5 OUTREACH

6 On or before October 15, 2019, the Commissioner of Labor shall develop  
7 and disseminate informational materials to educate workers and employers  
8 regarding the ability of a worker to receive compensation for the cost of  
9 prescribed over-the-counter medications. The methods of disseminating the  
10 materials shall include:

- 11 (1) posting the information on the Department's website;  
12 (2) e-mailing or otherwise providing written notice to insurance carriers  
13 that offer workers' compensation insurance in Vermont; and  
14 (3) ensuring, in coordination with the Department of Health and the  
15 appropriate professional licensing boards and professional membership  
16 associations, that the information is made available to all licensed health care  
17 professionals who are authorized to prescribe medications and to all licensed  
18 pharmacists in Vermont.

19 Sec. 19. 21 V.S.A. § 650 is amended to read:

20 § 650. PAYMENT; AVERAGE WAGE; COMPUTATION

21 \* \* \*



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

15 \* \* \* Required Notice for Unemployment Insurance \* \* \*

16 Sec. 20. 21 V.S.A. § 1346 is amended to read:

17 § 1346. CLAIMS FOR BENEFITS; ~~REGULATIONS~~ RULES; NOTICE

18 (a) Claims for benefits shall be made in accordance with ~~such regulations~~  
19 ~~as rules adopted by the Board may prescribe. Each employer shall post and~~  
20 ~~maintain printed statements of such regulations in places readily accessible to~~  
21 ~~individuals in his or her service and shall make available to each such~~

1 ~~individual, at the time he or she becomes unemployed, a printed statement of~~  
2 ~~such regulations. Such printed statements shall be supplied by the~~  
3 ~~Commissioner to each employer without cost to him or her.~~

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

10 (c) An employer shall post notice of how an unemployed individual can  
11 seek unemployment benefits in a form provided by the Commissioner in a  
12 place conspicuous to individuals performing services for the employer. The  
13 notice shall also advise individuals of their rights under the Domestic and  
14 Sexual Violence Survivor’s Transitional Employment Program, pursuant to  
15 chapter 16A of this title. The Commissioner shall provide a copy of the notice  
16 to an employer upon request without cost to the employer.

17 \* \* \* Short-Time Compensation Program \* \* \*

18 Sec. 21. FINDINGS

19 The General Assembly finds:

1           (1) The Short-Time Compensation Program was enacted in 1986 to  
2           assist employers in avoiding layoffs by temporarily reducing the hours worked  
3           by some of their employees.

4           (2) The Program provides partial unemployment insurance benefits to  
5           the employees who are working reduced hours.

6           (3) In 2014, the General Assembly amended 21 V.S.A. § 1338a to  
7           change the formula by which partially unemployed individuals who are not  
8           covered by a short-time compensation plan are paid partial unemployment  
9           benefits. By changing a claimant’s so-called “disregarded earnings” from  
10           30 percent to 50 percent of the claimant’s weekly wage, the amount of  
11           unemployment benefits available to a partially employed individual increased  
12           significantly.

13           (4) Because of the change in disregarded earnings, employers and  
14           employees both have less to gain from short-time compensation plans.

15           (5) The application and approval process for short-time compensation  
16           plans is an administrative burden for employers.

17           (6) Since 2014, only one employer in Vermont has established a Short-  
18           Time Compensation Program.

19           (7) Therefore, the General Assembly finds that 21 V.S.A. chapter 17,  
20           subchapter 3, which establishes the Short-Time Compensation Program,  
21           should be repealed.

1       Sec. 22. REPEAL

2             21 V.S.A. chapter 17, subchapter 3 is repealed.

3                     \* \* \* Self-Employment Assistance Program \* \* \*

4       Sec. 23. 21 V.S.A. § 1340a is added to read:

5       § 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

6             (a) As used in this section:

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

10                    (2) “Regular benefits” shall have the same meaning as in subdivision  
11                    1421(5) of this title.

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

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

19                    (5) “Self-Employment Assistance Program” means the program under  
20                    which an individual who meets the requirements of subsection (d) of this  
21                    section is eligible to receive an allowance in lieu of regular benefits for the

1 purpose of assisting that individual in establishing a business and becoming  
2 self-employed.

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

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

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

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

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

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

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

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

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

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

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

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

13          (iii) an individual who fails to participate in self-employment  
14          assistance activities or who fails to engage actively on a full-time basis in  
15          activities, including training, relating to the establishment of a business and  
16          becoming self-employed shall be disqualified from receiving an allowance for  
17          the week in which the failure occurs.

18          (e) The self-employment assistance allowance may be paid to up to 35  
19          qualified individuals at any time.

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

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

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

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

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

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

17           Sec. 24. USE OF SELF EMPLOYMENT ASSISTANCE PROGRAM;

18           REPORT

19           On or before January 15, 2021, the Commissioner of Labor shall submit a  
20           written report to the House Committee on Commerce and the Senate  
21           Committee on Economic Development, Housing and General Affairs regarding

1 the utilization of the Self Employment Assistance Program during the previous  
2 18 months, including the number of applications received, programs approved,  
3 and programs completed, and any recommendations for legislative action to  
4 improve the utilization of the Self Employment Assistance Program. The  
5 Commissioner shall also present the report in person to both Committees.

6 \* \* \* Unemployment Insurance Experience Ratings \* \* \*

7 Sec. 25. 21 V.S.A. § 1325 is amended to read:

8 § 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

9 DISCLOSURE TO SUCCESSOR ENTITY

10 (a)(1) The Commissioner shall maintain an experience-rating record for  
11 each employer. Benefits paid shall be charged against the experience-rating  
12 record of each subject employer who provided base-period wages to the  
13 eligible individual. Each subject employer's experience-rating charge shall  
14 bear the same ratio to total benefits paid as the total base-period wages paid by  
15 that employer bear to the total base-period wages paid to the individual by all  
16 base-period employers. The experience-rating record of an individual subject  
17 base-period employer shall not be charged for benefits paid to an individual  
18 under any of the following conditions:

19 \* \* \*

20 (E) The individual was paid wages of \$1,000.00 or less by the  
21 employer during the individual's base period.



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Sec. 26. MITIGATING IMPACT OF EXPERIENCE RATING SYSTEM ON  
SMALL BUSINESSES; REPORT

On or before January 15, 2020, 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.

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\* \* \* Effective Dates \* \* \*

Sec. 27. EFFECTIVE DATES

(a) Sec. 8 of this act shall take effect on July 1, 2019, and the memoranda of understanding required pursuant to that section shall be executed on or before September 1, 2019.

(b) Secs. 10, 11, 12, and 13 of this act shall take effect on July 1, 2023.

(c) Sec. 19 of this act shall take effect on January 1, 2020, and shall apply to injuries incurred on or after that date.

(d) The remaining sections of this act shall take effect on July 1, 2019.

and that after passage the title of the bill be amended to read: “An act relating to workers’ compensation, unemployment insurance, and employee misclassification”

(Committee vote: \_\_\_\_\_)

\_\_\_\_\_

Representative \_\_\_\_\_

FOR THE COMMITTEE