

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.

16 (2) Upon receiving notice that the Attorney General has determined that
17 an employing unit has committed a violation of section 342, 343, 348, 482,
18 or 483 of this chapter by misclassifying an employee as an independent
19 contractor, the Commissioners of Financial Regulation and of Taxes shall

1 review whether the employer is in compliance with the insurance or tax laws
2 that are under their jurisdiction.

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

4 § 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

5 * * *

6 (h) Information obtained from any employer, employee, or witness in the
7 course of investigating a complaint of unpaid wages shall be confidential and
8 shall not be disclosed or open to public inspection in any manner that reveals
9 the employee's or employer's identity or be admissible in evidence in any
10 action or proceeding other than one arising under this subchapter. However,
11 such information may be released to any public official for the purposes
12 provided in subdivision 1314(e)(1) of this title or to the Attorney General in
13 relation to investigations conducted pursuant to section 346 of this subchapter
14 as provided pursuant to the terms of the memorandum of understanding
15 between the Attorney General and the Commissioner of Labor executed
16 pursuant to section 3 of this title.

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

18 § 387. ENFORCEMENT BY ATTORNEY GENERAL; EMPLOYEE

19 MISCLASSIFICATION

20 (a) Following the referral of a complaint by the Commissioner of Labor
21 pursuant to the provisions of section 3 of this title, the Attorney General may

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

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

21 (2) Upon receiving notice that the Attorney General has determined that

1 an employing unit has committed a violation of this subchapter by
2 misclassifying an employee as an independent contractor, the Commissioners
3 of Financial Regulation and of Taxes shall review whether the employer is in
4 compliance with the insurance or tax laws that are under their jurisdiction.

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

6 § 3102. CONFIDENTIALITY OF TAX RECORDS

7 * * *

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

9 * * *

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

15 * * *

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

17 § 3. COOPERATION WITH ATTORNEY GENERAL; MEMORANDUM
18 OF UNDERSTANDING

19 (a) The Attorney General and the Commissioner of Labor shall enter into a
20 memorandum of understanding to establish a process for the referral of
21 complaints received by the Commissioner of Labor to the Attorney General.

1 the sharing of information, and the coordination of investigatory and
2 enforcement resources in relation to the provisions of sections 346, 387, 712,
3 and 1379 of this title. Notwithstanding any provision of 9 V.S.A. § 2460(a) to
4 the contrary, the memorandum shall, at a minimum, provide for:

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

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

13 (3) a requirement that the Commissioner of Labor shall, upon receiving
14 a complaint against an employer that has been determined to have engaged in
15 employee misclassification on three separate occasions during the past
16 10 years or is alleged to have misclassified 10 or more employees, either

17 (A) refer the complaint to the Attorney General; or

18 (B) coordinate with the Attorney General to investigate the complaint
19 and, depending on the outcome of the investigation, seek any appropriate
20 penalties pursuant to the provisions of this title and 9 V.S.A. §§ 2458–2461;

1 (4) the exchange of information and coordination of investigatory and
2 enforcement resources between the Commissioner of Labor and the Attorney
3 General.

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

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

19 Sec. 9. EMPLOYEE MISCLASSIFICATION; ENFORCEMENT BY
20 ATTORNEY GENERAL; REPORTS

1 (a)(1) On or before January 15, 2021, the Attorney General and the
2 Commissioner of Labor shall submit a written report to the House Committees
3 on Commerce and Economic Development and on General, Housing, and
4 Military Affairs and the Senate Committees on Economic Development,
5 Housing and General Affairs and on Finance regarding the enforcement of
6 employment laws related to employee misclassification pursuant to 21 V.S.A.
7 §§ 346, 387, 712, and 1379 and by the Commissioner of Labor pursuant to 21
8 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17.

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

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

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

16 (iii) the number of investigations initiated;

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

19 (v) the number and percentage of investigations that resulted in,
20 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) any recommendations for legislative action to improve the
11 effectiveness of the provisions of 21 V.S.A. §§ 346, 387, 712, and 1379.

12 (b)(1) On or before January 15, 2023, the Attorney General, in consultation
13 with the Commissioners of Financial Regulation, of Labor, and of Taxes, shall
14 submit a written report to the House Committees on Commerce and Economic
15 Development and on General, Housing, and Military Affairs and the Senate
16 Committees on Economic Development, Housing and General Affairs and on
17 Finance regarding the enforcement of employment laws related to employee
18 misclassification by the Attorney General pursuant to 21 V.S.A. §§ 346, 387,
19 712, and 1379 and by the Commissioner of Labor pursuant to 21 V.S.A.
20 chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17.

- 1 (A) The report shall include for both the Office of the Attorney
2 General and the Department of Labor in each calendar year:
- 3 (i) the number of complaints received in relation to violations of
4 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A. chapters 9 and 17 that
5 involved employee misclassification;
- 6 (ii) the number and percentage of complaints received that were
7 referred to the other entity;
- 8 (iii) the number of investigations initiated;
- 9 (iv) the average number of days between the receipt of a
10 complaint, the start of an investigation, and the completion of an investigation;
- 11 (v) the number and percentage of investigations that resulted in,
12 for the Office of the Attorney General, the imposition of a civil penalty, an
13 assurance of discontinuance, or the imposition of injunctive relief, and, for the
14 Department of Labor, the imposition of a penalty;
- 15 (vi) the number and percentage of investigations that resulted in a
16 determination that the employer had engaged in employee misclassification;
- 17 (vii) the number and percentage of investigations that resulted in
18 the imposition of debarment pursuant to 21 V.S.A. § 692, 708, or 1314a; and
- 19 (viii) the number of investigations related to employers who had
20 previously violated the provisions of 21 V.S.A. chapter 5, subchapter 2 or 3, or
21 21 V.S.A. chapter 9 or 17; and

1 any public officer or public agency of this or any other state or the federal
2 government dealing with the administration or regulation of relief, public
3 assistance, unemployment compensation, a system of public employment
4 offices, wages and hours of employment, workers' compensation,
5 misclassification or miscoding of workers, occupational safety and health, or a
6 public works program for purposes appropriate to the necessary operation of
7 those offices or agencies. The Commissioner may also make information
8 available to colleges, universities, and public agencies of the State for use in
9 connection with research projects of a public service nature, and to the
10 Vermont Economic Progress Council with regard to the administration of
11 32 V.S.A. chapter 105, subchapter 2; but no person associated with those
12 institutions or agencies may disclose that information in any manner that
13 would reveal the identity of any individual or employing unit from or
14 concerning whom the information was obtained by Commissioner.

15 * * *

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

21 * * *

1 chapter 40, 20 V.S.A. chapter 173, subchapter 2A, and 33 V.S.A. chapter 19,
2 subchapters 1A and 1B, ~~and 21 V.S.A. §§ 346, 387, 712, and 1379;~~

3 * * *

4 **Sec. 14. EDUCATION AND OUTREACH**

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

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

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

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

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

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

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

18 * * * Workers' Compensation * * *

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

20 § 711. WORKERS' COMPENSATION ADMINISTRATION FUND

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

13 * * *

14 Sec. 16. WORKERS' COMPENSATION EXEMPTION FOR EQUINE
15 CARE AND MANAGEMENT; REPORT

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

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

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

4 (2) whether any activities related to equine care and management would
5 fall within the definitions of “agriculture” and “farm employment” determined
6 pursuant to subdivision (1) of this subsection;

7 (3) what activities related to equine care and management, if any, should
8 be included in the exemptions from the definition of “worker” and
9 “employee”; and

10 (4) what the potential impact of excluding the activities identified
11 pursuant to subdivision (3) of this subsection from the definition of “worker”
12 and “employee” would be with respect to workers’ compensation premiums,
13 worker safety, and potential liability for employers that have equine care and
14 management operations.

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

16 Sec. 17. STATE EMPLOYEES; WORKERS’ COMPENSATION; POST-
17 TRAUMATIC STRESS DISORDER; MENTAL DISORDERS;
18 STUDY; REPORT

19 On or before January 15, 2020, the Agency of Administration, Office of
20 Risk Management, in consultation with the Agency of Human Services, the
21 Department for Children and Families, and the Departments of Human

1 Resources and of Labor, shall submit a written report on the workers'
2 compensation claims submitted by State employees in relation to post-
3 traumatic stress disorder and other mental conditions to the House Committee
4 on Commerce and Economic Development and the Senate Committee on
5 Economic Development, Housing and General Affairs. The report shall:

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

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

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

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

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

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

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

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

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

14 Sec. 18. WORKERS' COMPENSATION; COMPENSATION FOR
15 PRESCRIBED OVER-THE-COUNTER MEDICATIONS;
16 OUTREACH

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

1 after the established day. ~~For the purposes of~~ As used in this subsection,
2 “paid” means the payment is mailed to the claimant’s mailing address or, in the
3 case of direct deposit, transferred into the designated account. In the event of a
4 dispute, proof of payment shall be established by affidavit.

5 * * * Required Notice for Unemployment Insurance * * *

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

7 § 1346. CLAIMS FOR BENEFITS; ~~REGULATIONS~~ RULES; NOTICE

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

15 (b) Every person making a claim shall certify that he or she has not, during
16 the week with respect to which waiting period credit or benefits are claimed,
17 earned or received wages or other remuneration for any employment, whether
18 subject to this chapter or not, otherwise than as specified in his or her claim.

19 All benefits shall be paid in accordance with ~~such regulations as~~ the rules
20 adopted by the Board may prescribe.

1 unemployment benefits available to a partially employed individual increased
2 significantly.

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

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

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

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

12 Sec. 22. REPEAL

13 21 V.S.A. chapter 17, subchapter 3 is repealed.

14 * * * Self-Employment Assistance Program * * *

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

16 § 1340a. SELF-EMPLOYMENT ASSISTANCE PROGRAM

17 (a) As used in this section:

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

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

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

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

10 (5) “Self-Employment Assistance Program” means the program under
11 which an individual who meets the requirements of subsection (d) of this
12 section is eligible to receive an allowance in lieu of regular benefits for the
13 purpose of assisting that individual in establishing a business and becoming
14 self-employed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **Sec. 24. USE OF SELF EMPLOYMENT ASSISTANCE PROGRAM;**

11 **REPORT**

12 On or before January 15, 2021, the Commissioner of Labor shall submit a
13 written report to the House Committee on Commerce and the Senate
14 Committee on Economic Development, Housing and General Affairs regarding
15 the utilization of the Self Employment Assistance Program during the previous
16 18 months, including the number of applications received, programs approved,
17 and programs completed, and any recommendations for legislative action to
18 improve the utilization of the Self Employment Assistance Program. The
19 Commissioner shall also present the report in person to both Committees.

1 Development and the Senate Committee on Economic Development, Housing
2 and General Affairs regarding potential approaches to mitigate the impact of a
3 single separation from employment on a small employer’s unemployment
4 insurance experience rating and contribution rate. The report shall specifically
5 identify and describe provisions in other states’ laws that reduce the impact of
6 a single separation from employment on small employers’ unemployment
7 insurance experience ratings and contribution rates, and any resulting effect on
8 the state’s unemployment insurance trust fund. The report shall also identify
9 any amendments to the Vermont Statutes Annotated that could reduce the
10 impact of a single separation from employment on a small employer’s
11 unemployment insurance experience rating and contribution rate and, if
12 possible, make a recommendation for legislative action to accomplish that
13 goal.

14 * * * Effective Dates * * *

15 Sec. 27. EFFECTIVE DATES

16 (a) Secs. 10, 11, 12, and 13 shall take effect on July 1, 2023.

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

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

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

4

5

6

7 (Committee vote: _____)

8

9

Representative _____

10

FOR THE COMMITTEE