

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. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY
11 ATTORNEY GENERAL

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

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

1 in 9 V.S.A. §§ 2458–2461 as though a violation of section 687 or 708 of this
2 chapter and any related violations of the provisions of this chapter were unfair
3 acts in commerce. Any employer, employment agency, or labor organization
4 complained against shall have the same rights and remedies as specified in
5 9 V.S.A. §§ 2458–2461. The Superior Courts may impose the same civil
6 penalties and investigation costs and order other relief to the State of Vermont
7 or an aggrieved employee for a violation of section 687 or 708 of this chapter
8 and any related violations of the provisions of this chapter as they are
9 authorized to impose or order under the provisions of 9 V.S.A. §§ 2458 and
10 2461 in an unfair act in commerce. In addition, the Superior Courts may order
11 restitution of wages or other benefits on behalf of an employee and may order
12 reinstatement and other appropriate relief on behalf of an employee.

13 (c) If, following the investigation, the Attorney General determines that an
14 employer has committed a violation of section 687 or 708 of this chapter, the
15 Attorney General shall notify the Commissioners of Labor, of Financial
16 Regulation, and of Taxes of the determination, and those Commissioners shall
17 review whether the employer is in compliance with the employment,
18 insurance, or tax laws that are under their jurisdiction.

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

2 § 1379. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY
3 ATTORNEY GENERAL

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

9 (b) The Attorney General may investigate the complaint and may enforce
10 the provisions of this chapter by restraining prohibited acts, seeking civil
11 penalties, obtaining assurances of discontinuance, and conducting civil
12 investigations in accordance with the procedures established in 9 V.S.A.
13 §§ 2458–2461 as though the misclassification of an employee and any related
14 violations of the provisions of this chapter were unfair acts in commerce. Any
15 employer, employment agency, or labor organization complained against shall
16 have the same rights and remedies as specified in 9 V.S.A. §§ 2458–2461. The
17 Superior Courts may impose the same civil penalties and investigation costs
18 and order other relief to the State of Vermont or an aggrieved employee for the
19 misclassification of an employee and any related violations of the provisions of
20 this chapter as they are authorized to impose or order under the provisions of
21 9 V.S.A. §§ 2458 and 2461 in an unfair act in commerce. In addition, the

1 Superior Courts may order restitution of wages or other benefits on behalf of
2 an employee and may order reinstatement and other appropriate relief on
3 behalf of an employee.

4 (c) If, following the investigation, the Attorney General determines that an
5 employee has been misclassified as an independent contractor, the Attorney
6 General shall notify the Commissioners of Labor, of Financial Regulation, and
7 of Taxes of the determination, and those Commissioners shall review whether
8 the employer is in compliance with the employment, insurance, or tax laws that
9 are under their jurisdiction.

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

11 § 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;
12 DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT
13 EMPLOYMENT INFORMATION; DISCLOSURE OF
14 INFORMATION TO OTHER STATE AGENCIES TO
15 INVESTIGATE MISCLASSIFICATION OR MISCODING

16 * * *

17 (d)(1) Except as otherwise provided in this chapter, information obtained
18 from any employing unit or individual in the administration of this chapter, and
19 determinations as to the benefit rights of any individual shall be held
20 confidential and shall not be disclosed or open to public inspection in any
21 manner revealing the individual's or employing unit's identity, nor be

1 admissible in evidence in any action or proceeding other than one arising out
2 of this chapter, or to support or facilitate an investigation by a public agency
3 identified in subdivision (e)(1) of this section.

4 * * *

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

21 * * *

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

11 (c) If, following the investigation, the Attorney General determines that an
12 employer committed a violation of section 342, 343, 348, 482, or 483 of this
13 chapter by misclassifying an employee as an independent contractor, the
14 Attorney General shall notify the Commissioners of Labor, of Financial
15 Regulation, and of Taxes of the determination, and those Commissioners shall
16 review whether the employer is in compliance with the employment,
17 insurance, or tax laws that are under their jurisdiction.

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

19 § 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

20 * * *

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

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

12 § 387. ENFORCEMENT BY ATTORNEY GENERAL; EMPLOYEE
13 MISCLASSIFICATION

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

18 (b) The Attorney General may investigate a complaint of a violation of this
19 subchapter that is related to the misclassification of an employee as an
20 independent contractor and may enforce the provisions of this subchapter by
21 restraining prohibited acts, seeking civil penalties, obtaining assurances of

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

14 (c) If, following the investigation, the Attorney General determines that an
15 employer has violated this subchapter by misclassifying an employee as an
16 independent contractor, the Attorney General shall notify the Commissioners
17 of Labor, of Financial Regulation, and of Taxes of the determination, and those
18 Commissioners shall review whether the employer is in compliance with the
19 employment, insurance, or tax laws that are under their jurisdiction.

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

2 § 3102. CONFIDENTIALITY OF TAX RECORDS

3 * * *

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

5 * * *

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

11 * * *

12 Sec. 8. INFORMATION EXCHANGE; EMPLOYEE

13 MISCLASSIFICATION; ENFORCEMENT BY ATTORNEY

14 GENERAL; MEMORANDA OF UNDERSTANDING

15 (a) The Attorney General and the Commissioner of Labor shall enter into a
16 memorandum of understanding to establish a process for sharing information
17 and the coordination of investigatory resources in relation to the provisions of
18 21 V.S.A. §§ 346, 387, 712, and 1379. Notwithstanding any provision of
19 9 V.S.A. § 2460(a) to the contrary, the memorandum shall, at a minimum,
20 provide for:

1 (1) the notification of the Commissioner of Labor by the Attorney
2 General regarding the commencement and outcome of an investigation
3 conducted pursuant to 21 V.S.A. §§ 346, 387, 712, and 1379;

4 (2) the referral to the Attorney General by the Commissioner of Labor
5 of cases in which an employer may, through the misclassification of
6 employees, be engaging in willful, substantial, or systemic violations of the
7 provisions of 21 V.S.A. chapter 5, subchapter 2 or 3, or 21 V.S.A. chapter 9
8 or 17;

9 (3) the exchange of information related to an alleged violation or the
10 investigation of an alleged violation pursuant to 21 V.S.A. §§ 346, 387, 712,
11 and 1379; and

12 (4) a process for resolving a disagreement between the parties regarding
13 whether an employer engaged in employee misclassification in favor of the
14 determination made by the Commissioner of Labor.

15 (b) The Attorney General shall enter into separate memoranda of
16 understanding with the Commissioner of Financial Regulation and the
17 Commissioner of Taxes to establish a process for sharing information related
18 to an investigation by the Attorney General pursuant to 21 V.S.A. §§ 346, 387,
19 712, and 1379. Notwithstanding any provision of 9 V.S.A. § 2460(a) to the
20 contrary, each memorandum shall, at a minimum, provide for the disclosure of
21 the Attorney General's determination that an employer has, through the

1 misclassification of an employee, violated the provisions of 21 V.S.A.
2 chapter 5, subchapter 2 or 3, or 21 V.S.A. chapter 9 or 17, and the basis for that
3 determination.

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

9 Sec. 9. EMPLOYEE MISCLASSIFICATION; ENFORCEMENT BY

10 ATTORNEY GENERAL; REPORTS

11 (a)(1) On or before January 15, 2021, the Attorney General, in consultation
12 with the Commissioners of Financial Regulation, of Labor, and of Taxes, shall
13 submit a written report to the House Committees on Commerce and Economic
14 Development and on General, Housing, and Military Affairs and the Senate
15 Committees on Economic Development, Housing and General Affairs and on
16 Finance regarding the enforcement of employment law violations related to
17 employee misclassification by the Attorney General pursuant to 21 V.S.A.
18 §§ 346, 387, 712, and 1379.

19 (2) The report shall include:

20 (A) for each calendar year:

1 (i) the number of complaints received by the Office of the

2 Attorney General;

3 (ii) the number of investigations initiated by the Attorney General;

4 (iii) the number of investigations that resulted in the imposition of
5 a civil penalty, an assurance of discontinuance, or the imposition of injunctive
6 relief; and

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

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

17 (2) The report shall include:

18 (A) for each calendar year:

19 (i) the number of complaints received by the Office of the

20 Attorney General;

1 (ii) the number of investigations initiated by the Attorney General;

2 and

3 (iii) the number of investigations that resulted in the imposition of

4 a civil penalty, an assurance of discontinuance, or the imposition of injunctive

5 relief; and

6 (B) a recommendation regarding whether to delay or eliminate the

7 repeal of 21 V.S.A. §§ 346, 387, 712, and 1379, and if a delay or elimination

8 of the repeal is proposed, any recommendations for legislative action related to

9 those sections.

10 Sec. 10. REPEAL

11 21 V.S.A. §§ 346, 387, 712, and 1379 are repealed.

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

13 § 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;

14 DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT

15 EMPLOYMENT INFORMATION; DISCLOSURE OF

16 INFORMATION TO OTHER STATE AGENCIES TO

17 INVESTIGATE MISCLASSIFICATION OR MISCODING

18 * * *

19 (e)(1) Subject to such restrictions as the Board may by regulation prescribe,

20 information from unemployment insurance records may be made available to

21 any public officer or public agency of this or any other state or the federal

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

14 * * *

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

20 * * *

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 * * * Workers' Compensation Studies and Outreach * * *

5 Sec. 14. WORKERS' COMPENSATION EXEMPTION FOR EQUINE
6 CARE AND MANAGEMENT; REPORT

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

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

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

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

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

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

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

7 Sec. 15. STATE EMPLOYEES; WORKERS’ COMPENSATION; POST-
8 TRAUMATIC STRESS DISORDER; MENTAL DISORDERS;
9 STUDY; REPORT

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

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

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

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

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

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

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

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

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

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

5 Sec. 16. WORKERS' COMPENSATION; COMPENSATION FOR
6 PRESCRIBED OVER-THE-COUNTER MEDICATIONS;
7 OUTREACH

8 On or before October 15, 2019, the Commissioner of Labor shall develop
9 and post on the Department's website informational materials to educate
10 workers and employers regarding the ability of a worker to receive
11 compensation for the cost of prescribed over-the-counter medications.

12 * * * Direct Deposit of Workers' Compensation * * *

13 Sec. 17. 21 V.S.A. § 650 is amended to read:

14 § 650. PAYMENT; AVERAGE WAGE; COMPUTATION

15 * * *

16 (f) When benefits have been awarded or are not in dispute as provided in
17 subsection (e) of this section, the employer shall establish a weekday on which
18 payment shall be mailed or deposited and notify the claimant and the
19 Department of that day. The employer shall ensure that each weekly payment
20 is mailed or deposited on or before the day established. Payment shall be made
21 by direct deposit to a claimant who elects that payment method. For a claimant

1 who has elected to receive payments by direct deposit, the employer shall
2 provide him or her with written notice of each payment by direct deposit. If
3 the benefit payment is not mailed or deposited on the day established, the
4 employer shall pay to the claimant a late fee of \$10.00 or five percent of the
5 benefit amount, whichever is greater, for each weekly payment that is made
6 after the established day. For the purposes of this subsection, “paid” means the
7 payment is mailed to the claimant’s mailing address or, in the case of direct
8 deposit, transferred into the designated account. In the event of a dispute,
9 proof of payment shall be established by affidavit.

10 * * * Required Notice for Unemployment Insurance * * *

11 Sec. 18. 21 V.S.A. § 1346 is amended to read:

12 § 1346. CLAIMS FOR BENEFITS; ~~REGULATIONS;~~ RULES; NOTICE

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

20 (b) Every person making a claim shall certify that he or she has not, during
21 the week with respect to which waiting period credit or benefits are claimed,

1 earned or received wages or other remuneration for any employment, whether
2 subject to this chapter or not, otherwise than as specified in his or her claim.

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

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

12 * * * Effective Dates * * *

13 Sec. 19. EFFECTIVE DATES

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

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

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

19

20

21

1 (Committee vote: _____)

2

3

Representative _____

4

FOR THE COMMITTEE