

1 S.203

2 Introduced by Senators Brock, Ingalls, Parent and Terenzini

3 Referred to Committee on

4 Date:

5 Subject: Workforce development; occupational licensing; Office of

6 Professional Regulation; independent contractors; workers'

7 compensation; unemployment insurance; employment tax credit;

8 Vermont Strong Scholars Loan Forgiveness Program

9 Statement of purpose of bill as introduced: This bill proposes to amend
10 occupational licensing, workers' compensation, and unemployment insurance
11 requirements; to add a State income tax credit; and to appropriate funds for the
12 Vermont Strong Scholars Loan Forgiveness Program.

13 An act relating to workforce development

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

15 Sec. 1. SHORT TITLE

16 This act shall be known and may be cited as the Vermont Workforce
17 Expansion Act (VWEA).

18 Sec. 2. FINDINGS

19 The General Assembly finds:

1 of rehabilitation, and identification of the profession or professions for which
2 the individual seeks licensure.

3 (2) The individual shall submit this request online, accompanied by the
4 fee for preapplication determinations set forth in section 125 of this
5 subchapter. If the individual thereafter applies for licensure, this
6 preapplication fee shall be deducted from that license application fee.

7 (3) The Office shall:

8 (A) process a request within 30 days of receiving a complete request;

9 (B) assess the nature of the underlying conviction or convictions, the
10 nexus to the profession or professions for which the individual seeks licensure,
11 and the provided evidence of rehabilitation as described in subdivision
12 129a(a)(10) of this subchapter; and

13 (C) respond to the individual's request in writing: with the following
14 information:

15 (i) the grounds and reasons for the Office's determination;

16 (ii) the earliest date the individual may apply for a license given
17 the nature of the individual's underlying conviction or convictions; and

18 (iii) whether evidence of rehabilitation may be considered upon
19 application.

20 * * *

1 Sec. 5. 3 V.S.A. § 129a is amended to read:

2 § 129a. UNPROFESSIONAL CONDUCT

3 (a) In addition to any other provision of law, the following conduct by a
4 licensee constitutes unprofessional conduct. When that conduct is by an
5 applicant or person who later becomes an applicant, it may constitute grounds
6 for denial of a license or other disciplinary action. Any one of the following
7 items or any combination of items, whether the conduct at issue was
8 committed within or outside the State, shall constitute unprofessional conduct:

9 * * *

10 (10) Conviction of a crime related to the practice of the profession or
11 conviction of a felony, ~~whether or not related to the practice of the profession.~~

12 (A) No individual shall be disqualified from pursuing, practicing, or
13 engaging in any occupation for which a license, certification, or registration is
14 required solely or in part because of a prior criminal conviction, unless the
15 crime for which an applicant was convicted directly relates to the duties and
16 responsibilities for the occupation, nor shall an individual's arrest without a
17 subsequent conviction be considered as part of the licensing, certification, or
18 registration process.

19 (B) The Office shall list on its website the specific criminal
20 convictions that could disqualify an applicant from receiving a license,
21 certification, or registration for each profession the Office regulates. The list

1 shall not include vague or generic descriptors for types of criminal convictions,
2 such as “crimes of moral turpitude,” and shall only include criminal
3 convictions that are directly related to the duties and responsibilities of the
4 profession.

5 (C) If an individual has a conviction of concern, the board or hearing
6 officer shall consider the following in determining whether to deny or
7 discipline a license, certification, or registration to the individual based on the
8 following factors and shall make its determination based on clear and
9 convincing evidence:

10 (A)(i) the nature and seriousness of the conviction;

11 (B)(ii) the amount of time since the commission of the crime;

12 (C)(iii) the relationship of the crime to the ability, capacity, and
13 fitness required to perform the duties and discharge the responsibilities of the
14 profession; and

15 (D)(iv) evidence of rehabilitation or treatment.

16 * * *

17 * * * Licensing Reciprocity; Out of State Work; Apprenticeships * * *

18 Sec. 6. 3 V.S.A. § 136a is amended to read:

19 § 136a. ~~UNIFORM PROCESS FOR ENDORSEMENT FROM OTHER~~
20 ~~STATES~~ UNIVERSAL LICENSING RECIPROCITY AND
21 RECOGNITION

1 (a) ~~Notwithstanding any statute or rule to the contrary and except as~~
2 ~~provided in subsection (b) of this section, all professions attached to the Office~~
3 ~~shall have an endorsement process that requires not more than three years of~~
4 ~~practice in good standing in another jurisdiction within the United States,~~
5 ~~regardless of whether that jurisdiction has licensing requirements substantially~~
6 ~~similar to those of this State. Universal licensing reciprocity. An occupational~~
7 ~~license shall be granted to an individual based on licensure in another state if~~
8 ~~the individual:~~

9 (1) has established residence in this State;

10 (2) is currently licensed or certified in the occupation in at least one
11 other state;

12 (3) has been licensed or certified by at least one other state for a period
13 of at least one year immediately preceding the individual's application in this
14 State;

15 (4) passed an examination required for licensure or certification if
16 required by the other state;

17 (5) has not had a license or certificate revoked;

18 (6) has not voluntarily surrendered a license or certificate in any other
19 state while under investigation for unprofessional conduct;

20 (7) does not have an unresolved disciplinary action imposed by any
21 other regulating entity;

1 (8) does not have a complaint, allegation, or investigation pending
2 before any other regulating entity; and

3 (9) pays all applicable fees for licensure or certification.

4 ~~(b) Any profession determining that three years of demonstrated practice in~~
5 ~~another jurisdiction is not adequately protective of the public shall provide its~~
6 ~~rationale to the Director, who may propose any necessary statutory or rule~~
7 ~~amendments in order to implement more restrictive requirements for~~
8 ~~endorsement.~~ Universal licensing recognition. An occupational license shall
9 be granted to an individual based on work or job experience if the individual:

10 (1) has established residence in this State;

11 (2) worked in a state that does not use an occupational license or
12 certification to regulate the occupation;

13 (3) has worked for a period of at least three years in the profession
14 immediately preceding the individual's application in this State;

15 (4) has not had a license or certificate revoked;

16 (5) has not voluntarily surrendered a license or certificate in any other
17 state while under investigation for unprofessional conduct;

18 (6) does not have an unresolved disciplinary action imposed by any
19 other regulating entity;

20 (7) does not have a complaint, allegation, or investigation pending
21 before any other regulating entity; and

1 (8) pays all applicable fees for licensure or certification.

2 (c) ~~The Director may issue to an endorsement applicant a waiver of the~~
3 ~~profession's practice requirement if there is a showing that the waiver follows~~
4 ~~State policy and the public is adequately protected.~~ Rules. The Office shall
5 adopt any rules necessary for implementing the provisions of this section.

6 Sec. 7. 3 V.S.A. § 139 is added to read:

7 § 139. EXPANDED APPRENTICESHIPS

8 (a) Notwithstanding any other provision of law, the Office shall grant a
9 license for any occupation it regulates to an applicant who meets the following
10 criteria:

11 (1) completed an apprenticeship program set out in 29 C.F.R. Part 29,
12 including industry programs, in the licensed profession within one year
13 following the individual's application for licensure;

14 (2) passed any examinations and background investigations deemed
15 necessary by the Office; and

16 (3) paid all applicable fees for licensure.

17 (b) The examinations and fees contained under subsection (a) of this
18 section shall not exceed those required in the standard licensing process for
19 that profession.

1 ~~(iii) The individual holds him or herself out as in business for~~
2 ~~him or herself.~~

3 ~~(iv) The individual holds him or herself out for work for the~~
4 ~~general public and does not perform work exclusively for or with another~~
5 ~~person.~~

6 ~~(v) The individual is not treated as an employee for purposes of~~
7 ~~income or employment taxation with regard to the work performed.~~

8 ~~(vi) The services are performed pursuant to a written agreement or~~
9 ~~contract between the individual and another person, and the written agreement~~
10 ~~or contract explicitly states that the individual is not considered to be an~~
11 ~~employee under this chapter, is working independently, has no employees, and~~
12 ~~has not contracted with other independent contractors. The written contract or~~
13 ~~agreement shall also include information regarding the right of the individual~~
14 ~~to purchase workers' compensation insurance coverage and the individual's~~
15 ~~election not to purchase that coverage. However, if the individual who is party~~
16 ~~to the agreement or contract under this subdivision is found to have employees,~~
17 ~~those employees may file a claim for benefits under this chapter against either~~
18 ~~or both parties to the agreement unless the sole proprietor or partner owner~~
19 ~~notifies that Commissioner that the sole proprietor or partner owner intends to~~
20 ~~be covered under the provisions of this chapter. The submission of an~~

1 insurance contract or an amendment to an insurance contract to elect coverage
2 of the sole proprietor or partner owner shall be considered sufficient notice.

3 * * *

4 (I) An independent contractor if it can be demonstrated that the
5 individual is free from the essential direction and control of the employing
6 unit, both under the individual's contract and in fact, and the employing unit
7 proves that the individual satisfies all the criteria in subdivision (i) of this
8 subdivision (14)(I) and at least two of the criteria in subdivision (ii) of this
9 subdivision (14)(I).

10 (i) In order for an individual to be an independent contractor, all of
11 the following criteria must be satisfied:

12 (I) the individual has the essential right to control the means
13 and progress of the work except as to the final results;

14 (II) the individual is customarily engaged in an independently
15 established trade, occupation, or business;

16 (III) the individual has a substantive investment in the facilities,
17 tools, instruments, materials, and knowledge used by the individual to
18 complete the work;

19 (IV) the individual has the opportunity for profit and loss as a
20 result of the services being performed for the employing unit;

1 Sec. 9. 21 V.S.A. § 1301 is amended to read:

2 § 1301. DEFINITIONS

3 ~~The following words and phrases, as As used in this chapter, shall have the~~
4 ~~following meanings unless the context clearly requires otherwise:~~

5 * * *

6 (6)(A)(i) “Employment,” subject to the other provisions of this
7 subdivision (6), means service within the jurisdiction of this State, ~~performed~~
8 ~~prior to January 1, 1978, which was employment as defined in this subdivision~~
9 ~~prior to such date and, subject to the other provisions of this subdivision,~~
10 ~~service performed after December 31, 1977,~~ by an employee, as defined in
11 subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including
12 service in interstate commerce, performed for wages or under any contract of
13 hire, written or oral, expressed or implied. Services partly within and partly
14 ~~without~~ outside this State may by election as ~~hereinbefore~~ provided in
15 subdivision (5)(E)(i) of this section be treated as if wholly within the
16 jurisdiction of this State. ~~And whenever~~ If an employing unit ~~shall have~~ has
17 elected to come under the provisions of a similar act of a state where a part of
18 the services of an employee are performed, the Commissioner, upon ~~his or her~~
19 ~~approval of said~~ approving the election as to ~~any such~~ the employee, may treat
20 the services covered by ~~said~~ the approved election as having been performed
21 wholly ~~without~~ outside the jurisdiction of this State.

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* * *

(B) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless ~~and until it is shown to the satisfaction of the Commissioner that:~~

~~(i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact; and~~

~~(ii) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and~~

~~(iii) Such individual is customarily engaged in an independently established trade, occupation, profession, or business they are specifically excluded pursuant to this chapter.~~

(C) The term “employment” shall not include:

* * *

(xxii) Services performed by an independent contractor if it can be demonstrated that the individual is free from the essential direction and control of the person for whom the services are performed, both under the individual’s contract and in fact, and the person for whom the services are performed proves that the individual satisfies all the criteria in subdivision (I) of this

1 subdivision (6)(C)(xxii) and at least two of the criteria in subdivision (II) of
2 this subdivision (6)(C)(xxii).

3 (I) In order for an individual to be an independent contractor,
4 all of the following criteria must be satisfied:

5 (aa) the individual has the essential right to control the
6 means and progress of the work except as to the final results;

7 (bb) the individual is customarily engaged in an
8 independently established trade, occupation, or business;

9 (cc) the individual has a substantive investment in the
10 facilities, tools, instruments, materials, and knowledge used by the individual
11 to complete the work;

12 (dd) the individual has the opportunity for profit and loss as
13 a result of the services being performed for the employing unit;

14 (ee) the individual hires and pays the individual's
15 employees, if any, and supervises the details of the employees' work; and

16 (ff) the individual makes the individual's services available
17 to the general public and is able to accept work for entities other than the
18 person for whom the services are performed, whether or not the individual
19 chooses to do so.

20 (II) In order for an individual to be an independent contractor,
21 at least two of the following criteria must be met:

1 (A) who works the equivalent of not less than 20 hours per week for
2 not less than 45 of the 52 weeks following the individual's date of hire;

3 (B) whose compensation equals or exceeds the prevailing wage,
4 including wages and benefits, for the particular employment sector and region
5 of the State as published periodically by the Vermont Department of Labor;

6 (C) who has certification from the Commissioner of Labor at the time
7 of hire that the individual experiences one or more barriers to employment,
8 including recovery from addiction, past incarceration, or other barriers as
9 defined under 26 U.S.C. § 51(d); and

10 (D) who has not been employed by the qualified employer for 90
11 days prior to the date of hire.

12 (2) "Qualified employer" means a person who:

13 (A) employs individuals in that person's service;

14 (B) is in good standing with respect to:

15 (i) any applicable registration, fee, and filing requirements with
16 the Secretary of State and the Commissioner of Labor; and

17 (ii) any and all taxes payable to the Commissioner of Taxes
18 pursuant to subsection 3113(g) of this title;

19 (C) has a valid workers' compensation policy in effect; and

20 (D) is required to furnish unemployment insurance coverage pursuant
21 to 21 V.S.A. chapter 17.

