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	(1) Vermont's aging demographics threaten the State's future economic
2	prosperity.
3	(2) An expansion of the size and scope of the workforce—as well as
4	greater workforce participation—is necessary to grow the Vermont economy
5	and finance important investments.
6	(3) Occupational licensing requirements can serve as a barrier to
7	entering the workforce.
8	(4) Flexible work from home has become an essential part of the
9	workforce since the COVID-19 pandemic.
10	(5) Vermont can and should reduce barriers to enter the workforce and
11	promote flexible work while preserving public safety.
12	* * * Occupational Licensing Fee Waiver * * *
13	Sec. 3. 3 V.S.A. § 125 is amended to read:
14	§ 125. FEES
15	* * *
16	(d) Pursuant to qualifications and procedures determined by the Director,
17	the Office shall, upon request, waive application fees to qualified military
18	members and military spouses. The Office shall waive all initial licensing,
19	application, registration, and certification fees of those professions regulated
20	by the Office for:

1	(1) households with an income that does not exceed 200 percent of the
2	federal poverty income guidelines;
3	(2) active-duty members of the U.S. Armed Forces who establish
4	residence in this State;
5	(3) spouses of active-duty members of the U.S. Armed Forces who
6	establish residence in this State;
7	(4) veterans of the U.S. Armed Forces; and
8	(5) any individual 18 to 25 years of age.
9	* * * Formerly Incarcerated Individuals Seeking Licensure * * *
10	Sec. 4. 3 V.S.A. § 123 is amended to read:
11	§ 123. DUTIES OF OFFICE
12	* * *
13	(k) For any profession attached to it, the Office shall provide a pre-
14	application determination of an individual's criminal background. This
15	determination shall not be binding on the Office in a future application if the
16	individual violates probation or parole or is convicted of another crime
17	following the determination.
18	(1) The Office shall initiate this determination upon an individual's
19	"second chance" determination request. This request shall provide
20	documentation related to the individual's conviction or convictions, evidence

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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.

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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,

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 UNIVERAL LICENSING RECIPROCITY AND
21	<u>RECOGNITION</u>

1	(a) Notwithstanding any statute of full 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	* * * Independent Contractors; Workers' Compensation; Unemployment
2	Insurance * * *
3	Sec. 8. 21 V.S.A. § 601 is amended to read:
4	§ 601. DEFINITIONS
5	Unless the context otherwise requires, words and phrases As used in this
6	chapter shall be construed as follows:
7	* * *
8	(14) "Worker" and "employee" means mean an individual who has
9	entered into the employment of, or works under contract of service or
10	apprenticeship with, an employer. Any reference to a worker who has died as
11	the result of a work injury shall include a reference to the worker's dependents
12	and any reference to a worker who is a minor or incompetent shall include a
13	reference to the minor's committee, guardian, or next friend. The term
14	"worker" or "employee" does not include:
15	* * *
16	(F) The sole proprietor or partner owner or partner owners of an
17	unincorporated business provided:
18	(i) The individual performs work that is distinct and separate from
19	that of the person with whom the individual contracts.
20	(ii) The individual controls the means and manner of the work
21	performed.

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	(V) the individual hires and pays the individual's employees, in
2	any, and supervises the details of the employees' work; and
3	(VI) the individual makes the individual's services available to
4	the general public and is able to accept work for entities other than the
5	employing unit, whether or not the individual chooses to do so.
6	(ii) In order for an individual to be an independent contractor, at
7	least two of the following criteria must be met:
8	(I) the individual is responsible for the satisfactory completion
9	of the work and may be held contractually responsible for failure to complete
10	the work;
11	(II) the parties have a written contract that defines the
12	relationship and give the individual contractual rights in the event the contract
13	is terminated by the employing unit prior to the completion of the work;
14	(III) payment to the individual is based on factors directly
15	related to the work performed and not solely on the amount of time expended
16	by the individual;
17	(IV) the work is outside the usual course of business of the
18	employing unit for which the service is performed; and
19	(V) the individual has elected to file taxes as an independent
20	contractor with the federal Internal Revenue Service.
21	* * *

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

§ 1301. DEFINITIONS

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

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

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1	* * *
2	(B) Services performed by an individual for wages shall be deemed
3	to be employment subject to this chapter unless and until it is shown to the
4	satisfaction of the Commissioner that:
5	(i) Such individual has been and will continue to be free from
6	control or direction over the performance of such services, both under his or
7	her contract of service and in fact; and
8	(ii) Such service is either outside the usual course of the business
9	for which such service is performed, or that such service is performed outside
10	of all the places of business of the enterprise for which such service is
11	performed; and
12	(iii) Such individual is customarily engaged in an independently
13	established trade, occupation, profession, or business they are specifically
14	excluded pursuant to this chapter.
15	(C) The term "employment" shall not include:
16	* * *
17	(xxii) Services performed by an independent contractor if it can be
18	demonstrated that the individual is free from the essential direction and control
19	of the person for whom the services are performed, both under the individual's
20	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	(aa) the individual is responsible for the satisfactory
2	completion of the work and may be held contractually responsible for failure to
3	complete the work;
4	(bb) the parties have a written contract that defines the
5	relationship and give the individual contractual rights in the event the contract
6	is terminated by the person for whom the services are performed prior to the
7	completion of the work;
8	(cc) payment to the individual is based on factors directly
9	related to the work performed and not solely on the amount of time expended
10	by the individual;
11	(dd) the work is outside the usual course of business of the
12	person for whom the services are performed; and
13	(ee) the individual has elected to file taxes as an independent
14	contractor with the federal Internal Revenue Service.
15	* * *
16	* * * Vermont Strong Loan Forgiveness Program * * *
17	Sec. 10. APPROPRIATION; VERMONT STRONG SCHOLARS
18	INITIATIVE
19	There is appropriated to the Vermont Strong Scholars Fund the amount of
20	\$3,700,000.00 for the Vermont Strong Loan Forgiveness Program.

1	* * * Employer Tax Credit * * *
2	Sec. 11. 32 V.S.A. chapter 151, subchapter 11H is added to read:
3	Subchapter 11H. Hiring Workers with Barriers to Employment Tax Credit
4	§ 5930t. CREDIT FOR HIRING WORKERS WITH BARRIERS TO
5	<u>EMPLOYMENT</u>
6	(a) A qualified employer shall be eligible for a nonrefundable credit against
7	the tax imposed under section 5822, 5832, 5836, or 8551 of this title or against
8	the tax imposed under 8 V.S.A. § 6014 or 33 V.S.A. chapter 19, subchapter 2.
9	The amount of the credit under this section shall equal \$2,000.00 for each new
10	qualified employee hired on or after July 1, 2022 by a qualified employer for
11	employment in a position for which the majority of the duties are required to
12	be performed, including remotely, at one or more of the qualified employer's
13	places of operation in Vermont.
14	(b) Notwithstanding subsection (a) of this section, the amount of the credit
15	under this section shall be reduced, but not below zero, by the amount of the
16	federal work opportunity tax credit allowed against the qualified employer's
17	federal income tax for the taxable year for the same qualified employee.
18	(c) The credit under this section may be carried forward one taxable year.
19	(d) As used in this section:
20	(1) "Qualified employee" means an individual:

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.

1	(e) The Commissioner of Labor shall:
2	(1) promote awareness of the tax credit available under this section to
3	employers and eligible employees;
4	(2) establish procedures for prequalifying an individual as a qualified
5	employee and for providing notice to the Commissioner of Taxes when a
6	qualified employee is hired;
7	(3) establish procedures for certifying a qualified employer's eligibility
8	for the credit under this section;
9	(4) adopt measurable goals, outcomes, and an audit strategy to assess the
10	use and performance of the credit under this section; and
11	(5) engage in efforts to promote the hiring of employees with barriers to
12	employment through the hiring practices of the State of Vermont.
13	* * * Effective Dates * * *
14	Sec. 12. EFFECTIVE DATES
15	This act shall take effect on passage, except that:
16	(1) Sec. 6 (licensing reciprocity and recognition) and Sec. 7 (expanded
17	apprenticeships) shall take effect on July 1, 2023.
18	(2) Sec. 10 (appropriation; Vermont Strong Scholars Initiative) shall
19	take effect on July 1, 2022.
20	(3) Sec. 11 (employer tax credit) shall take effect on January 1, 2023
21	and shall apply to taxable years beginning on and after January 1, 2023.