

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

H.223

Introduced by Representatives Poirier of Barre City, Christie of Hartford,
Donovan of Burlington, Gonzalez of Winooski, Hill of Wolcott,
Macaig of Williston, McCormack of Burlington, Morris of
Bennington, O’Sullivan of Burlington, Stevens of Waterbury,
Stuart of Brattleboro, Sullivan of Dorset, Sullivan of
Burlington, Till of Jericho, Troiano of Stannard, Walz of Barre
City, Weed of Enosburgh, and Yantachka of Charlotte

Referred to Committee on

Date:

Subject: Labor; workers’ compensation; unemployment insurance;
independent contractors; public assistance; workforce development;
benefit cliffs

Statement of purpose of bill as introduced: This bill proposes to amend the
definitions related to independent contractors in the workers’ compensation
and unemployment insurance laws to: provide for notice of the requirements
regarding employee classification at worksites; permit the Department of
Labor to enter an employer’s premises for the purposes of investigating
compliance with the workers’ compensation and unemployment compensation
statutes; permit the Department to obtain an injunction to enforce a stop-work
order related to a violation of the workers’ compensation statute; clarify the

1 requirements for consultation regarding debarment of employers that have
2 violated the wage and hour, workers' compensation, or unemployment
3 compensation statutes; create an Employee Classification Task Force and;
4 provide beneficiaries of public assistance programs with transitional assistance
5 once they begin earning income, in order to enable their transition from public
6 assistance to the workforce.

7 An act relating to employee classification and transitional assistance for
8 beneficiaries of public assistance

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

10 Sec. 1. 21 V.S.A. § 601 is amended to read:

11 § 601. DEFINITIONS

12 Unless the context otherwise requires, words and phrases used in this
13 chapter shall be construed as follows:

14 * * *

15 (3) "Employer" includes any body of persons, corporate or
16 unincorporated, public or private, and the legal representative of a deceased
17 employer, and includes the owner or lessee of premises or other person who is
18 virtually the proprietor or operator of the business there carried on, but who, by
19 reason of there being an independent contractor or for any other reason, is not
20 the direct employer of the workers there employed. If the employer is insured,

1 the term “employer” includes the employer’s insurer so far as applicable. A
2 person is not deemed to be an “employer” for the purposes of this chapter as
3 the result of entering into a contract for services or labor with ~~an individual~~
4 a sole proprietor or partner owner who has knowingly and voluntarily waived
5 coverage of this chapter pursuant to subdivision (14)(F) of this section, or an
6 individual who is a corporate officer or L.L.C. member or manager that has
7 filed, and had approved, an exclusion pursuant to subdivision 14(H) of this
8 section and who meets the criteria set forth in that subdivision.

9 * * *

10 (14) “Worker” and “employee” ~~means an individual~~ mean a person who
11 has entered into the employment of, or works under contract of service or
12 apprenticeship with, an employer. Any reference to a worker who has died as
13 the result of a work injury shall include a reference to the worker’s dependents,
14 and any reference to a worker who is a minor or incompetent shall include a
15 reference to the minor’s committee, guardian, or next friend. ~~The term~~
16 ~~“worker” or “employee” does not include~~ A person who performs services for
17 compensation is presumed to be an employee unless the person is one of the
18 following:

19 * * *

20 (F)(i) ~~The~~ A sole proprietor or partner owner or partner owners of an
21 unincorporated business, provided the following conditions are met:

1 ~~(i)(I)(aa)~~ The individual or partner owner is an independent
2 contractor who performs work that is distinct and separate from that of the
3 person with whom the individual or partner owner contracts; or

4 ~~(bb)~~ the individual or partner owner is an independent
5 contractor and is either actively registered as a business with the Vermont
6 Secretary of State or actively registered as a business in the state or country of
7 domicile.

8 ~~(ii)~~ The individual controls the means and manner of the work
9 performed.

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

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

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

17 ~~(vi)(II)(aa)~~ The services are performed pursuant to a written
18 agreement or contract between the individual or partner owner and another the
19 person who is providing compensation for the services, and the written
20 agreement or contract explicitly states that the individual or partner owner is
21 not considered to be an employee under this chapter, is working independently,

1 has no employees, and has not contracted with other independent contractors.

2 The written contract or agreement shall also include information regarding the
3 right of the individual or partner owner to purchase workers' compensation
4 insurance coverage ~~and the individual's election not to purchase that coverage.~~

5 The contract or agreement shall provide that any claim related to a personal
6 injury arising out of and in the course of the individual or partner owner's
7 employment shall be brought in Vermont Superior Court.

8 (bb) ~~However, if~~ If the individual or partner owner who is
9 party to the agreement or contract under this subdivision is found to have
10 employees, those employees may file a claim for benefits under this chapter
11 against either or both parties to the agreement.

12 (ii)(I) An individual or partner owner that meets the conditions of
13 subdivision (i) of this subdivision (14)(F) may elect to file with the
14 Commissioner a notice to waive the right to make a claim for workers'
15 compensation against the person with whom the individual or partner owner
16 contracts.

17 (II) If, after filing a notice under subdivision (I) of this
18 subdivision (14)(F)(ii), the individual or partner owner suffers a personal
19 injury arising out of and in the course of his or her employment, he or she may
20 bring an action to recover damages for personal injury against the person who
21 is providing compensation for the services and, in that action, the person who

1 is providing compensation for the services shall have all of the defenses
2 available in a personal injury claim. This election shall not prevent any
3 individual, other than the individual excluded pursuant to subdivision (i) of this
4 subdivision (14)(F), who is determined to be an employee of the
5 unincorporated business from claiming workers' compensation benefits under
6 this chapter from the business or a statutory employer.

7 (iii) An individual or partner owner that makes an election under
8 subdivision (ii) of this subdivision (14)(F) shall document that any person
9 hired to perform services for the individual or partner owner's unincorporated
10 business has workers' compensation coverage or is otherwise in compliance
11 with the provisions of this chapter.

12 * * *

13 (H) With the approval of the Commissioner, a corporation or a
14 limited liability company (L.L.C.) may elect to file exclusions from the
15 provisions of this chapter. A corporation or an L.L.C. may elect to exclude up
16 to four corporate executive officers or four L.L.C. managers or members from
17 coverage requirements under this chapter. If all officers of the corporation or
18 all managers or members of an L.L.C. make ~~such~~ the election, and receive
19 approval, and the business has no employees, the corporation or L.L.C. shall
20 not be required to purchase workers' compensation coverage. ~~If after election,~~
21 ~~the officer, manager, or member experiences a personal injury and files a claim~~

1 ~~under this chapter, the employer shall have all the defenses available in a~~
2 ~~personal injury claim. However, this election shall not prevent any other~~
3 ~~individual, other than the individual excluded under this section, found to be an~~
4 ~~employee of the corporation or L.L.C. to recover workers' compensation from~~
5 ~~either the corporation, L.L.C., or the statutory employer.~~

6 (i) For purposes of this chapter a person shall not be deemed to be
7 an "employer" of corporate executive officers or L.L.C. managers or members
8 that are excluded under this subdivision (14)(H) if the following conditions
9 are met:

10 (I) The corporate executive officers or L.L.C. managers or
11 members operate a separate and distinct business that is an independent
12 contractor and is actively registered with the Vermont Secretary of State.

13 (II) The services are performed pursuant to a written contract or
14 agreement between the corporation or L.L.C. and the person who is providing
15 compensation for the services, and the contract or agreement explicitly states
16 that the corporate executive officers or L.L.C. managers or members are not
17 considered to be employees under this chapter and are working independently.
18 The contract or agreement shall also include information regarding the right of
19 the corporation or L.L.C. to purchase workers' compensation insurance
20 coverage and the right of the corporate executive officers or the L.L.C.
21 managers or members to elect not to exclude themselves from coverage. The

1 contract or agreement shall provide that any claim related to a personal injury
2 arising out of and in the course of the individual or partner owner's
3 employment shall be brought in Vermont Superior Court.

4 (ii) If, after making an election under this subdivision (14)(H), the
5 corporate officer or L.L.C. manager or member suffers a personal injury
6 arising out of and in the course of his or her employment, he or she may bring
7 an action to recover damages for personal injury against the person who is
8 providing compensation for the services and, in that action, the person who is
9 providing compensation for the services shall have all of the defenses available
10 in a personal injury claim. This election shall not prevent any individual, other
11 than the individual excluded pursuant to this subdivision, who is determined to
12 be an employee of the corporation or L.L.C. from claiming workers'
13 compensation benefits under this chapter from the corporation or L.L.C. or
14 from a statutory employer.

15 (iii) A corporation or L.L.C. whose executive officers, members,
16 or managers make an election under this subdivision (14)(H) shall document
17 that any person hired to perform services for the corporation or L.L.C. has
18 workers' compensation coverage or is otherwise in compliance with this
19 chapter.

20 * * *

1 (31)(A) “Independent contractor” means a person that is economically
2 independent of the person’s employing unit under the totality of the
3 circumstances based on an assessment of the following factors:

4 (i) whether the person is free from the direction and control of the
5 employing unit with respect to the means and manner of the services
6 performed, both under the person’s contract of service and in fact;

7 (ii) whether the person operates a separate and distinct business
8 from that of the employing unit and the extent to which the person is
9 performing work that is not a substantial, essential, and recurring part of the
10 core services, functions, or activities of the employing unit;

11 (iii) whether the person’s contract of service provides for the
12 performance of specific services for specified amounts of compensation and
13 does not provide that the services will be performed on an ongoing or
14 indefinite basis, and whether the person may realize a profit or suffer a loss
15 under the contract of service;

16 (iv) the extent of the person’s investment in the resources, assets,
17 or equipment necessary to perform the services contracted for; whether the
18 person possesses specialized skills or knowledge necessary to perform the
19 services contracted for; and whether the person has continuing and recurring
20 business liabilities and obligations;

1 (v) whether the person holds itself out as in business for itself and
2 offers its services to the general public; and

3 (vi) whether the person is not treated as an employee for purposes
4 of income or employment taxation with regard to the work performed and
5 either:

6 (I) holds or has applied for a federal employer identification
7 number; or

8 (II) has filed business or self-employment tax returns with the
9 federal Internal Revenue Service within the past year or will file business or
10 self-employment tax returns with the federal Internal Revenue Service for the
11 current year.

12 (B) In considering whether a person is economically independent
13 pursuant to subdivision (A) of this subdivision (31), no single factor in and of
14 itself shall be dispositive.

15 (C) If multiple persons are performing the same work on a project or
16 jobsite, the determination of whether the person is economically independent
17 of the employing unit shall take into account the relationship between the
18 specific services performed by the person and the circumstances of the project
19 or job in relation to which the person is providing services.

20 (D) An independent contractor shall purchase workers' compensation
21 coverage for its employees as provided in this chapter.

1 Sec. 2. 21 V.S.A. § 1301 is amended to read:

2 § 1301. DEFINITIONS

3 The following words and phrases, 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~~ that 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 be treated
15 as if wholly within the jurisdiction of this State. ~~And whenever~~ Whenever an
16 employing unit shall have elected to come under the provisions of a similar act
17 of a state where a part of the services of an employee are performed, the
18 Commissioner, upon his or her approval of ~~said~~ the election as to any such
19 employee, may treat the services covered by ~~said~~ the approved election as
20 having been performed wholly ~~without~~ outside the jurisdiction of this State.

21 * * *

1 (B)(i) Services performed by an individual for wages shall be deemed
2 to be employment subject to this chapter unless and until it is shown to the
3 satisfaction of the Commissioner that the individual is economically
4 independent of his or her employing unit under the totality of the
5 circumstances in light of the following factors:

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

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

13 ~~(iii) Such individual is customarily engaged in an independently~~
14 ~~established trade, occupation, profession, or business.~~

15 (I) whether the individual is free from the direction and control
16 of his or her employing unit with respect to the means and manner of the
17 services performed, both under his or her contract of service and in fact;

18 (II) whether the individual operates a separate and distinct
19 business from that of the employing unit and the extent to which he or she is
20 performing work that is not a substantial, essential, and recurring part of the
21 core services, functions, or activities of the employing unit;

1 (III) whether the individual's contract of service provides for
2 the performance of specific services for specified amounts of compensation
3 and does not provide that the services will be performed on an ongoing or
4 indefinite basis, and whether the individual may realize a profit or suffer a loss
5 under the contract of service;

6 (IV) the extent of the individual's investment in the resources,
7 assets, and equipment, as well as the specialized skills or knowledge necessary
8 to perform the services contracted for, and whether he or she has continuing
9 and recurring business liabilities and obligations;

10 (V) whether the individual holds himself or herself out as in
11 business for himself or herself and offers his or her services to the general
12 public; and

13 (VI) whether the individual is not treated as an employee for
14 purposes of income or employment taxation with regard to the work performed
15 and either:

16 (aa) holds or has applied for a federal employer
17 identification number; or

18 (bb) has filed business or self-employment tax returns with
19 the federal Internal Revenue Service within the past year or will file business
20 or self-employment tax returns with the federal Internal Revenue Service for
21 the current year.

- 1 (1) the Secretary of Administration or designee;
- 2 (2) the Attorney General or designee;
- 3 (3) the Secretary of Transportation or designee;
- 4 (4) the Commissioner of Buildings and General Services or designee;
- 5 (5) the Commissioner of Labor or designee;
- 6 (6) the Commissioner of Financial Regulation or designee;
- 7 (7) the Secretary of Human Services or designee;
- 8 (8) the Commissioner of Taxes or designee;
- 9 (9) the Commissioner of Liquor Control or designee; and
- 10 (10) the Secretary, Commissioner, or designee of any other State
11 licensing agency or department as determined by the Secretary of
12 Administration.

13 (c)(1) The Task Force shall meet at least six times per year.

14 (2) The Secretary of Administration or designee and the Attorney
15 General or designee shall be Co-Chairs of the Task Force.

16 (d) The Secretary of Administration shall ensure that all State agencies do
17 the following:

18 (1) coordinate their efforts to combat employee misclassification in a
19 manner that increases the efficiency and effectiveness of those efforts; and

1 (2) In a central database accessible to all State agencies and
2 departments, share information concerning any employer determined to have
3 misclassified one or more employees as independent contractors.

4 (e) The Secretary shall adopt rules and procedures necessary to carry out
5 the duties set forth in subsection (d) of this section.

6 (f) The Secretary of Administration shall report annually on or before
7 January 15 of each year to the House Committees on Commerce and Economic
8 Development and on Ways and Means and the Senate Committee on Finance
9 regarding activities that he or she has undertaken pursuant to this section and
10 any additional tax revenue and unemployment insurance contributions, as well
11 as any reduction in workers' compensation premiums and costs, realized as a
12 result of the efforts undertaken by the Secretary pursuant to this section. The
13 provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply
14 to the report to be made under this subsection.

15 Sec. 4. 21 V.S.A. § 398 is added to read:

16 § 398. NOTICE TO PERSON RECEIVING COMPENSATION AS AN
17 INDEPENDENT CONTRACTOR

18 (a)(1) Every employer shall post in a prominent and accessible place on a
19 site where work is performed a poster provided by the Department that shall
20 explain the differences between an "employee" and an "independent

1 contractor” pursuant to the applicable provisions of chapters 9 and 17 of this
2 title. The poster shall also include information regarding:

3 (A) the protections against retaliation provided by this title;

4 (B) the penalties provided pursuant to this title for failure to classify
5 an individual properly as an employee;

6 (C) how an individual may file a complaint or inquiry with the
7 Commissioner about his or her employment classification status; and

8 (D) how an employer may obtain guidance or information from the
9 Department with respect to the proper classification of employees and
10 independent contractors.

11 (2)(A) The information set forth on the poster shall be in English or
12 other languages as required by the Commissioner.

13 (B) If the poster is located outdoors, it shall be constructed of
14 materials capable of withstanding adverse weather conditions.

15 (3) An employer shall, at the time of hiring, provide home-based
16 employees and employees that do not work at a fixed worksite with the
17 information required under subdivision (1) of this subsection. The information
18 shall be provided in a format provided by the Department.

19 (b) On or before August 1, 2017, the Commissioner shall create the poster
20 required pursuant to subsection (a) of this section and shall make it available to
21 employers on the Department’s website.

1 (c) An employer who violates the provisions of this section shall be subject
2 to an administrative penalty of not more than \$100.00 per violation.

3 Sec. 5. 21 V.S.A. § 603 is amended to read:

4 § 603. WITNESSES, OATHS, BOOKS, PAPERS, RECORDS

5 (a) So far as it is necessary in his or her examinations and investigations
6 and in the determination of matters within his or her jurisdiction, the
7 Commissioner shall have power to subpoena witnesses, administer oaths, and
8 ~~to~~ demand the production of books, papers, records, and documents for his or
9 her examination. In addition, the Commissioner or designee may, upon
10 presenting appropriate credentials, at reasonable times and without unduly
11 disrupting business operations enter and inspect any place of business or
12 employment, question any employees, and investigate any facts, conditions, or
13 matters necessary and material to the administration of this chapter. The
14 employer shall, at reasonable times and without unduly disrupting business
15 operations, make its workers available to meet with the Commissioner or
16 designee, as required by the Commissioner. The Commissioner or designee
17 shall inform the employer of the employer's rights to refuse entry and to
18 consult with legal counsel, and of the Commissioner's rights under this
19 section. If entry is refused, the Commissioner may apply to the Civil Division
20 of the Superior Court for an order to enforce the rights given to the
21 Commissioner under this section.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

* * *

Sec. 6. 21 V.S.A. § 692 is amended to read:

§ 692. PENALTIES; FAILURE TO INSURE; ~~STOP WORK~~ STOP-WORK
ORDERS

(a)(1) Failure to insure. If after a hearing under section 688 of this title, the Commissioner determines that an employer has failed to comply with the provisions of section 687 of this title, the employer shall be assessed an administrative penalty of not more than \$100.00 for every day for the first seven days the employer neglected to secure liability and not more than \$150.00 for every day thereafter.

(2) Purposeful violation. If the Commissioner determines that the employer purposefully violated section 687 of this title:

(A) any penalties assessed pursuant to subdivision (1) of this subsection shall be doubled; and

(B) the employer may be liable for punitive damages in an amount equal to any penalties assessed pursuant to this subsection in an action related to the employer's purposeful violation of section 687 that is brought pursuant to section 712 of this chapter.

(b) Stop-work orders. If an employer fails to comply with the provisions of section 687 of this title after investigation by the Commissioner, the Commissioner ~~shall~~ may issue an emergency order to that employer to stop

1 work until the employer has secured workers' compensation insurance. If the
2 Commissioner determines that issuing a stop-work order would immediately
3 threaten the safety or health of the public, the Commissioner may permit work
4 to continue until the immediate threat to public safety or health is removed.
5 The Commissioner shall document the reasons for permitting work to continue,
6 and the document shall be available to the public. In addition, the employer
7 shall be assessed an administrative penalty of not more than \$250.00 for every
8 day that the employer fails to secure workers' compensation coverage after the
9 Commissioner issues an order to obtain insurance and may also be assessed an
10 administrative penalty of not more than \$250.00 for each employee for every
11 day that the employer fails to secure workers' compensation coverage as
12 required in section 687 of this title. When a stop-work order is issued, the
13 Commissioner shall post a notice at a conspicuous place on the work site of the
14 employer informing the employees that their employer failed to comply with
15 the provisions of section 687 of this title and that work at the work site has
16 been ordered to cease until workers' compensation insurance is secured. If an
17 employer fails to comply with a stop-work order, the Commissioner may seek
18 an order from the Civil Division of the Superior Court to enjoin the employer
19 from employing any individual. The stop-work order shall be rescinded as
20 soon as the Commissioner determines that the employer is in compliance with
21 section 687 of this title.

1 (c) Debarment. An employer ~~against whom a stop-work order has been~~
2 ~~issued~~ who has not been in compliance with section 687 of this title, unless the
3 Commissioner determines that the failure to comply was inadvertent or
4 excusable, is prohibited from ~~contracting~~ entering into subsequent contracts,
5 directly or indirectly, with the State or any of its subdivisions for a period of up
6 to three years following the date of the issuance of ~~the stop-work order a~~
7 citation, as determined by the Commissioner in consultation with the
8 ~~Commissioner of Buildings and General Services or the Secretary of~~
9 ~~Transportation, as appropriate. Either the Secretary or the Commissioner, as~~
10 ~~appropriate, shall be consulted in any contest of the prohibition of the~~
11 ~~employer from contracting with the State or its subdivisions~~ Secretary of
12 Administration. The consultation shall be informal and shall occur within five
13 business days of the notification by the Commissioner. The results of the
14 consultation shall be documented.

15 ~~(e)~~(d) Penalty for violation of stop-work order. In addition to any other
16 penalties, an employer who violates a stop-work order described in subsection
17 (b) of this section is subject to:

18 (1) ~~a civil~~ an administrative penalty of not more than \$5,000.00 for the
19 first violation and ~~a civil~~ an administrative penalty of not more than
20 \$10,000.00 for a second or subsequent violation; or

1 employer subject to the provisions of this chapter to provide a workers'
2 compensation compliance statement on a form provided by the Commissioner.
3 The employer shall provide the compliance statement to the Commissioner
4 within 30 days of the request. For the purposes of this subsection, an employer
5 includes subcontractors and independent contractors. The form shall require
6 all the following information sorted by job site:

7 * * *

8 (2)(A) ~~Any~~ If an employer who fails to comply with this subsection or
9 falsifies information on the compliance statement the Commissioner may be
10 ~~assessed~~ assess an administrative penalty of not more than \$5,000.00 for each
11 week during which the noncompliance or falsification occurred and any costs
12 and attorney's fees required to enforce this subsection against the employer.

13 (B) The Commissioner may also seek injunctive relief in Washington
14 Superior Court.

15 (C) If the Commissioner determines that the employer has
16 purposefully failed to comply with this subsection or purposefully falsified
17 information on the compliance statement, any penalties assessed pursuant to
18 subdivision (b)(2)(A) of this subsection shall be doubled.

19 * * *

20 (c) Upon receiving written authorization from an employer to release
21 information to the Commissioner, the employer's agent or broker or the

1 authorized representative of an insurance or guarantee company shall provide
2 within five business days any contract or policy information, including an
3 insurance application, binder, or reported payroll, that is requested by the
4 Commissioner pursuant to this section.

5 (d) The Commissioner shall be represented by the Attorney General in any
6 action related to a purposeful violation of the provisions of this section.

7 Sec. 10. 21 V.S.A. § 625 is amended to read:

8 § 625. CONTRACTING OUT FORBIDDEN; PROHIBITED ACTS;

9 PENALTIES

10 (a) ~~An~~ Except as provided in subdivisions 601(3) and (14) of this chapter,
11 an employer shall not be relieved in whole or in part from liability created by
12 the provisions of this chapter by any contract, rule, regulation, or device
13 whatsoever.

14 (b) The Commissioner may investigate complaints that an employee has
15 been improperly classified and determine whether a person meets the
16 requirements to be an independent contractor as set forth in subdivision
17 601(31) of this title.

18 (c) Unless the improper classification was inadvertent or due to excusable
19 neglect, any person that, for the purpose of avoiding its obligations under this
20 title, improperly classifies an employee as an independent contractor:

1 (A) shall be subject to an administrative penalty of not more than
2 \$5,000.00; and

3 (B) may be liable for punitive damages in an amount equal to any
4 penalties assessed pursuant to this subsection in an action related to the
5 improper classification of the employee that is brought pursuant to section 712
6 of this chapter.

7 (d)(1) If, following an investigation, the Commissioner determines that a
8 person has improperly classified an employee as an independent contractor, the
9 Commissioner shall notify the Commissioners of Financial Regulation and of
10 Taxes of the determination.

11 (2) Upon receiving notification of the determination, the Commissioners
12 of Financial Regulation and of Taxes shall conduct an investigation to
13 determine whether the person has also misclassified the employee pursuant to
14 the applicable provisions of law under his or her jurisdiction.

15 (e) Any person who, for the purpose of avoiding its obligations under this
16 title, coerces an employee or prospective employee into becoming an
17 independent contractor, after notice and an opportunity for a hearing, may be
18 assessed an administrative penalty of not more than \$5,000.00 and may be
19 liable to the employee or prospective employee for punitive damages in an
20 amount equal to any penalty assessed pursuant to this subdivision in an action
21 brought pursuant to section 712 of this chapter.

1 Sec. 11. 8 V.S.A. § 3661 is amended to read:

2 § 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND
3 PENALTIES

4 * * *

5 (c) An employer who makes a false statement or representation that results
6 in a lower workers' compensation premium, after notice and opportunity for
7 hearing before the Commissioner, may be assessed an administrative penalty
8 of not more than \$20,000.00 in addition to any other appropriate penalty. In
9 addition, an employer found to have violated this section is prohibited from
10 ~~contracting~~ entering into subsequent contracts, directly or indirectly, with the
11 State or any of its subdivisions for up to three years following the date the
12 employer was found to have made a false statement or misrepresentation, as
13 determined by the Commissioner in consultation with the ~~Commissioner of~~
14 ~~Buildings and General Services or the Secretary of Transportation~~, as
15 appropriate. ~~Either the Secretary or the Commissioner, as appropriate, shall be~~
16 ~~consulted in any appeal relating to prohibiting the employer from contracting~~
17 ~~with the State or its subdivisions~~ Secretary of Administration. The
18 consultation may be informal and shall occur within five business days of the
19 notification by the Commissioner. The outcome of the consultation shall be
20 documented.

21 * * *

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

2 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;

3 PENALTIES

4 * * *

5 (f)(1) Any employing unit or employer that fails to:

6 (A) File any report required by this section shall be subject to a an
7 administrative penalty of \$100.00 for each report not received by the
8 prescribed due dates.

9 (B) Properly classify an individual regarding the status of
10 employment is subject to a an administrative penalty of not more than
11 \$5,000.00 for each improperly classified employee. In addition, an employer
12 found to have violated this section is prohibited from ~~contracting~~ entering into
13 subsequent contracts, directly or indirectly, with the State or any of its
14 subdivisions for up to three years following the date the employer was found to
15 have failed to properly classify, as determined by the Commissioner in
16 consultation with the ~~Commissioner of Buildings and General Services or the~~
17 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~
18 ~~Commissioner, as appropriate, shall be consulted in any appeal relating to~~
19 ~~prohibiting the employer from contracting with the State or its subdivisions~~
20 Secretary of Administration. The consultation may be informal and shall occur

1 within five business days of the notification by the Commissioner. The
2 outcome of the consultation shall be documented.

3 * * *

4 Sec. 13. 21 V.S.A. § 708 is amended to read:

5 § 708. PENALTY FOR FALSE REPRESENTATION

6 (a)(1)(A) ~~Action by the Commissioner of Labor. A person who willfully~~ If
7 a person purposefully makes a false statement or representation, ~~for the~~
8 ~~purpose of obtaining~~ to obtain any benefit or payment under the provisions of
9 this chapter, either for herself or himself or for any other person, the
10 Commissioner may, after notice and opportunity for hearing, ~~may be assessed~~
11 assess an administrative penalty of not more than \$20,000.00, ~~and~~ against the
12 person.

13 (B) In addition to any penalty imposed pursuant to subdivision (1)(A)
14 of this subsection (a), the person shall forfeit all or a portion of any right to
15 compensation under the provisions of this chapter, as determined to be
16 appropriate by the Commissioner after a determination by the Commissioner
17 that the person has ~~willfully~~ purposefully made a false statement or
18 representation of a material fact.

19 (2)(A) In addition, an employer found to have violated this section is
20 prohibited from ~~contracting~~ entering into subsequent contracts, directly or
21 indirectly, with the State or any of its subdivisions for up to three years

1 following the date the employer was found to have made a purposeful false
2 statement or misrepresentation of a material fact, as determined by the
3 Commissioner in consultation with the ~~Commissioner of Buildings and~~
4 ~~General Services or the Secretary of Transportation, as appropriate. Either the~~
5 ~~Secretary or the Commissioner, as appropriate, shall be consulted in any~~
6 ~~contest relating to the prohibition of the employer from contracting with the~~
7 ~~State or its subdivisions~~ Secretary of Administration. The consultation may be
8 informal and shall occur within five business days of the notification by the
9 Commissioner. The outcome of the consultation shall be documented.

10 (B) The employer may also be liable for punitive damages in an
11 amount equal to any administrative penalty assessed pursuant to subsection (a)
12 of this section in an action related to the employer's violation of this section
13 that is brought pursuant to section 712 of this chapter.

14 (b) When In addition to any penalties assessed pursuant to subsection (a) of
15 this section, when the Department Commissioner of Labor has sufficient
16 reason to believe that an employer has purposefully made a false statement or
17 representation for the purpose of obtaining to obtain a lower workers'
18 compensation premium, the Department Commissioner shall refer the alleged
19 violation to the Commissioner of Financial Regulation for the Commissioner's
20 consideration of enforcement pursuant to 8 V.S.A. § 3661(c).

21 * * *

1 Sec. 14. 21 V.S.A. § 710 is amended to read:

2 § 710. UNLAWFUL DISCRIMINATION

3 * * *

4 (b) No person shall discharge from employment or retaliate or discriminate
5 against an employee ~~from employment~~ because ~~such~~ the employee asserted or
6 attempted to assert a claim for benefits under this chapter or under the law of
7 any state or under the United States.

8 * * *

9 (d) An employer shall not retaliate or take any other negative action against
10 an individual because the employer knows or suspects that the individual has
11 filed a complaint with the Department or other authority, ~~or~~ reported a
12 violation of this chapter, ~~or~~ cooperated in an investigation of misclassification,
13 discrimination, or other violation of this chapter, or testified in a proceeding
14 related to a violation of this chapter.

15 (e) The Attorney General or a State's Attorney may enforce the provisions
16 of this section by restraining prohibited acts, seeking civil penalties, obtaining
17 ~~assurance~~ assurances of discontinuance, and conducting civil investigations in
18 accordance with the procedures established in 9 V.S.A. §§ 2458-2461 as
19 though discrimination under this section were an unfair act in commerce.

1 (f) The provisions against retaliation in subdivision 495(a)(8) of this title
2 and the penalty and enforcement provisions of section 495b of this title shall
3 apply to this subchapter.

4 Sec. 15. 21 V.S.A. § 712 is added to read:

5 § 712. PRIVATE RIGHT OF ACTION

6 (a) If an employer fails to comply with the provisions of sections 603, 625,
7 692, 708, or 710 of this chapter, a person harmed by the employer's failure
8 may bring an action in the Civil Division of the Superior Court seeking:

9 (1) compensatory damages;

10 (2) punitive damages,

11 (3) additional damages not more than \$500.00 for each violation of
12 sections 603, 625, 692, 708, and 710 of this chapter;

13 (4) equitable relief, including restraint of prohibited acts and
14 reinstatement;

15 (5) restitution of wages, benefits, and other compensation;

16 (6) costs and reasonable attorney's fees;

17 (7) and any other appropriate relief.

18 (b) An action pursuant to this section may be brought by one or more
19 persons on behalf of themselves and other persons similarly situated.

20 (c) An action under this section must be brought within three years after the
21 final date on which the person performed services for the employer.

1 Sec. 16. 21 V.S.A. § 713 is added to read:

2 § 713. INDIVIDUAL LIABILITY OF OFFICERS AND AGENTS

3 An officer or agent of an employer that knowingly permits the employer to
4 violate the provisions of sections 603, 625, 692, 708, or 710 of this chapter
5 may be held individually liable for each violation and any penalties assessed
6 for that violation.

7 Sec. 17. 21 V.S.A. § 1307 is amended to read:

8 § 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

9 The Commissioner of Labor shall administer this chapter. The
10 Commissioner may employ ~~such~~ persons, make ~~such~~ expenditures, require
11 ~~such~~ reports, make ~~such~~ investigations, and take ~~such~~ other action as he or she
12 considers necessary or suitable to that end. In the discharge of his or her duties
13 imposed by this chapter, the Commissioner may administer oaths, take
14 depositions, certify to official acts, ~~and~~ subpoena witnesses, and compel the
15 production of books, papers, correspondence, memoranda, and other records
16 necessary and material to the administration of this chapter. In addition, the
17 Commissioner or designee may, upon presenting appropriate credentials, at
18 reasonable times and without unduly disrupting business operations enter and
19 inspect any place of business or employment, question any employee, and
20 investigate any fact, condition, or matter necessary and material to the
21 administration of this chapter. The employer shall, at reasonable times and

1 without unduly disrupting business operations, make its workers available to
2 meet with the Commissioner or designee, as required by the Commissioner.
3 The Commissioner or designee shall inform the employer of the employer's
4 rights to refuse entry and to consult with legal counsel, and of the
5 Commissioner's rights under this section. If entry is refused, the
6 Commissioner may apply to the Civil Division of the Superior Court for an
7 order to enforce the rights given to the Commissioner under this section.

8 Sec. 18. 2010 Acts and Resolves No. 142, Sec. 7 is amended to read:

9 Sec. 7. DEPARTMENT OF LABOR; EMPLOYEE

10 MISCLASSIFICATION REPORTING SYSTEM

11 The ~~department of labor~~ Department of Labor shall create and maintain an
12 online employee misclassification reporting system. The system shall be
13 designed to allow individuals to report suspected cases of employee
14 misclassification, failure to have appropriate insurance coverage, and claimant
15 fraud to the ~~department~~ Department to ensure that this information is
16 distributed to appropriate departments and agencies, including the Office of the
17 Attorney General. The ~~department~~ Department and any agency or department
18 that the information is distributed to, including the Office of the Attorney
19 General, shall keep the name of the complainant confidential.

1 Sec. 19. 33 V.S.A. chapter 20 is added to read:

2 CHAPTER 20. TRANSITIONAL FINANCIAL ASSISTANCE

3 § 2091. PURPOSE

4 The purpose of providing transitional financial assistance is:

5 (1) to assist individuals and families to transition from public assistance
6 to self-sufficient employment;

7 (2) to reduce the benefit cliffs within Vermont's public assistance
8 programs and enable families to seek job training and employment
9 opportunities without fear of losing income; and

10 (3) to make sufficient financial supports available to individuals and
11 families in a manner that prevents beneficiaries from returning to public
12 assistance after obtaining employment.

13 § 2092. DEFINITIONS

14 As used in this chapter:

15 (1) "Beneficiary" means an individual or family that is determined as
16 eligible for transitional financial assistance under this chapter and in
17 accordance with rules adopted by the Commissioner.

18 (2) "Commissioner" means the Commissioner for Children and Families
19 or designee.

20 (3) "Department" means the Department for Children and Families.

1 (4) “Transitional financial assistance benefit” or “benefit” means a
2 financial support provided to a beneficiary on a monthly basis in accordance
3 with the provisions of this chapter and with rules adopted by the
4 Commissioner.

5 § 2093. TRANSITIONAL FINANCIAL ASSISTANCE

6 (a) An individual or family receiving public assistance pursuant to a State
7 program established in part 2 of this title shall be eligible to receive transitional
8 financial assistance for a period of time while earning income that would
9 otherwise disqualify the individual or family from receiving further public
10 assistance.

11 (b)(1) A beneficiary of transitional financial assistance shall receive
12 benefits that gradually decrease both over the eligibility period and as the
13 beneficiary earns higher income. A beneficiary’s initial transitional financial
14 assistance benefit shall not be more than 80 percent of the total public
15 assistance benefit that the beneficiary was receiving at the time the beneficiary
16 exceeded the earned income threshold of the applicable State public assistance
17 program. The benefit shall decrease by at least 20 percent for every nine
18 consecutive months that a beneficiary receives assistance under this chapter.
19 Depending on the degree to which a beneficiary’s income exceeds the federal
20 poverty level, the transitional financial assistance benefit may decrease more

1 rapidly or at greater increments in accordance with rules adopted by the
2 Commissioner pursuant to section 2094 of this title.

3 (2) A beneficiary's eligibility for transitional financial assistance shall
4 expire once the beneficiary's income exceeds 300 percent of the federal
5 poverty level.

6 (c) A beneficiary shall remain eligible to receive transitional financial
7 assistance pursuant to this chapter for no more than a total of 36 months during
8 the beneficiary's lifetime. The 36 months in which a beneficiary receives
9 transitional financial assistance need not be consecutive.

10 § 2094. RULEMAKING

11 On or before January 1, 2018, the Commissioner shall adopt rules pursuant
12 to 3 V.S.A. chapter 25 prescribing the administration, benefits, and appeals
13 process associated with transitional financial assistance available under this
14 chapter, including:

15 (1) departmental protocols for accepting clients, administering
16 transitional financial assistance benefits, and managing caseloads;

17 (2) specific eligibility criteria for transitional financial assistance
18 beneficiaries, such as beneficiaries' prior receipt of public assistance pursuant
19 to a State program established in part 2 of this title;

20 (3) methodologies and timetables for determining a beneficiary's
21 transitional financial assistance benefit under this chapter that account for

1 earned income, the number of individuals supported by the benefit, the degree
2 to which the beneficiary's income exceeds the federal poverty level, the benefit
3 received prior to becoming eligible for benefits under this chapter, the number
4 of consecutive months a beneficiary has received transitional financial
5 assistance benefits, and any gaps in receipt of benefits;

6 (4) the manner and timeliness of notice provided to potential
7 beneficiaries regarding eligibility for transitional financial assistance;

8 (5) the manner and timeliness of notice provided to beneficiaries each
9 time the benefit received under this chapter is subject to change; and

10 (6) available processes that a beneficiary or potential beneficiary may
11 use to appeal a decision by the Department regarding eligibility or specific
12 changes in the beneficiary's transitional financial assistance benefit.

13 Sec. 20. EFFECTIVE DATE

14 This act shall take effect on July 1, 2017.