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H.323

Introduced by Representative Hooper of Montpelier

Referred to Committee on

Date:

Subject: Labor; workers' compensation; unemployment insurance;
independent contractors

Statement of purpose of bill as introduced: This bill proposes to amend definitions related to independent contractors in the workers' compensation and unemployment compensation statutes, to provide for notice of the requirements regarding employee classification at worksites, to 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, to permit the Department to obtain an injunction to enforce a stop-work order related to a violation of the workers' compensation statute, to clarify the requirements for consultation regarding debarment of employers that have violated the wage and hour, workers' compensation, and unemployment compensation statutes, and to create an Employee Classification Task Force.

19
20

An act relating to the classification of employees and independent contractors

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

2 Sec. 1. PURPOSE

3 By enacting this legislation, the General Assembly intends to promote the
4 proper classification of employees and independent contractors by more clearly
5 defining the “statutory employer” concept and the definitions of “employee”
6 and “employer,” and by establishing a consistent definition of “independent
7 contractor” between Vermont’s workers’ compensation and unemployment
8 insurance laws. In particular, this legislation is intended to:

9 (1) honor and build on the over 100-year evolution and improvement on
10 the grand bargain of Vermont’s workers’ compensation law that provides
11 employees with a prompt, no-fault remedy for workplace injuries while
12 limiting the potential liability of employers;

13 (2) ensure that Vermont’s workers’ compensation and unemployment
14 insurance systems reflect and support the unique character and spirit of
15 innovation that is inherent in Vermont’s workforce and economy;

16 (3) embrace, strengthen, and build upon the emerging independent and
17 collaborative sectors of Vermont’s workforce and economy;

18 (4) affirm that under Vermont’s workers’ compensation and
19 unemployment insurance laws, an individual that performs services for
20 compensation is presumed to be an employee unless the statute clearly
21 provides otherwise;

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

11 * * *

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

21 * * *

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

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

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

1 to four corporate executive officers or four L.L.C. managers or members from
2 coverage requirements under this chapter. If all officers of the corporation or
3 all managers or members of an L.L.C. make such election, receive approval,
4 and the business has no employees, the corporation or L.L.C. shall not be
5 required to purchase workers' compensation coverage. ~~If after election, the~~
6 ~~officer, manager, or member experiences a personal injury and files a claim~~
7 ~~under this chapter, the employer shall have all the defenses available in a~~
8 ~~personal injury claim. However, this election shall not prevent any other~~
9 ~~individual, other than the individual excluded under this section, found to be an~~
10 ~~employee of the corporation or L.L.C. to recover workers' compensation from~~
11 ~~either the corporation, L.L.C., or the statutory employer.~~

12 (i) A person shall not be deemed to be an "employer" for purposes
13 of this chapter of corporate executive officers or L.L.C. managers or members
14 that are excluded under this subdivision (14)(H) if the following conditions
15 are met:

16 (I) The corporate executive officers or L.L.C. managers or
17 members operate a separate and distinct business that is an independent
18 contractor, is actively registered with the Vermont Secretary of State, and
19 elects to file a corporate officer or L.L.C. member exclusion from the
20 provisions of this chapter.

1 (II) The services are performed pursuant to a written agreement
2 or contract between the corporation or L.L.C. and the person who is providing
3 compensation for the services, and the written agreement or contract explicitly
4 states that the corporate executive officers or L.L.C. managers or members are
5 not considered to be employees under this chapter and are working
6 independently. The written contract or agreement shall also include
7 information regarding the right of the corporation or L.L.C. to purchase
8 workers' compensation insurance coverage and of the corporate executive
9 officers or the L.L.C. managers or members to elect not to exclude themselves
10 from coverage.

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

1 (iv) the nature and extent of the relative investments by the person
2 and the employing unit in the resources, assets, or equipment necessary to
3 perform the services contracted for;

4 (v) whether the work performed requires the person to exercise
5 specialized business skills, judgment, and initiative;

6 (vi) whether the person holds itself out as in business for itself and
7 competes to offer its services to the general public in the open market; and

8 (vii) the degree to which the relationship between the person and
9 the employing unit is permanent or indefinite.

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

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

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

1 Sec. 3. 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 this State may by election as hereinbefore provided be treated as if
15 wholly within the jurisdiction of this State. And whenever an employing unit
16 shall have elected to come under the provisions of a similar act of a state where
17 a part of the services of an employee are performed, the Commissioner, upon
18 his or her approval of ~~said~~ the election as to any such employee, may treat the
19 services covered by ~~said~~ the approved election as having been performed
20 wholly without 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 the his or her contract of service and in fact;

18 (II) whether the individual performs work that is an integral
19 part of his or her employing unit's business;

20 (III) whether the individual's managerial skills affect his or her
21 opportunity for profit or loss;

1 Sec. 4. 3 V.S.A. § 2222d is added to read:

2 § 2222d. VERMONT EMPLOYEE CLASSIFICATION TASK FORCE

3 (a) Creation and purpose. The Vermont Employee Classification Task
4 Force is created in the Agency of Administration to reduce the frequency of
5 employee misclassification through enhanced education, improved
6 coordination of State resources, and increased collaboration among State
7 government, businesses, labor, and other stakeholders.

8 (b) Membership. The Task Force shall be composed of the following nine
9 members:

10 (1) the Secretary of Administration or designee;

11 (2) the Commissioner of Labor or designee;

12 (3) the Secretary of Transportation or designee;

13 (4) the Commissioner of Buildings and General Services or designee;

14 (5) the Commissioner of Financial Regulation or designee;

15 (6) the Secretary of Human Services or designee;

16 (7) the Commissioner of Taxes or designee;

17 (8) the Attorney General or designee; and

18 (9) the Commissioner of Liquor Control or designee.

19 (c) Meetings.

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

21 (2) The Secretary of Administration or designee shall be the Chair.

1 (3) A majority of the membership of the Task Force shall constitute a
2 quorum.

3 (d) Duties.

4 (1) The Task Force shall have the following duties:

5 (A) to develop and implement an ongoing outreach program to
6 educate and inform employers, workers, and the general public about the
7 proper classification of employees and independent contractors;

8 (B) to examine and evaluate existing misclassification enforcement
9 by State agencies and departments;

10 (C) to develop and implement strategies to improve coordination,
11 cooperation, and information sharing among State agencies and departments in
12 relation to the investigation and enforcement of employee misclassification;

13 (D) to review and establish reasonable mechanisms to accept
14 complaints and reports of noncompliance;

15 (E) to ensure that State agencies and departments are engaged in
16 timely enforcement;

17 (F) to ensure that penalties and debarment periods are posted on a
18 publicly available website in a timely manner, to the extent permitted by law;

19 (G) to review and recommend additional methods to provide public
20 notice and share information regarding enforcement, penalties, and debarment
21 periods;

1 (H) to develop strategies and programs to assist businesses in
2 complying with Vermont's requirements for the proper classification of
3 employees and independent contractors, and to reduce the frequency of
4 employee misclassification; and

5 (I) to recommend legislative, regulatory, and administrative measures
6 to reduce the frequency of employee misclassification.

7 (2) The Task Force shall consult and collaborate with businesses, labor,
8 and other interested stakeholders to accomplish the duties set forth in
9 subdivision (1) of this subsection, and may appoint representatives of business,
10 labor, and other interested stakeholders to subcommittees as the Task Force
11 deems appropriate.

12 (e) Reports.

13 (1) The Task Force shall report annually on or before January 15 to the
14 House Committee on Commerce and Economic Development and the Senate
15 Committee on Finance regarding the activities that it has undertaken pursuant
16 to this section, the progress of the Task Force's ongoing education and
17 outreach programs, the number and results of the employer audits conducted
18 during the previous calendar year, and any barriers or impediments to the
19 proper classification of employees and independent contractors that the Task
20 Force has identified. The report may recommend legislative, regulatory, and
21 administrative measures to reduce the frequency of employee misclassification.

1 The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not
2 apply to the report to be made under this subsection.

3 (2) The Task Force shall examine the issue of comprehensive
4 enforcement of employee misclassification within Vermont's workers'
5 compensation system and potential measures to improve the efficacy of the
6 State's misclassification enforcement mechanisms, including by transferring
7 the responsibility for the investigation and enforcement of misclassification to
8 the Office of the Attorney General. The Task Force shall develop and
9 establish performance measures to evaluate the efficacy of efforts to enforce
10 the requirements for classification of employees and independent contractors,
11 and any improvement in the outcomes of the State's enforcement efforts over
12 time. On or before February 15, 2018, the Task Force shall report to the House
13 Committee on Commerce and Economic Development and the Senate
14 Committee on Finance with a recommendation for a comprehensive plan to
15 improve the State's misclassification enforcement mechanisms and any
16 legislative, regulatory, or administrative measures necessary to implement
17 the plan.

18 (3) The Task Force shall study the use of multiple independent
19 contractors to perform the same work on a project or jobsite to determine how
20 often employee misclassification occurs in such situations. In performing its
21 study, the Task Force shall review documented instances of misclassification

1 and may consult with businesses, labor, and other interested stakeholders. On
2 or before February 15, 2018, the Task Force shall submit a written report to the
3 General Assembly with its findings and any recommendations for legislative
4 action.

5 (4) The Task Force shall examine the issue of whether all workers in
6 certain industries should be required to be covered by workers' compensation
7 insurance. On or before February 15, 2018, the Task Force shall submit a
8 written report to the General Assembly with its findings and any
9 recommendations for legislative action.

10 (f) Definition. As used in this section, "employee misclassification" means
11 the improper classification of employees as independent contractors.

12 Sec. 5. 21 V.S.A. § 398 is added to read:

13 § 398. NOTICE TO PERSONS RECEIVING COMPENSATION AS AN
14 INDEPENDENT CONTRACTOR

15 (a)(1) Every employer shall post in a prominent and accessible place on a
16 site where work is performed a poster provided by the Department that shall
17 explain the differences between an "employee" and an "independent
18 contractor" pursuant to the applicable provisions of chapters 9 and 17 of this
19 title. The poster shall also include information regarding:

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

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

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

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

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

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

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

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

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

1 Sec. 6. 21 V.S.A. § 603 is amended to read:

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

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

20 * * *

1 Sec. 7. 21 V.S.A. § 692 is amended to read:

2 § 692. PENALTIES; FAILURE TO INSURE; ~~STOP WORK~~ STOPWORK
3 ORDERS

4 * * *

5 (b) Stop-work orders. If an employer fails to comply with the provisions of
6 section 687 of this title after investigation by the Commissioner, the
7 Commissioner ~~shall~~ may issue an emergency order to that employer to stop
8 work until the employer has secured workers' compensation insurance. If the
9 Commissioner determines that issuing a stop-work order would immediately
10 threaten the safety or health of the public, the Commissioner may permit work
11 to continue until the immediate threat to public safety or health is removed.
12 The Commissioner shall document the reasons for permitting work to continue,
13 and the document shall be available to the public. In addition, the employer
14 shall be assessed an administrative penalty of not more than \$250.00 for every
15 day that the employer fails to secure workers' compensation coverage after the
16 Commissioner issues an order to obtain insurance and may also be assessed an
17 administrative penalty of not more than \$250.00 for each employee for every
18 day that the employer fails to secure workers' compensation coverage as
19 required in section 687 of this title. When a stop-work order is issued, the
20 Commissioner shall post a notice at a conspicuous place on the work site of the
21 employer informing the employees that their employer failed to comply with

1 the provisions of section 687 of this title and that work at the work site has
2 been ordered to cease until workers' compensation insurance is secured. If an
3 employer fails to comply with a stop-work order, the Commissioner may seek
4 an order from the Civil Division of the Superior Court to enjoin the employer
5 from employing any individual. The stop-work order shall be rescinded as
6 soon as the Commissioner determines that the employer is in compliance with
7 section 687 of this title.

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

1 Sec. 10. 21 V.S.A. § 690 is amended to read:

2 § 690. CERTIFICATE, FORM; COPY OF POLICY

3 * * *

4 (b)(1) In addition to any other authority provided to the Commissioner
5 pursuant to this chapter, the Commissioner may issue a written request to an
6 employer subject to the provisions of this chapter to provide a workers'
7 compensation compliance statement on a form provided by the Commissioner.
8 The employer shall provide the compliance statement to the Commissioner
9 within 30 days of the request. For the purposes of this subsection, an employer
10 includes subcontractors and independent contractors. The form shall require
11 all the following information sorted by job site:

12 * * *

13 (c) Upon receiving written authorization from an employer to release
14 information to the Commissioner, the employer's agent or broker or the
15 authorized representative of an insurance or guarantee company shall provide
16 within five business days any contract or policy information, including an
17 insurance application, binder, or reported payroll, that is requested by the
18 Commissioner pursuant to this section.

1 Sec. 11. 21 V.S.A. § 625 is amended to read:

2 § 625. CONTRACTING OUT FORBIDDEN; PROHIBITED ACTS;

3 PENALTIES

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

8 (b) The Commissioner may investigate complaints and determine whether
9 the requirements to be an independent contractor set forth in subdivision
10 601(31) of this title are met. Unless the Commissioner determines that the
11 improper classification was inadvertent or excusable, any person that, for the
12 purpose of avoiding its obligations under this title, improperly classifies an
13 employee as an independent contractor may, after notice and an opportunity
14 for a hearing, be assessed an administrative penalty of not more than
15 \$5,000.00.

16 (c) A person who, for the purpose of avoiding its obligations under this
17 chapter, provides an individual that is or will be performing services for the
18 person with substantial and material assistance related to the establishment of
19 an independent business, including the registration of an unincorporated
20 business with the Vermont Secretary of State, the establishment of a
21 corporation or L.L.C., or the acquisition of a federal Employer Identification

1 Number, may, after notice and an opportunity for a hearing, be assessed an
2 administrative penalty of not more than \$5,000.00. As used in this subsection,
3 “substantial and material assistance” does not include:

4 (1) inquiring about whether an unincorporated business, corporation, or
5 L.L.C. is actively registered with the Secretary of State;

6 (2) inquiring about whether an individual that is or will be performing
7 services operates an unincorporated business, corporation, or L.L.C.; or

8 (3) referring an individual to a State agency, department, or website
9 related to the registration or establishment of an unincorporated business,
10 corporation, or L.L.C.

11 Sec. 12. 8 V.S.A. § 3661 is amended to read:

12 § 3661. CEASE AND DESIST POWERS; PROSECUTIONS AND
13 PENALTIES

14 * * *

15 (c) An employer who makes a false statement or representation that results
16 in a lower workers' compensation premium, after notice and opportunity for
17 hearing before the Commissioner, may be assessed an administrative penalty
18 of not more than \$20,000.00 in addition to any other appropriate penalty. In
19 addition, an employer found to have violated this section is prohibited from
20 ~~contracting~~ entering into subsequent contracts, directly or indirectly, with the
21 State or any of its subdivisions for up to three years following the date the

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

10 * * *

11 Sec. 13. 21 V.S.A. § 1314a is amended to read:

12 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;
13 PENALTIES

14 * * *

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

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

19 (B) Properly classify an individual regarding the status of
20 employment is subject to a an administrative penalty of not more than
21 \$5,000.00 for each improperly classified employee. In addition, an employer

1 found to have violated this section is prohibited from ~~contracting~~ entering into
2 subsequent contracts, directly or indirectly, with the State or any of its
3 subdivisions for up to three years following the date the employer was found to
4 have failed to properly classify, as determined by the Commissioner in
5 consultation with the ~~Commissioner of Buildings and General Services or the~~
6 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~
7 ~~Commissioner, as appropriate, shall be consulted in any appeal relating to~~
8 ~~prohibiting the employer from contracting with the State or its subdivisions~~
9 Secretary of Administration. The consultation may be informal and shall occur
10 within five business days of the notification by the Commissioner. The
11 outcome of the consultation shall be documented.

12 * * *

13 Sec. 14. 21 V.S.A. § 708 is amended to read:

14 § 708. PENALTY FOR FALSE REPRESENTATION

15 (a) Action by the Commissioner of Labor. A person who ~~willfully~~
16 purposefully makes a false statement or representation, ~~for the purpose of~~
17 ~~obtaining to obtain~~ any benefit or payment under the provisions of this chapter,
18 either for herself or himself or for any other person, after notice and
19 opportunity for hearing, may be assessed an administrative penalty of not more
20 than \$20,000.00, and shall forfeit all or a portion of any right to compensation
21 under the provisions of this chapter, as determined to be appropriate by the

1 Commissioner after a determination by the Commissioner that the person has
2 ~~willfully~~ purposefully made a false statement or representation of a material
3 fact. In addition, an employer found to have violated this section is prohibited
4 from ~~contracting~~ entering into subsequent contracts, directly or indirectly, with
5 the State or any of its subdivisions for up to three years following the date the
6 employer was found to have made a purposeful false statement or
7 misrepresentation of a material fact, as determined by the Commissioner in
8 consultation with the ~~Commissioner of Buildings and General Services or the~~
9 ~~Secretary of Transportation, as appropriate. Either the Secretary or the~~
10 ~~Commissioner, as appropriate, shall be consulted in any contest relating to the~~
11 ~~prohibition of the employer from contracting with the State or its subdivisions~~
12 Secretary of Administration. The consultation may be informal and shall occur
13 within five business days of the notification by the Commissioner. The
14 outcome of the consultation shall be documented.

15 (b) ~~When~~ In addition to any penalties assessed pursuant to subsection (a) of
16 this section, when the Department of Labor has sufficient reason to believe that
17 an employer has purposefully made a false statement or representation ~~for the~~
18 ~~purpose of obtaining~~ to obtain a lower workers' compensation premium, the
19 Department shall refer the alleged violation to the Commissioner of Financial
20 Regulation for the Commissioner's consideration of enforcement pursuant to
21 8 V.S.A. § 3661(c).

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Sec. 15. 21 V.S.A. § 1307 is amended to read:

§ 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

The Commissioner of Labor shall administer this chapter. The Commissioner may employ ~~such~~ persons, make ~~such~~ expenditures, require ~~such~~ reports, make ~~such~~ investigations, and take ~~such~~ other action as he or she considers necessary or suitable to that end. In the discharge of his or her duties imposed by this chapter, the Commissioner may administer oaths, take depositions, certify to official acts, and subpoena witnesses and compel the production of books, papers, correspondence, memoranda, and other records necessary and material to the administration of this chapter. In addition, the Commissioner or his or her designee may, upon presenting appropriate credentials, at reasonable times and without unduly disrupting business operations enter and inspect any place of business or employment, question any employee, and investigate any fact, condition, or matter necessary and material to the administration of this chapter. The employer shall, at reasonable times and without unduly disrupting business operations, make its workers available to meet with the Commissioner or designee, as required by the Commissioner. The Commissioner or designee shall inform the employer of the employer's rights to refuse entry and to consult with legal counsel, and of the Commissioner's rights under this section. If entry is refused, the

1 Commissioner may apply to the Civil Division of the Superior Court for an
2 order to enforce the rights given to the Commissioner under this section.

3 Sec. 16. DEPARTMENT OF FINANCIAL REGULATION AND
4 DEPARTMENT OF LABOR; EDUCATION; OUTREACH

5 On or before October 1, 2017, the Commissioners of Financial Regulation
6 and of Labor shall develop an education and outreach program for workers'
7 compensation insurance companies, agents, auditors, and adjusters, as well as
8 employers, workers, attorneys, and tax professionals, regarding:

9 (1) the definition of "independent contractor" that is added to 21 V.S.A.
10 §§ 601 and 1301 by this act; and

11 (2) how to determine whether a person should be classified as an
12 independent contractor under "the totality of the circumstances" pursuant to
13 those definitions.

14 Sec. 17. EFFECTIVE DATES

15 (a) This section and Secs. 1, 4, and 16 shall take effect on July 1, 2017.

16 (b) In Sec. 5, 21 V.S.A. § 398(b) shall take effect on July 1, 2017, and the
17 remainder of the section shall take effect on October 1, 2017.

18 (c) The remaining sections shall take effect on October 1, 2017.