

1 Introduced by Committee on Commerce and Economic Development

2 Date:

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

5 Statement of purpose of bill as introduced: This bill proposes to amend  
6 definitions related to independent contractors in the workers' compensation  
7 and unemployment compensation statutes, to provide for notice of the  
8 requirements regarding employee classification at worksites, to permit the  
9 Department of Labor to enter an employer's premises for the purposes of  
10 investigating compliance with the workers' compensation and unemployment  
11 compensation statutes, to permit the Department to obtain an injunction to  
12 enforce a stop-work order related to a violation of the workers' compensation  
13 statute, to clarify the requirements for consultation regarding debarment of  
14 employers that have violated the wage and hour, workers' compensation, and  
15 unemployment compensation statutes, and to create an Employee  
16 Classification Task Force.

17 An act relating to classification of employees and independent contractors

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

2 Sec. 1. 21 V.S.A. § 398 is added to read:

3 § 398. NOTICE TO PERSONS RECEIVING COMPENSATION AS AN  
4 INDEPENDENT CONTRACTOR

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

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

11 (B) the penalties provided pursuant to this title for failure to classify  
12 an individual properly as an employee; and

13 (C) how an individual may file a complaint or inquiry with the  
14 Commissioner about his or her employment classification status.

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

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

19 (b) On or before August 1, 2016, 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. 2. 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~~ Commissioner shall have power to subpoena witnesses,  
8        administer oaths, and to demand the production of books, papers, records, and  
9        documents for his or her examination. In addition, the Commissioner or his or  
10       her designee may, upon presenting appropriate credentials, at reasonable times  
11       and without unduly disrupting business operations enter and inspect any place  
12       of business or employment, question any employees, and investigate any facts,  
13       conditions, or matters necessary and material to the administration of this  
14       chapter. The employer shall, at reasonable times and without unduly  
15       disrupting business operations, make its workers available to meet with the  
16       Commissioner or designee, as required by the Commissioner. The  
17       Commissioner or designee shall inform the employer of his or her rights to  
18       refuse entry and to consult with legal counsel, and of the Commissioner's  
19       rights under this section. If entry is refused, the Commissioner may apply to  
20       the Civil Division of the Superior Court for an order to enforce the rights given  
21       to the 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. 3. 21 V.S.A. § 692 is amended to read:

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

(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 work until the employer has secured workers' compensation insurance. If the Commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the Commissioner may permit work to continue until the immediate threat to public safety or health is removed. The Commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than \$250.00 for every day that the employer fails to secure workers' compensation coverage after the Commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than \$250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. When a stop-work order is issued, the Commissioner shall post a notice at a conspicuous place on the work site of the 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, directly or indirectly, with the State  
12 or any of its subdivisions for a period of up to three years following the date of  
13 the issuance of ~~the stop work order~~ an administrative citation, as determined  
14 by the Commissioner in consultation with the ~~Commissioner of Buildings and~~  
15 ~~General Services or the Secretary of Transportation,~~ as appropriate. ~~Either the~~  
16 ~~Secretary or the Commissioner, as appropriate, shall be consulted in any~~  
17 ~~contest of the prohibition of the employer from contracting with the State or its~~  
18 ~~subdivisions~~ Secretary of Administration. The consultation shall be informal  
19 and shall occur within five business days of the notification by the  
20 Commissioner. The results of the consultation shall be documented.





1 **[Sec. 7: DEPARTMENT OF LABOR PROPOSAL]**

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

3 § 625. CONTRACTING OUT FORBIDDEN

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  
10 21 V.S.A. § 601(31) are met. Any person that, for the purpose of avoiding its  
11 obligations under this title, improperly classifies an employee as an  
12 independent contractor, may, after notice and an opportunity for a hearing, be  
13 assessed an administrative penalty of not more than \$5,000.00.

14 (c) Any administrative penalty imposed pursuant to this section may be in  
15 addition to other penalties authorized pursuant to chapters 9 and 17 of this title.

16 **[Sec. 7: ASSOCIATED INDUSTRIES OF VERMONT PROPOSAL]**

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

18 § 625. CONTRACTING OUT FORBIDDEN

19 (a) ~~An~~ Except as provided in subdivisions 601(3) and (14) of this chapter,  
20 an employer shall not be relieved in whole or in part from liability created by

1 the provisions of this chapter by any contract, rule, regulation, or device  
2 whatsoever.

3 (b) The Commissioner may investigate complaints and determine whether  
4 the requirements to be an independent contractor set forth in  
5 21 V.S.A. § 601(31) are met. Any person that, for the purpose of avoiding its  
6 obligations under this title, willfully and knowingly misclassifies an employee  
7 as an independent contractor, may, after notice and an opportunity for a  
8 hearing, be assessed an administrative penalty of not more than \$5,000.00.

9 (c) Any administrative penalty imposed pursuant to this section may be in  
10 addition to other penalties authorized pursuant to chapters 9 and 17 of this title.

11 Sec. 8. 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 purposefully makes a false statement or  
16 representation that results in a lower workers' compensation premium, after  
17 notice and opportunity for hearing before the Commissioner, may be assessed  
18 an administrative penalty of not more than \$20,000.00 in addition to any other  
19 appropriate penalty. In addition, an employer found to have violated this  
20 section is prohibited from contracting, directly or indirectly, with the State or  
21 any of its subdivisions for up to three years following the date the employer

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

9 \* \* \*

10 Sec. 9. 21 V.S.A. § 1314a is amended to read:

11 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;

12 PENALTIES

13 \* \* \*

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

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

18 (B) Properly classify an individual regarding the status of  
19 employment is subject to a an administrative penalty of not more than  
20 \$5,000.00 for each improperly classified employee. In addition, an employer  
21 found to have violated this section is prohibited from contracting, directly or

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

11 Sec. 10. 21 V.S.A. § 708 is amended to read:

12 § 708. PENALTY FOR FALSE REPRESENTATION

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

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

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

1 Sec. 11. 21 V.S.A. § 1307 is amended to read:

2 § 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

3 The ~~commissioner of labor~~ Commissioner of Labor shall administer this  
4 chapter. The ~~commissioner~~ Commissioner may employ such persons, make  
5 such expenditures, require such reports, make such investigations, and take  
6 such other action as he or she considers necessary or suitable to that end. In  
7 the discharge of his or her duties imposed by this chapter, the ~~commissioner~~  
8 Commissioner may administer oaths, take depositions, certify to official acts,  
9 and subpoena witnesses and compel the production of books, papers,  
10 correspondence, memoranda, and other records necessary and material to the  
11 administration of this chapter. In addition, the Commissioner or his or her  
12 designee may, upon presenting appropriate credentials, at reasonable times and  
13 without unduly disrupting business operations, enter and inspect any place of  
14 business or employment, question any employee, and investigate any fact,  
15 condition, or matter necessary and material to the administration of this  
16 chapter. The employer shall, at reasonable times and without unduly  
17 disrupting business operations, make its workers available to meet with the  
18 Commissioner or his or her designee, as required by the Commissioner. The  
19 Commissioner or his or her designee shall inform the employer of his or her  
20 rights to refuse entry and to consult with legal counsel, and of the  
21 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. 12. 21 V.S.A. § 601 is amended to read:

4 § 601. DEFINITIONS

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

7 \* \* \*

8 (3) “Employer” includes any body of persons, corporate or  
9 unincorporated, public or private, and the legal representative of a deceased  
10 employer, and includes the owner or lessee of premises or other person who is  
11 virtually the proprietor or operator of the business there carried on, but who, by  
12 reason of there being an independent contractor or for any other reason, is not  
13 the direct employer of the workers there employed. If the employer is insured,  
14 the term “employer” includes the employer’s insurer so far as applicable. A  
15 person is not deemed to be an “employer” for the purposes of this chapter as  
16 the result of entering into a contract for services or labor with an individual  
17 who has knowingly and voluntarily waived coverage of this chapter pursuant  
18 to subdivision (14)(F) of this section, or is a corporate officer or L.L.C.  
19 member or manager that has filed, and had approved, an exclusion pursuant to  
20 subdivision 14(H) of this section and who meets the criteria set forth in that  
21 subdivision.

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

\* \* \*

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

\* \* \*

(B) An individual engaged in amateur sports, including a referee or official that is paid on a per game or per event basis, even if an employer contributes to the support of such sports.

\* \* \*

(F)(i) The sole proprietor or partner owner or partner owners of an unincorporated business provided all of the following are met:

~~(i)~~(I)(aa) The individual or partner owner performs work that is distinct and separate from that of the person with whom the individual ~~contracts~~ or partner owner contracts; or

1                    (bb) the individual or partner owner operates a separate and  
2                    distinct business from that of the person with whom he or she contracts and is  
3                    actively registered with the Vermont Secretary of State.

4                    ~~(ii)~~(II) The individual or partner owner controls the means and  
5                    manner of the work performed.

6                    ~~(iii)~~(III) The individual or partner owner holds ~~him~~ him- or herself  
7                    out as in business for ~~him~~ him- or herself.

8                    ~~(iv)~~(IV) The individual or partner owner holds ~~him~~ him- or herself  
9                    out for work for the general public and does not perform work exclusively for  
10                    or with another person.

11                    ~~(v)~~(V) The individual or partner owner is not treated as an  
12                    employee for purposes of income or employment taxation with regard to the  
13                    work performed.

14                    ~~(vi)~~(VI) The services are performed pursuant to a written  
15                    agreement or contract between the individual or partner owner and another  
16                    person, and the written agreement or contract explicitly states that the  
17                    individual or partner owner is not considered to be an employee under this  
18                    chapter, is working independently, has no employees, and has not contracted  
19                    with other independent contractors. The written contract or agreement shall  
20                    also include information regarding the right of the individual or partner owner  
21                    to purchase workers' compensation insurance coverage and the individual's or

1 partner owner's election not to purchase that coverage. However, if the  
2 individual or partner owner who is party to the agreement or contract under  
3 this subdivision is found to have employees, those employees may file a claim  
4 for benefits under this chapter against either or both parties to the agreement.

5 (ii)(I) With the approval of the Commissioner, a sole proprietor or  
6 partner owner of an unincorporated business that meets the requirements of  
7 subdivision (14)(F)(i) of this section may elect to file a notice of waiver of the  
8 coverage requirements of this chapter.

9 (II) If, after filing a notice of waiver of the coverage  
10 requirements of this chapter, the individual or partner owner suffers a personal  
11 injury arising out of and in the course of his or her employment, he or she may  
12 bring an action to recover damages for personal injury against the employer,  
13 and in such action the employer shall have all of the defenses available in a  
14 personal injury claim. However, this election shall not prevent any other  
15 individual, other than the individual excluded pursuant to subdivision  
16 (14)(F)(ii)(I) of this section, who is determined to be an employee of the  
17 unincorporated business from claiming workers' compensation benefits under  
18 this chapter from the unincorporated business, or from a statutory employer.

19 (iii) A sole proprietor or partner owner that files a notice of waiver  
20 of the coverage requirements of this chapter under subdivision (14)(F)(ii)(I) of  
21 this section shall ensure that any other individual hired to perform services for

1 the sole proprietor or partner owner’s unincorporated business has workers’  
2 compensation coverage.

3 \* \* \*

4 (H) With the approval of the Commissioner, a corporation or a  
5 limited liability company (L.L.C.) may elect to file exclusions from the  
6 provisions of this chapter. A corporation or an L.L.C. may elect to exclude up  
7 to four corporate executive officers or four L.L.C. managers or members from  
8 coverage requirements under this chapter. If all officers of the corporation or  
9 all managers or members of an L.L.C. make such election, receive approval,  
10 and the business has no employees, the corporation or L.L.C. shall not be  
11 required to purchase workers’ compensation coverage. ~~If after election, the~~  
12 ~~officer, manager, or member experiences a personal injury and files a claim~~  
13 ~~under this chapter, the employer shall have all the defenses available in a~~  
14 ~~personal injury claim. However, this election shall not prevent any other~~  
15 ~~individual, other than the individual excluded under this section, found to be an~~  
16 ~~employee of the corporation or L.L.C. to recover workers’ compensation from~~  
17 ~~either the corporation, L.L.C., or the statutory employer.~~

18 (i) A person shall not be deemed to be an “employer” for purposes  
19 of this chapter of corporate executive officers or L.L.C. managers or members  
20 that are excluded under this subdivision if all of the following are met:

1                   (I) The corporate executive officers or L.L.C. managers or  
2                   members operate a separate and distinct business from that of the person with  
3                   whom the corporation or L.L.C. contracts, and the corporation or L.L.C. is  
4                   actively registered with the Vermont Secretary of State.

5                   (II) The corporation or L.L.C. controls the means and manner  
6                   of the work performed.

7                   (III) The corporation or L.L.C. holds itself out as in business  
8                   for itself and performs work for the general public.

9                   (IV) The person that the corporation or L.L.C. contracts with  
10                  does not treat the corporate executive officers or L.L.C. managers or members  
11                  as employees for purposes of income or employment taxation in relation to the  
12                  work performed.

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

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

11                  (I) An individual who provides services for which he or she receives  
12                  foster care payments that are specifically excluded from gross income pursuant  
13                  to Section 131 of the federal Internal Revenue Code, 26 U.S.C. § 131.

14                  (J) An individual that is a direct seller, provided all of the following  
15                  are met:

16                  (i) The individual is engaged in the trade or business of selling or  
17                  soliciting the sale of consumer products, including services or other intangibles  
18                  in the home or a location other than in a permanent retail establishment. For  
19                  purposes of this subdivision, “the trade or business of selling or soliciting the  
20                  sale of consumer products” includes the sale or solicitation of a sale to any

1 buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for  
2 resale by the buyer or any other person.

3 (ii) Substantially all of the compensation, whether or not received  
4 in cash, that the individual receives for the performance of the services  
5 described in subdivision (i) of this subdivision (14)(J) is directly related to  
6 sales or other output, including the performance of services, rather than to the  
7 number of hours worked.

8 (iii) The services performed by the individual are performed  
9 pursuant to a written contract between the individual and the person for whom  
10 the services are performed, and the contract provides that the individual will  
11 not be treated as an employee for federal and State tax purposes.

12 \* \* \*

13 [ALTERNATIVE WITH INDEPENDENT CONTRACTOR DEFINITION]

14 Sec. 12. 21 V.S.A. § 601 is amended to read:

15 § 601. DEFINITIONS

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

18 \* \* \*

19 (3) “Employer” includes any body of persons, corporate or  
20 unincorporated, public or private, and the legal representative of a deceased  
21 employer, and includes the owner or lessee of premises or other person who is

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

12 \* \* \*

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

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

\* \* \*

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

(i)(I)(aa) The individual performs work that is distinct and separate from that of the person with whom the individual contracts or partner owner is an independent contractor and has purchased workers' compensation coverage for him- or herself; or

(bb) the individual or partner owner is an independent contractor, is actively registered with the Vermont Secretary of State, and elects to file a notice of waiver of the coverage requirements under this chapter that is approved by the Commissioner.

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

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

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

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

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

14            (ii) If, after making an election under subdivision (F)(i)(I)(bb) of  
15 this section, the individual or partner owner suffers a personal injury arising  
16 out of and in the course of his or her employment, he or she may bring an  
17 action to recover damages for personal injury against the person who is  
18 providing compensation for the services, and in such action the person who is  
19 providing compensation for the services shall have all of the defenses available  
20 in a personal injury claim. However, this election shall not prevent any other  
21 individual, other than the individual excluded pursuant to subdivision

1 (F)(i)(I)(bb) of this section, who is determined to be an employee of the  
2 unincorporated business from claiming workers' compensation benefits under  
3 this chapter from the unincorporated business, or from a statutory employer.

4 (iii) An individual or partner owner that makes an election under  
5 subdivision (F)(i)(I)(bb) of this section shall collect and maintain  
6 documentation that any other person hired to perform services for the sole  
7 proprietor or partner owner's unincorporated business has workers'  
8 compensation coverage, or is otherwise in compliance with the provisions of  
9 this chapter.

10 \* \* \*

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

1 ~~individual, other than the individual excluded under this section, found to be an~~  
2 ~~employee of the corporation or L.L.C. to recover workers' compensation from~~  
3 ~~either the corporation, L.L.C., or the statutory employer.~~

4 (i) A person shall not be deemed to be an “employer” for purposes  
5 of this chapter of corporate executive officers or L.L.C. managers or members  
6 that are excluded under this subdivision if the following conditions are met:

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

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

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

12                   (iii) A corporation or L.L.C. whose executive officers, members,  
13 or managers make an election under subdivision (14)(H)(i) of this section shall  
14 collect and maintain documentation that any other person hired to perform  
15 services for the corporation or L.L.C. has workers' compensation coverage, or  
16 is otherwise in compliance with this chapter.

17                   (I) An individual who provides services for which he or she receives  
18 foster care payments that are specifically excluded from gross income pursuant  
19 to Section 131 of the federal Internal Revenue Code, 26 U.S.C. § 131.

20                   (J) An individual that is a direct seller, provided all of the following  
21 are met:



- 1                   (ii) controls the means and manner of the work performed;
- 2                   (iii) operates a separate and distinct business from that of the
- 3 person with whom it contracts;
- 4                   (iv) holds itself out as in business for itself;
- 5                   (v) offers its services to the general public; and
- 6                   (vi) is not treated as an employee for purposes of income or
- 7 employment taxation with regard to the work performed.

8                   (B) An independent contractor shall purchase workers' compensation

9 coverage for its employees as provided in this chapter.

10 Sec. 13. 21 V.S.A. § 707 is added to read:

11 § 707. HIRING MULTIPLE INDIVIDUALS TO PERFORM WORK;

12                   NOTICE

13                   (a) An employing unit shall provide notice to the Commissioner if it hires

14 multiple sole proprietors, partnerships, or single member corporations or

15 L.L.C.s that are excluded from coverage under this chapter pursuant to

16 subdivision 601(14)(F) or (H) of this chapter to perform the same work on a

17 project or jobsite. The employing unit shall submit the notice on a form

18 provided by the Commissioner within 15 business days after hiring the second

19 sole proprietor, partnership, or single member corporation or L.L.C. that is

20 excluded from coverage under this chapter or the commencement of work,

21 whichever is later.

1        (b) An employing unit that violates the provisions of this section shall be  
2        subject to an administrative penalty of not more than \$100.00 for each notice  
3        that the employer fails to submit within the required time period.

4        [ALTERNATIVE] Sec. 13. 21 V.S.A. § 707 is added to read:

5        § 707. HIRING MULTIPLE INDEPENDENT CONTRACTORS TO  
6        PERFORM WORK; NOTICE

7        (a) An employing unit shall notify the Commissioner if it hires multiple  
8        independent contractors that are excluded from coverage under this chapter  
9        pursuant to subdivision 601(14)(F) or (H) of this chapter to perform the same  
10       work on a project or jobsite. The employing unit shall submit the notice on a  
11       form provided by the Commissioner within 15 business days after hiring the  
12       second independent contractor that is excluded from coverage under this  
13       chapter or the commencement of work, whichever is later.

14       (b) An employing unit that violates the provisions of this section shall be  
15       subject to an administrative penalty of not more than \$100.00 for each notice  
16       that the employer fails to submit within the required time period.

17       Sec. 14. 21 V.S.A. § 1301 is amended as follows:

18       § 1301. DEFINITIONS

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

21       \* \* \*



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

4 (ii) Such service is ~~either~~ outside the usual course of the business  
5 for which such service is performed, ~~or that such service is performed outside~~  
6 ~~of all the places of business of the enterprise for which such service is~~  
7 ~~performed~~ unless it can be demonstrated that such individual holds him- or  
8 herself out to the public as a provider of such service; and

9 (iii) Such individual is customarily engaged in an independently  
10 established trade, occupation, profession, or business, and that independently  
11 established trade, occupation, profession, or business is actively registered with  
12 the Vermont Secretary of State.

13 \* \* \*

14 [ALTERNATIVE] Sec. 14. 21 V.S.A. § 1301 is amended as follows:

15 § 1301. DEFINITIONS

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

18 \* \* \*

19 (6)(A)(i) “Employment,” subject to the other provisions of this  
20 subdivision (6), means service within the jurisdiction of this State, performed  
21 prior to January 1, 1978, which was employment as defined in this subdivision

1 prior to such date and, subject to the other provisions of this subdivision,  
2 service performed after December 31, 1977, by an employee, as defined in  
3 subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including  
4 service in interstate commerce, performed for wages or under any contract of  
5 hire, written or oral, expressed or implied. Services partly within and partly  
6 without this State may by election as hereinbefore provided be treated as if  
7 wholly within the jurisdiction of this State. And whenever an employing unit  
8 shall have elected to come under the provisions of a similar act of a state where  
9 a part of the services of an employee are performed, the Commissioner, upon  
10 his or her approval of said election as to any such employee, may treat the  
11 services covered by said approved election as having been performed wholly  
12 without the jurisdiction of this State.

13 \* \* \*

14 (B) Services performed by an individual for wages shall be deemed  
15 to be employment subject to this chapter unless and until it is shown to the  
16 satisfaction of the Commissioner that the individual is an independent  
17 contractor.

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



1 Sec. 15. 21 V.S.A. § 1313 is added to read:

2 § 1313. HIRING MULTIPLE INDIVIDUALS TO PERFORM WORK:

3 NOTICE

4 (a) An employing unit shall notify the Commissioner if it hires multiple  
5 individuals to perform the same services on a project or jobsite and the  
6 employing unit believes that the services are not employment pursuant to  
7 subdivision 1301(6) of this chapter. The employing unit shall submit the  
8 notice on a form provided by the Commissioner within 15 business days after  
9 hiring the second such individual or the commencement of work, whichever is  
10 later.

11 (b) An employing unit that violates the provisions of this section shall be  
12 subject to an administrative penalty of not more than \$100.00 for each notice  
13 that the employing unit fails to submit within the required time period.

14 [ALTERNATIVE] Sec. 15. 21 V.S.A. § 1313 is added to read:

15 § 1313. HIRING MULTIPLE INDEPENDENT CONTRACTORS TO

16 PERFORM WORK; NOTICE

17 (a) An employing unit shall notify the Commissioner if it hires multiple  
18 independent contractors to perform the same work on a project or jobsite. The  
19 notice shall be submitted on a form provided by the Commissioner within  
20 15 business days after hiring the second independent contractor or the  
21 commencement of work, whichever is later.

1        (b) An employing unit that violates the provisions of this section shall be  
2        subject to an administrative penalty of not more than \$100.00 for each notice  
3        that the employing unit fails to submit within the required time period.

4        Sec. 16. 21 V.S.A. § 8 is added to read:

5        § 8. VERMONT EMPLOYEE CLASSIFICATION TASK FORCE

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

11       (b) Membership. The Task Force shall be composed of the following 16  
12       members:

13       (1) the Commissioner of Labor or designee;

14       (2) the Secretary of Administration or designee;

15       (3) the Secretary of Transportation or designee;

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

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

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

19       (7) the Commissioner of Taxes or designee;

20       (8) the Attorney General or designee;

21       (9) the Commissioner of Liquor Control or designee;

1           (10) three individuals representing the interests of labor, one of whom  
2           shall be appointed by the Speaker of the House, one of whom shall be  
3           appointed by the Senate Committee on Committees, and one of whom shall be  
4           appointed by the Governor;

5           (11) three individuals representing the interests of business, one of  
6           whom shall be appointed by the Speaker of the House, one of whom shall be  
7           appointed by the Senate Committee on Committees, and one of whom shall be  
8           appointed by the Governor; and

9           (12) one individual representing the interests of workers' compensation  
10          insurers who shall be appointed by the Governor.

11          (c) Meetings.

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

13           (2) The Commissioner of Labor or designee shall be the Chair.

14           (3) A majority of the membership of the Task Force shall constitute a  
15          quorum.

16          (d) Duties.

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

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

1 (B) to examine and evaluate existing misclassification enforcement  
2 by State agencies and departments;

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

6 (D) to review and establish reasonable mechanisms to accept  
7 complaints and reports of noncompliance;

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

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

12 (G) to review and recommend additional methods to provide public  
13 notice and share information regarding enforcement, penalties, and debarment  
14 periods;

15 (H) to develop strategies and programs to assist businesses in  
16 complying with Vermont’s requirements for the proper classification of  
17 employees and independent contractors, and to reduce the frequency of  
18 employee misclassification; and

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

1           (2) The Task Force shall consult and collaborate with businesses, labor,  
2           and other interested stakeholders to accomplish the duties set forth in  
3           subdivision (1) of this subsection.

4           (e) Reports.

5           (1) The Task Force shall report annually on or before January 15 of each  
6           year to the House Committee on Commerce and Economic Development and  
7           the Senate Committee on Finance regarding the activities that it has undertaken  
8           pursuant to this section, the progress of the Task Force’s ongoing education  
9           and outreach programs, the number and results of the employer audits  
10           conducted during the previous calendar year, and any barriers or impediments  
11           to the proper classification of employees and independent contractors that the  
12           Task Force has identified. The report may recommend legislative, regulatory,  
13           and administrative measures to reduce the frequency of employee  
14           misclassification. The provisions of 2 V.S.A. § 20(d) (expiration of required  
15           reports) shall not apply to the report to be made under this subsection.

16           (2) The Task Force shall examine instances in which a person has hired  
17           multiple sole proprietors, partnerships, or single member corporations or  
18           L.L.C.s to perform the same work on a project or jobsite to determine how  
19           often employee misclassification occurs in such situations and whether  
20           legislative changes are necessary to reduce the frequency of those occurrences.  
21           On or before January 15, 2017, the Task Force shall submit a written report to

1 the General Assembly with its findings and any recommendations for  
2 legislative action.

3 (f) Definition. As used in this section, “employee misclassification” means  
4 the improper classification of employees as independent contractors.

5 **Sec. 17.** EFFECTIVE DATE

6 This act shall take effect on July 1, 2016.

DRAFT