

1 S.73

2 Introduced by Senators Sirotkin and Baruth

3 Referred to Committee on

4 Date:

5 Subject: Labor; workers' compensation; unemployment insurance; income
6 taxation; employee misclassification

7 Statement of purpose of bill as introduced: This bill proposes to create an
8 interagency commission to investigate, evaluate, and address the negative
9 impacts from employee misclassification in Vermont on workers'
10 compensation rates, unemployment insurance contributions, and State tax
11 revenues, and to recommend changes to Vermont's workers' compensation,
12 unemployment insurance, tax, and other laws to improve the clarity and
13 consistency of the laws relating to employee classification. This bill also
14 proposes to permit the Attorney General to enforce complaints of employee
15 misclassification under the workers' compensation and unemployment
16 insurance laws.

17 An act relating to the Vermont Commission on Employee Misclassification

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

2 Sec. 1. 21 V.S.A. § 712 is added to read:

3 § 712. VERMONT COMMISSION ON EMPLOYEE

4 MISCLASSIFICATION; REPORT

5 (a) Legislative purpose. The General Assembly deems it prudent to
6 establish a permanent and formal mechanism to ensure collaboration and
7 consultation among State agencies and departments for the purpose of reducing
8 employee misclassification and its associated harm to Vermont's
9 unemployment insurance and workers' compensation systems, State tax
10 revenues, workers, and law-abiding businesses.

11 (b) Definition. As used in this section, "employee misclassification" means
12 improperly classifying employees as independent contractors.

13 (c) Creation and purpose. The Vermont Commission on Employee
14 Misclassification is created in the Department of Labor for the following
15 purposes:

16 (1) to investigate and evaluate the problem of employee
17 misclassification with respect to payroll taxes, occupational safety,
18 unemployment insurance, and workers' compensation;

19 (2) to develop and implement strategies to improve interagency
20 cooperation to address employee misclassification;

1 (3) to recommend legislative, regulatory, and administrative measures to
2 reduce the frequency of employee misclassification; and

3 (4) to recommend legislative changes to improve the clarity and
4 consistency of the statutory definitions related to employee classification.

5 (d) Membership. The Commission shall be composed of the following
6 10 members:

7 (1) the Commissioner of Labor or designee;

8 (2) the Attorney General or designee;

9 (3) the Secretary of Administration or designee;

10 (4) the Commissioner of Financial Regulation or designee;

11 (5) the Commissioner of Taxes or designee;

12 (6) the Commissioner of Buildings and General Services or designee;

13 (7) the Secretary of Transportation or designee;

14 (8) the Secretary of Human Services or designee;

15 (9) the Secretary of Commerce and Community Development or
16 designee; and

17 (10) the Commissioner of Liquor Control or designee.

18 (e) Duties. The Commission shall have the following duties:

19 (1) to evaluate the current practices, policies, and procedures employed
20 by State agencies and departments in relation to the monitoring, investigation,
21 and enforcement of employee misclassification, and recommend measures to

1 improve the monitoring, investigation, and enforcement of employee
2 misclassification;

3 (2) to evaluate Vermont's laws and regulations related to the
4 classification of employees and recommend legislative and regulatory changes
5 to reduce the frequency and improve the enforcement of employee
6 misclassification;

7 (3) to evaluate and recommend potential amendments to Vermont's
8 statutory definitions of "employee," "independent contractor," and other
9 related terms to improve the consistency and clarity of the definitions and to
10 ensure that the definitions are as similar as possible to the comparable
11 definitions set forth in the federal Fair Labor Standards Act, 29 U.S.C. § 203;

12 (4) to evaluate existing reporting and complaint mechanisms employed
13 by State agencies and departments in relation to employee misclassification
14 and recommend specific measures that agencies and departments can
15 implement to facilitate the filing of complaints and the identification of
16 potential violators of the requirements for classifying employees in Vermont;

17 (5) to identify barriers to the sharing of information among State
18 agencies and departments in relation to employee misclassification and
19 recommend legislative, regulatory, programmatic, and administrative changes
20 to improve the sharing of information;

1 (6) to review templates for State contracts and grant applications and
2 recommend changes to ensure that contractors for State projects and recipients
3 of State grants comply with the requirements for classifying employees in
4 Vermont;

5 (7) to develop, implement, and revise as necessary an outreach
6 campaign to educate and inform employers, workers, and the general public
7 about the requirements for classifying employees in Vermont and the costs of
8 employee misclassification;

9 (8) to collaborate with businesses, labor, and other stakeholders to
10 develop strategies to reduce the frequency of employee misclassification;

11 (9) to ensure that State agencies and departments are engaged in timely
12 enforcement of instances of employee misclassification;

13 (10) to ensure that information regarding penalties imposed for instances
14 of employee misclassification, including related debarment periods, are posted
15 to a website accessible to the general public, provided the posting of the notice
16 is not otherwise prohibited by law; and

17 (11) to analyze the actual and projected additional tax revenue and
18 unemployment insurance contributions, as well as the actual and projected
19 reduction in workers' compensation premiums and costs, from
20 recommendations made by, and any actions taken by, the Commission
21 pursuant to this subsection.

1 (f) Subcommittee.

2 (1) The Commission shall include the Subcommittee on Statutory
3 Definitions. The following members of the Commission shall be the members
4 of the Subcommittee: the Commissioner of Labor or designee, the Attorney
5 General or designee, the Secretary of Administration or designee, the Secretary
6 of Transportation or designee, the Commissioner of Financial Regulation or
7 designee, and the Commissioner of Taxes or designee. The Commissioner of
8 Labor or designee and the Attorney General or designee shall be the Co-Chairs
9 of the Subcommittee.

10 (2) The Subcommittee shall carry out the Commission's duties with
11 respect to evaluating and recommending potential amendments to Vermont's
12 statutory definitions of "employee," "independent contractor," and other
13 related terms to improve the consistency and clarity of the definitions and to
14 ensure that the definitions are as similar as possible to the comparable
15 definitions set forth in the federal Fair Labor Standards Act, 29 U.S.C. § 203.

16 (g) Assistance. The Commission shall have the administrative, technical,
17 and legal assistance of the Department of Labor.

18 (h)(1) Annual report. On or before December 15 of each year, the
19 Commission shall submit a written report to the Governor and the General
20 Assembly with its findings and any recommendations for legislative or

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

3 (2) Draft legislation. On or before January 15, 2018, the Subcommittee
4 on Statutory Definitions shall submit draft legislation to the General Assembly
5 proposing amendments to the definitions of “employee,” “independent
6 contractor,” and other related terms throughout the Vermont Statutes
7 Annotated as necessary to improve the consistency and clarity of the
8 definitions and to ensure that the definitions are as similar as possible to the
9 comparable definitions set forth in the federal Fair Labor Standards Act,
10 29 U.S.C. § 203.

11 (i) Meetings.

12 (1) The Commissioner of Labor shall call the first meeting of the
13 Commission to occur on or before September 1, 2017.

14 (2) The Commissioner of Labor or designee and the Attorney General or
15 designee shall be Co-Chairs of the Commission.

16 (3) A majority of the membership of the Commission shall constitute a
17 quorum.

18 (4) The Commission shall meet at least six times per year.

19 (5) Notice of each of the Commission’s meetings shall, at least two
20 weeks prior to the meeting, be published on the Department of Labor’s website
21 and sent to representatives of business, labor, and other interested stakeholders.

1 (j) Limitations. The Commission’s powers shall be limited to
2 information-gathering and interagency coordination. This section shall not be
3 construed to grant the Commission any enforcement or regulatory authority.

4 Sec. 2. 3 V.S.A. § 2222d is added to read:

5 § 2222d. EMPLOYEE MISCLASSIFICATION; INVESTIGATION AND
6 ENFORCEMENT

7 (a) As used in this section, “employee misclassification” means the
8 improper classification of employees as independent contractors.

9 (b) The Secretary of Administration shall ensure that all State agencies do
10 the following:

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

13 (2) share in a central database accessible to all State agencies and
14 departments information concerning any employer determined to have
15 misclassified one or more employees as independent contractors.

16 (c) The Secretary shall adopt rules and procedures necessary to carry out
17 the duties set forth in subsection (b) of this section.

18 (d) The Secretary of Administration shall report on or before January 15 of
19 each year to the House Committee on Ways and Means and the Senate
20 Committee on Finance regarding the activities that he or she has undertaken
21 pursuant to this section, the amount of any additional tax revenue and

1 unemployment insurance contributions, the amount of any reduction in
2 workers' compensation premiums, and any reduction in costs realized as a
3 result of the efforts undertaken by the Secretary pursuant to this section. The
4 provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply
5 to the report to be made under this subsection.

6 Sec. 3. 7 V.S.A. § 712 is added to read:

7 § 712. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY
8 ATTORNEY GENERAL

9 (a) In addition to any other remedies provided under this chapter, an
10 individual that is misclassified by an employer or harmed by an employer's
11 misclassification of an employee as an independent contractor may file a
12 complaint with the Attorney General of the misclassification and any related
13 violations of the provisions of this chapter.

14 (b) The Attorney General shall investigate the complaint and may enforce
15 the provisions of this chapter by restraining prohibited acts, seeking civil
16 penalties, obtaining assurances of discontinuance, and conducting civil
17 investigations in accordance with the procedures established in 9 V.S.A.
18 §§ 2458–2461 as though the misclassification of an employee and any related
19 violations of the provisions of this chapter were unfair acts in commerce.

20 (c) If, following the investigation, the Attorney General determines that an
21 employee has been misclassified as an independent contractor, the Attorney

1 General shall notify the Commissioners of Labor, of Financial Regulation, and
2 of Taxes of the determination, and those Commissioners shall review whether
3 the employer is in compliance with the laws related to employee classification
4 that are under their jurisdiction.

5 Sec. 4. 21 V.S.A. § 1379 is added to read:

6 § 1379. COMPLAINT OF MISCLASSIFICATION; ENFORCEMENT BY
7 ATTORNEY GENERAL

8 (a) In addition to any other remedies provided under this chapter, an
9 individual that is misclassified by an employing unit or harmed by an
10 employing unit's misclassification of an employee as an independent
11 contractor may file a complaint of the misclassification and any related
12 violations of the provisions of this chapter with the Attorney General.

13 (b) The Attorney General shall investigate the complaint and may enforce
14 the provisions of this chapter by restraining prohibited acts, seeking civil
15 penalties, obtaining assurances of discontinuance, and conducting civil
16 investigations in accordance with the procedures established in 9 V.S.A.
17 §§ 2458–2461 as though the misclassification of an employee and any related
18 violations of the provisions of this chapter were unfair acts in commerce.

19 (c) If, following the investigation, the Attorney General determines that an
20 employee has been misclassified as an independent contractor, the Attorney
21 General shall notify the Commissioners of Labor, of Financial Regulation, and

1 of Taxes of the determination, and those Commissioners shall review whether
2 the employer is in compliance with the laws related to employee classification
3 that are under their jurisdiction.

4 Sec. 5. EFFECTIVE DATE

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