

1 S.211

2 Introduced by Senator Sirotkin

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 on workers' compensation rates, unemployment insurance
10 contributions, and State tax revenues from employee misclassification in
11 Vermont. The Commission would also recommend changes to Vermont's
12 workers' compensation, unemployment insurance, taxation, and other laws to
13 improve the clarity and consistency of Vermont's laws relating to employee
14 classification.

15 An act relating to the Vermont Commission on Employee Misclassification

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

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

18 § 712. VERMONT COMMISSION ON EMPLOYEE

19 MISCLASSIFICATION; REPORT

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

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

9 (c) Creation and purpose. The Vermont Commission on Employee
10 Misclassification is created in the Department of Labor to:

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

14 (2) develop and implement strategies to improve interagency
15 cooperation to address employee misclassification;

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

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

20 (d) Membership. The Commission shall be composed of the following
21 12 members:

- 1 (1) the Commissioner of Labor or designee;
- 2 (2) the Secretary of Administration or designee;
- 3 (3) the Commissioner of Financial Regulation or designee;
- 4 (4) the Commissioner of Taxes or designee;
- 5 (5) the Commissioner of Buildings and General Services or designee;
- 6 (6) the Attorney General or designee;
- 7 (7) the Secretary of Transportation or designee;
- 8 (8) the Secretary of Human Services or designee;
- 9 (9) the Secretary of Commerce and Community Development or
10 designee;
- 11 (10) the Commissioner of Liquor Control or designee;
- 12 (11) a member of the House of Representatives, who shall be appointed
13 by the Speaker of the House and shall serve until the beginning of the
14 biennium immediately following the one in which the member is
15 appointed; and
- 16 (12) a member of the Senate, who shall be appointed by the Committee
17 on Committees and shall serve until the beginning of the biennium
18 immediately following the one in which the member is appointed.
- 19 (e) Duties. The Commission shall have the following duties:
- 20 (1) evaluate the current practices, policies, and procedures employed by
21 State agencies and departments in relation to the monitoring, investigation, and

1 enforcement of employee misclassification, and recommend measures to
2 improve the monitoring, investigation, and enforcement of employee
3 misclassification;

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

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

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

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

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

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

13 (10) 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, so long as the provision of such
16 notice is not otherwise prohibited by law; and

17 (11) 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 resulting 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 Secretary of
5 Administration or designee, the Secretary of Transportation or designee, the
6 Commissioner of Financial Regulation or designee, and the Commissioner of
7 Taxes or designee. The Commissioner of Labor or his or her designee shall be
8 the Chair of the Subcommittee.

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

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

17 (h)(1) Annual report. On or before December 15 of each year, the
18 Commission shall submit a written report to the Governor and the General
19 Assembly with its findings and any recommendations for legislative or
20 regulatory action. The provisions of 2 V.S.A. § 20(d) (expiration of required
21 reports) shall not apply to the report to be made under this subsection.

1 (2) Draft legislation. On or before January 15, 2017, the Subcommittee
2 on Statutory Definitions shall submit draft legislation to the General Assembly
3 proposing amendments to the definitions of “employee,” “independent
4 contractor,” and other related terms throughout the Vermont Statutes
5 Annotated as necessary to improve the consistency and clarity of the
6 definitions, and to ensure that the definitions are as similar as possible to the
7 comparable definitions set forth in the federal Fair Labor Standards Act,
8 29 U.S.C. § 203.

9 (i) Meetings.

10 (1) The Commissioner of Labor shall call the first meeting of the
11 Commission to occur on or before September 1, 2016.

12 (2) The Commissioner of Labor or designee shall be the Chair. The
13 Commission may elect a deputy chair to serve in the absence of the Chair.

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

16 (j) Reimbursement. For attendance at meetings during adjournment of the
17 General Assembly, legislative members of the Commission shall be entitled to
18 per diem compensation and reimbursement of expenses pursuant to 2 V.S.A.
19 § 406 for not more than four meetings per year.

1 (k) Limitations. The Commission’s powers shall be limited to information
2 gathering and interagency coordination. This section shall not be construed to
3 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 improperly
8 classifying 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 information concerning any employer determined to have
14 misclassified one or more employees as independent contractors in a central
15 database accessible to all State agencies and departments.

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 activities that he or she has undertaken
21 pursuant to this section and any additional tax revenue and unemployment

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

6 Sec. 3. EFFECTIVE DATE

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