

# **IMPORTANT NOTICE**

**TO:** Workers' Compensation Insurance Agents

**FROM:** Laura K. Collins, Deputy Commissioner, Department of Labor & Industry

**Re:** **Changes in Workers' Compensation Insurance Coverage Requirements**

**DATE:** June 3, 2004

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Please be advised that H.632, the Workers' Compensation Bill, alters workers' compensation insurance coverage requirements for some employers. Specifically, sole proprietors, small corporations and farm employment coverage requirements and implications have changed.

Excerpted sections of the law changes in 21 V.S.A. § 601(14) follow:

**FOR FARM EMPLOYMENT – a worker or employee does not include:**

**(C) An individual engaged in agriculture or farm employment for an employer whose aggregate payroll is less than \$10,000.00 in a calendar year, unless the employer notifies the commissioner that the employer wishes to be included.**

**FOR A SOLE PROPRIETOR – a worker or employee does not include:**

**(F) The sole proprietor or partner owner or partner owners of an unincorporated business,**

- (i) The individual performs work that is distinct and separate from that of the person with whom the individual contracts.**
- (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.**
- (vi) The services are performed pursuant to a written agreement or contract between the individual and another person, and the written agreement or contract explicitly states that the individual is not considered to be an employee under this chapter, is working independently, has no employees, and has not contracted with other independent contractors. The written contract or**

**agreement shall also include information regarding the right of the individual to purchase workers' compensation insurance coverage and the individual's election not to purchase that coverage. However, if the individual who is party to the agreement or contract under this subdivision is found to have employees, those employees may file a claim for benefits under this chapter against either or both parties to the agreement.**

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**FOR A SMALL CORPORATION – a worker or an employee does not include::**

**(H)Any executive officer elected or appointed and empowered in accordance with the bylaws of the corporation shall be an employee of the corporation. With the approval of the commissioner, an officer may elect not to come under the provisions of this chapter and if all officers of the corporation make such election and the corporation has no employees, the corporation shall not be required to purchase workers' compensation coverage. If after election, the officer suffers a personal injury and files a claim under this chapter, the employer shall have all the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the executive officer, found to be an employee of the corporation to recover workers' compensation from either the corporation or the statutory employer.**

These changes were effective on passage of the law, May 26, 2004.

***Please note:*** any business that wishes to rely upon any one of these exceptions *must* meet all of the requirements set out in the law. For example, if a general contractor wishes to rely upon this exception for a sole proprietor with whom they wish to contract, a written agreement must be signed by both contracting parties, the sole proprietor's work must meet each of the 6 elements addressed in the law and the sole proprietor must have no employees. In the event one or more requirements are not met, the exception may fail.

The complete bill and additional information is available on the workers' compensation website at <http://www.state.vt.us/labind/wcindex.htm>. If you have additional questions you may contact the workers' compensation division at (802) 828-2286.