

1 S.95

2 Introduced by Committee on Economic Development, Housing and General
3 Affairs

4 Date: March 15, 2011

5 Subject: Labor; unemployment compensation; conditions

6 Statement of purpose: This bill proposes to: exempt from the unemployment
7 compensation statutes individuals who sell or deliver a weekly or monthly
8 newspaper; study the impact of allowing people who work in a
9 nonadministrative capacity for an educational institution to receive
10 unemployment compensation between academic terms; relieve an employer's
11 experience rating record of charges if the employer paid \$1,000.00 or less to an
12 individual in his or her base period; allow school employees to be paid over the
13 course of a year; and require employers to furnish required work apparel to
14 employees.

15 An act relating to exemptions for newspaper deliverers from the
16 unemployment statutes; relieving an employer's experience rating record of
17 charges; studying the receipt of unemployment compensation between
18 academic terms; allowing school employees to be paid wages over the
19 course of a year; and requiring employers to furnish required work apparel

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

1 Sec. 1. FINDINGS

2 The general assembly finds that:

3 (1) Federal law allows employees who work in a noninstructional,
4 research, or principal administrative capacity in an educational institution to
5 receive unemployment benefits between academic terms. This law allows bus
6 drivers, custodians, and cafeteria staff among others to receive benefits.

7 (2) At one time Vermont allowed these employees to receive
8 unemployment benefits between academic terms but no longer does, despite
9 being authorized to do so by federal law.

10 (3) During the time Vermont allowed the receipt of these benefits, the
11 Vermont supreme court held in Riddel v. Department of Employment Security
12 that teachers aides and para-educators were not eligible for unemployment
13 benefits between academic terms because they were considered to be working
14 in an instructional capacity.

15 (4) Reinstating the receipt of these benefits would exclude teachers
16 aides and para-educators from unemployment benefits. The question remains
17 whether authorizing unemployment benefits to bus drivers, custodians, and
18 cafeteria staff and other eligible employees would pose significant and
19 unreasonable costs to local school systems.

20 (5) More study is needed to determine the impact of reinstating
21 unemployment benefits between school terms.

1 ~~Sec. 2. STUDY~~

2 ~~(a) The commissioner of labor in consultation with the Vermont school~~
3 ~~boards association and any other interested parties shall study the issue of~~
4 ~~allowing the receipt of unemployment benefits between academic terms for~~
5 ~~noninstructional employees. The study shall consider the costs of allowing~~
6 ~~receipt of such benefits, the employees who would be eligible for benefits, and~~
7 ~~any other relevant issues. In addition, the study shall consider the potential~~
8 ~~benefit to those employees of school-district coordinated job placement~~
9 ~~services for the months between academic terms.~~

10 ~~(b) The commissioner shall report its findings and any recommendations to~~
11 ~~the senate committee on economic development, housing and general affairs~~
12 ~~and the house committee on commerce and economic development by~~
13 ~~January 15, 2012.~~

Sec. 2. STUDY

(a) The commissioner of labor in consultation with the Vermont school boards association and any other interested parties shall study the issue of allowing the receipt of unemployment benefits between academic terms for noninstructional employees. The study shall consider the costs of allowing receipt of such benefits, the employees who would be eligible for benefits, and any other relevant issues. In addition, the study shall consider the potential benefit to those employees of school-district-coordinated job placement services for the months between academic terms.

(b) The commissioner shall also study the issue of whether wages paid by an elderly individual for in-home assistance should be subject to the unemployment insurance statutes.

(c) The commissioner shall report his or her findings and any recommendations to the senate committee on economic development, housing

and general affairs and the house committee on commerce and economic development by January 15, 2012.

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 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 election as to any such employee, may treat the
19 services covered by said approved election as having been performed wholly
20 ~~without the jurisdiction of this state.~~

1 * * *

2 (C) The term "employment" shall not include:

3 * * *

4 (xxi) Service performed by a direct seller if the individual is in
5 compliance with all the following:

6 (I) The individual is engaged in:

7 (aa) the trade or business of selling or soliciting the sale of
8 consumer products, including services or other intangibles, in the home or a
9 location other than in a permanent retail establishment, including whether the
10 sale or solicitation of a sale is to any buyer on a buy-sell basis, a
11 deposit-commission basis, or any similar basis for resale by the buyer or any
12 other person.

13 (bb) the trade or business of the delivery or distribution of
14 newspapers or shopping news, including any services directly related to such
15 trade or business.

16 (II) Substantially all the remuneration, whether or not received
17 in cash, for the performance of the services described in subdivision (I) of this
18 subdivision (C)(xxi) is directly related to sales or other output, including the
19 performance of services, rather than to the number of hours worked.

20 (III) The services performed by the individual are performed
21 pursuant to a written contract between the individual and the person for whom

1 ~~the services are performed, and the contract provides that the individual will~~
2 ~~not be treated as an employee for federal and state tax purposes.~~

Sec. 3. 21 V.S.A. § 1301 is amended to read:

§ 1301. DEFINITIONS

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

** * **

(6)(A)(i) "Employment," subject to the other provisions of this subdivision (6), means service within the jurisdiction of this state, performed prior to January 1, 1978, which was employment as defined in this subdivision prior to such date and, subject to the other provisions of this subdivision, service performed after December 31, 1977, by an employee, as defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Services partly within and partly without this state may by election as hereinbefore provided be treated as if wholly within the jurisdiction of this state. And whenever an employing unit shall have elected to come under the provisions of a similar act of a state where a part of the services of an employee are performed, the commissioner, upon his or her approval of said election as to any such employee, may treat the services covered by said approved election as having been performed wholly without the jurisdiction of this state.

** * **

(C) The term "employment" shall not include:

** * **

(xxi) Service performed by a direct seller if the individual is in compliance with all the following:

(I) The individual is engaged in:

(aa) the trade or business of selling or soliciting the sale of consumer products, including services or other intangibles, in the home or a location other than in a permanent retail establishment, including whether the sale or solicitation of a sale is to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person.

(bb) the trade or business of the delivery or distribution of weekly or monthly newspapers, including any services directly related to such trade or business.

(II) Substantially all the remuneration, whether or not received in cash, for the performance of the services described in subdivision (I) of this subdivision (C)(xxi) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

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

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1 Sec. 4. 21 V.S.A. § 1314 is amended to read:

2 § 1314. REPORTS AND RECORDS; SEPARATION INFORMATION;
3 DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT
4 EMPLOYMENT INFORMATION; DISCLOSURE OF
5 INFORMATION TO OTHER STATE AGENCIES TO
6 INVESTIGATE MISCLASSIFICATION OR MISCODING

7 * * *

8 (d)(1) Except as otherwise provided in this chapter, information obtained
9 from any employing unit or individual in the administration of this chapter, and
10 determinations as to the benefit rights of any individual shall be held
11 confidential and shall not be disclosed or open to public inspection in any
12 manner revealing the individual's or employing unit's identity, nor be
13 admissible in evidence in any action or proceeding other than one arising out
14 of this chapter, or to support or facilitate an investigation by a public agency
15 identified in subdivision (e)(1) of this section.

1 (2) An individual or his or her duly authorized agent may be supplied
2 with information from those records to the extent necessary for the proper
3 presentation of his or her claims for benefits or to inform him or her of his or
4 her existing or prospective rights to benefits; an employing unit may be
5 furnished with such information as may be deemed proper, within the
6 discretion of the commissioner, to enable it to fully discharge its obligations
7 and safeguard its rights under this chapter.

8 ~~(2)~~(3) Automatic data processing services and systems and
9 programming services within the department of labor shall be the
10 responsibility and under the direct control of the commissioner in the
11 administration of this chapter and chapter 15 of this title.

12 ~~(3)~~(4) Notwithstanding the provisions in subdivision (2) of this section,
13 the department of labor shall, at the request of the agency of administration,
14 perform such services for other departments and agencies of the state as are
15 within the capacity of its data processing equipment and personnel, provided
16 that such services can be accomplished without undue interference with the
17 designated work of the department of labor

18 (e)(1) Subject to such restrictions as the board may by regulation prescribe,
19 information from unemployment insurance records may be made available to
20 any public officer or public agency of this or any other state or the federal
21 government dealing with the administration or regulation of relief, public

1 assistance, unemployment compensation, a system of public employment
2 offices, wages and hours of employment, workers' compensation,
3 misclassification or miscoding of workers, occupational safety and health, or a
4 public works program for purposes appropriate to the necessary operation of
5 those offices or agencies. The commissioner may also make information
6 available to colleges, universities, and public agencies of the state for use in
7 connection with research projects of a public service nature, and to the
8 Vermont economic progress council with regard to the administration of
9 subchapter 11E of chapter 151 of Title 32; but no person associated with those
10 institutions or agencies may disclose that information in any manner which
11 would reveal the identity of any individual or employing unit from or
12 concerning whom the information was obtained by the commissioner.

13 * * *

14 Sec. 5. 21 V.S.A. § 1325 is amended to read:

15 § 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

16 DISCLOSURE TO SUCCESSOR ENTITY; EMPLOYEE PAID

17 \$1,000.00 OR LESS DURING BASE PERIOD

18 (a) The commissioner shall maintain an experience-rating record for each
19 employer. Benefits paid shall be charged against the experience-rating record
20 of each subject employer who provided base-period wages to the eligible
21 individual. Each subject employer's experience-rating charge shall bear the

1 same ratio to total benefits paid as the total base-period wages paid by that
2 employer bear to the total base-period wages paid to the individual by all
3 base-period employers. The experience-rating record of an individual subject
4 base-period employer shall not be charged for benefits paid to an individual
5 under any of the following conditions:

6 (1) The individual's employment with that employer was terminated
7 under disqualifying circumstances.

8 (2) The individual's employment or right to reemployment with that
9 employer was terminated by retirement of the individual pursuant to a
10 retirement or lump-sum retirement pay plan under which the age of mandatory
11 retirement was agreed upon by the employer and its employees or by the
12 bargaining agent representing those employees.

13 (3) As of the date on which the individual filed an initial claim for
14 benefits, the individual's employment with that employer had not been
15 terminated or reduced in hours.

16 (4) The individual was employed by that employer as a result of another
17 employee taking leave under subchapter 4A of chapter 5 of this title, and the
18 individual's employment was terminated as a result of the reinstatement of the
19 other employee under subchapter 4A of chapter 5 of this title.

20 (5) The individual was paid wages of \$1,000.00 or less by the employer
21 in the individual's base period.

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Sec. 6. 21 V.S.A. § 342 is amended to read:

§ 342. WEEKLY BIWEEKLY AND SEMIMONTHLY PAYMENT OF
WAGES; SCHOOL EMPLOYEES; CALENDAR YEAR

(a)(1) Any person having employees doing and transacting business within the state shall pay each week, in lawful money or checks, the wages earned by each employee to a day not more than six days prior to the date of such payment.

(2) After giving written notice to the employees, any person having employees doing and transacting business within the state may, notwithstanding subdivision (1) of this subsection, pay ~~bi-weekly~~ biweekly or ~~semi-monthly~~ semimonthly in lawful money or checks, each employee the wages earned by the employee to a day not more than six days prior to the date of the payment. If a collective bargaining agreement so provides, the payment may be made to a day not more than 13 days prior to the date of payment.

(3) Notwithstanding subsection 384(a) of this title, an employee of a school district may in his or her sole discretion elect to have his or her wages paid over the course of a calendar year, beginning on the first day of the school year and ending not later than 12 months after the wage payment period begins.

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1 ~~Sec. 7. 21 V.S.A. § 385a is added to read:~~

2 ~~§ 385a. REQUIRED APPAREL~~

3 ~~An employer that requires its employees to wear apparel which displays the~~
4 ~~employer's trademark, logo, or other identifying characteristic, or that requires~~
5 ~~its employees to wear apparel sold or produced by the employer shall furnish~~
6 ~~the apparel free of charge to the employees.~~

Sec. 7. 21 V.S.A. § 385a is added to read:

§ 385a. REQUIRED APPAREL

*An employer that requires its employees to wear apparel which displays the
employer's trademark, logo, or other identifying characteristic, or that
requires its employees to wear apparel sold or produced by the employer shall
furnish and replace as necessary at least one week's worth of apparel free of
charge to the employees. An employee shall be responsible for maintaining the
apparel in good condition.*

Sec. 8. 21 V.S.A. § 1453 is amended to read:

§ 1453. APPROVAL OR REJECTION; RESUBMISSION

*The commissioner shall approve or reject a plan in writing within ~~45~~ 30
days of its receipt, and in the case of rejection shall state the reasons therefor.
The reasons for rejection shall be final and nonappealable, but the employer
shall be allowed to submit another plan for approval.*