

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

H.359

Introduced by Representative Mulvaney-Stanak of Burlington  
Referred to Committee on  
Date:  
Subject: Labor; unemployment insurance  
Statement of purpose of bill as introduced: This bill proposes to amend the  
definition of employment for purposes of unemployment insurance; to require  
the Department of Labor to use State Employees for the intake, processing,  
administration, and adjudication of all unemployment insurance claims; to  
increase the amount of weekly unemployment insurance benefits; to establish  
additional instances in which an employee who voluntarily leaves employment  
may be eligible for unemployment insurance benefits; to create a study  
committee to examine the possibility of creating a portable benefits system for  
contingent workers in Vermont; and to require the Department of Labor to  
report to the General Assembly regarding improving the accessibility of the  
unemployment insurance system for individuals with limited English  
proficiency and to improve the Domestic and Sexual Violence Survivor's  
Transitional Employment Program.

19 An act relating to expanding access to unemployment insurance benefits

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

2 Sec. 1. 21 V.S.A. § 1301 is amended to read:

3 § 1301. DEFINITIONS

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

7 \* \* \*

8 (6)(A)(i) “Employment,” subject to the other provisions of this  
9 subdivision (6), means service within the jurisdiction of this State, performed  
10 ~~prior to January 1, 1978, which was employment as defined in this subdivision~~  
11 ~~prior to such date and, subject to the other provisions of this subdivision,~~  
12 ~~service performed after December 31, 1977,~~ by an employee, as defined in  
13 subsections 3306(i) and (o) of the Federal Unemployment Tax Act, including  
14 service in interstate commerce, performed for wages or under any contract of  
15 hire, written or oral, expressed or implied. Services partly within and partly  
16 ~~without~~ outside this State may by election as ~~hereinbefore~~ provided in  
17 subdivision (5)(E)(i) of this section be treated as if wholly within the  
18 jurisdiction of this State. ~~And whenever~~ Whenever an employing unit shall  
19 have elected to come under the provisions of a similar act of a state where a  
20 part of the services of an employee are performed, the Commissioner, upon his  
21 or her approval of ~~said~~ the election as to any such employee, may treat the

1 services covered by ~~said~~ the approved election as having been performed  
2 wholly ~~without~~ outside the jurisdiction of this State.

3 \* \* \*

4 (B)(i) Services performed by an individual for wages shall be deemed  
5 to be employment subject to this chapter unless and until it is shown to the  
6 satisfaction of the Commissioner that:

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

10 (ii)(II) ~~Such~~ the service is ~~either~~ outside the usual course of the  
11 business for which ~~such~~ the service is performed, ~~or that such service is~~  
12 ~~performed outside of all the places of business of the enterprise for which such~~  
13 ~~service is performed;~~ and

14 (iii)(III) ~~Such~~ the individual is customarily engaged in an  
15 independently established trade, occupation, profession, or business of the  
16 same nature as the service performed.

17 (ii) As used in this subdivision (6)(B), the term "individual"  
18 means:

19 (I) a natural person;

20 (II) a single-member LLC that does not have any employees  
21 other than the member; or



1           (A) negotiates with clients or customers regarding the type of work  
2           and working conditions and the time, place, quality, and price of the services  
3           performed;

4           (B) determines the assignment or reassignment of the workers,  
5           regardless of whether workers retain the right to refuse specific assignments;

6           (C) retains the authority to assign or reassign workers to other clients  
7           or customers when a client or customer determines that a particular worker is  
8           unacceptable;

9           (D) assigns or reassigns workers to perform services for specific  
10          clients or customers;

11          (E) sets the rate of pay for the workers, whether or not through  
12          negotiation;

13          (F) pays workers from its own account or accounts; and

14          (G) retains the right to hire and terminate workers.

15          Sec. 2. 21 V.S.A. § 1307 is amended to read:

16          § 1307. COMMISSIONER OF LABOR, DUTIES AND POWERS OF

17          (a) The Commissioner of Labor shall administer this chapter. The  
18          Commissioner may employ such persons, make such expenditures, require  
19          such reports, make such investigations, and take such other action as he or she  
20          considers necessary or suitable to that end.



1 (f) The maximum weekly benefit amount shall be ~~\$425.00~~ \$580.00. When  
2 the State Unemployment Compensation Fund has a positive balance and all  
3 advances made to the State Unemployment Compensation Fund pursuant to  
4 Title XII of the Social Security Act have been repaid as of December 31 of the  
5 last completed calendar year, on the first day of the first calendar week of July,  
6 the maximum weekly benefit amount shall be adjusted by a percentage equal  
7 to the percentage change during the preceding calendar year in the State  
8 average weekly wage as determined by subsection (g) of this section, but in no  
9 event shall the maximum weekly benefit amount decrease. When the  
10 unemployment contribution rate schedule established by subsection 1326(e) of  
11 this title is at schedule III, the maximum weekly benefit amount shall be  
12 adjusted on the first day of the first calendar week in July to an amount equal  
13 to ~~57~~ 62 percent of the State annual average weekly wage as determined by  
14 subsection (g) of this section. The maximum weekly benefit amount shall not  
15 increase in any year that advances made to the State Unemployment  
16 Compensation Fund pursuant to Title XII of the Social Security Act, as  
17 amended, remain unpaid.

18 \* \* \*

19 Sec. 4. 21 V.S.A. § 1343 is amended to read:

20 § 1343. CONDITIONS

21 \* \* \*

1 (c) After March 31, 1984, benefits are payable on the basis of service in  
2 employment as defined in subdivisions 1301(6)(A)(ix) and (x) of this title, in  
3 the same amount, on the same terms, and subject to the same conditions as  
4 benefits payable on the basis of other service subject to this chapter, except  
5 that:

6 \* \* \*

7 ~~(2) With respect to services performed in any other capacity for an~~  
8 ~~educational institution benefits shall not be payable on the basis of such~~  
9 ~~services to any individual for any week of unemployment that commences~~  
10 ~~during a period between two successive academic years or terms if such~~  
11 ~~individual performs such services in the first of such academic years or terms~~  
12 ~~and there is a reasonable assurance that such individual will perform such~~  
13 ~~services for any educational institution in the second of such academic years or~~  
14 ~~terms, except that if benefits are denied to any individual under this~~  
15 ~~subdivision and such individual was not offered an opportunity to perform~~  
16 ~~such services for the educational institution for the second of such academic~~  
17 ~~years or terms, such individual shall be entitled to a retroactive payment of the~~  
18 ~~benefits for each week for which the individual filed a timely claim for benefits~~  
19 ~~and for which benefits were denied solely by reason of this subdivision.~~

20 [Repealed.]





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

\* \* \*

(2) For any week benefits are claimed, except as provided in subdivision (a)(3) of this section, until he or she has presented evidence to the satisfaction of the Commissioner that he or she has performed services in employment for a bona fide employer and has had earnings in excess of six times his or her weekly benefit amount if the Commissioner finds that such individual is unemployed because:

(A) He or she has left the employ of his or her last employing unit voluntarily without good cause attributable to such employing unit. An individual shall not suffer more than one disqualification by reason of ~~such~~ the separation. However, an individual shall not be disqualified for benefits if the individual left ~~such~~ employment:

(i) to accompany a spouse who:

(~~i~~)(I) is on active duty with the U.S. Armed Forces and is required to relocate due to permanent change of station orders, activation orders, or unit deployment orders, and ~~when such~~ the relocation would make it impractical or impossible, as determined by the Commissioner, for the individual to continue working for ~~such~~ the employing unit; or

(~~ii~~)(II) holds a commission in the U.S. Foreign Service and is assigned overseas, and ~~when such~~ the relocation would make it impractical or

1 impossible, as determined by the Commissioner, for the individual to continue  
2 working for ~~such~~ the employing unit;

3 (ii) due to a change in the location of the individual's principal  
4 place of work so that it is located more than 35 miles from the individual's  
5 primary residence or in a location that takes more than one and one-half hours  
6 for the individual to commute to;

7 (iii) due to working conditions that pose a risk to the individual's  
8 health and safety as certified by a health care provider, as defined in 18 V.S.A.  
9 § 9432(9);

10 (iv) due to an unreliable work schedule;

11 (v) to care for a family member who is ill, injured, pregnant, or  
12 disabled, provided that the individual shall not be eligible for benefits under  
13 the provisions of this chapter until he or she meets the requirements of  
14 subsection 1343(a) of this chapter; or

15 (vi) to care for the individual's child due to the unavailability of  
16 adequate or affordable childcare, provided that the individual shall not be  
17 eligible for benefits under the provisions of this chapter until he or she meets  
18 the requirements of subsection 1343(a) of this chapter.

19 \* \* \*

20 (G) As used in this subdivision (a)(2):

1                    (i) “Child” means an individual’s child, stepchild, ward, or foster  
2 child.

3                    (ii) “Family member” means an individual’s parent, grandparent,  
4 spouse, child, sibling, parent-in-law, or grandchild. As used in this subdivision  
5 (a)(2)(G)(ii), “spouse” includes a domestic partner or civil union partner.

6                    (iii) “Unreliable work schedule” means that the employer:

7                    (I) fails to provide the individual with a work schedule at least  
8 14 days in advance of the first day of a schedule period; or

9                    (II) changes the individual’s work schedule within 14 days of  
10 the first day of a schedule period for reasons other than the following:

11                    (aa) the employer’s operation at the scheduled work location  
12 cannot begin or continue on a particular day due to threats made to employees  
13 or property at the work location, a utility failure, a natural disaster, a fire at or  
14 near the work location, a state of emergency declared by the Governor or the  
15 president of the United States, or severe weather conditions that pose a threat  
16 to employee safety;

17                    (bb) the individual requested a change to his or her  
18 schedule;

19                    (cc) the individual voluntarily traded his or her shift with  
20 another employee; or

1                    (dd) the employer requests the individual to work additional  
2                    hours due to an unanticipated absence or high volume of work and offers to  
3                    pay the individual one-and-one-half times his or her regular wage rate for any  
4                    additional hours that the individual agrees to work.

5                    \* \* \*

6                    Sec. 6. CONTINGENT WORK AND PORTABLE EMPLOYEE BENEFITS  
7                    STUDY COMMITTEE

8                    (a) Creation. There is created the Contingent Work and Portable Employee  
9                    Benefits Study Committee.

10                   (b) Membership. The Committee shall be composed of the following  
11                   four members:

12                   (1) the Commissioner of Labor or designee;

13                   (2) the Commissioner of Financial Regulation or designee;

14                   (3) the State Treasurer or designee; and

15                   (4) the Secretary of Commerce and Community Development or  
16                   designee.

17                   (c)(1) Powers and duties. The Committee shall study contingent work and  
18                   workers in Vermont and mechanisms for creating insurance, retirement, and  
19                   other types of employment benefits that are portable and easily accessible to  
20                   workers who are not employed as traditional full-time or permanent  
21                   employees, including freelance workers in e-commerce, self-employed

1 workers, contingent workers, and workers in the on-demand economy. In  
2 particular, the Committee shall study the following issues:

3 (A) the prevalence and types of contingent work in Vermont;

4 (B) the number, types, demographics, and geographic distribution of  
5 contingent workers in Vermont;

6 (C) the current practices, policies, and procedures of employers in  
7 relation to contingent workers;

8 (D) the applicability and efficacy of Vermont's employment laws  
9 with respect to contingent workers;

10 (E) the types of businesses and employers that utilize contingent  
11 workers in Vermont;

12 (F) the availability of traditional social safety nets to workers who are  
13 not employed as traditional full-time or permanent employees, including  
14 freelance workers in e-commerce, self-employed workers, contingent workers,  
15 and workers in the on-demand economy;

16 (G) the necessity for new mechanisms to replace or augment  
17 traditional social safety nets for workers who are not employed as traditional  
18 full-time or permanent employees;

19 (H) potential mechanisms that could replace or augment traditional  
20 social safety nets for workers who are not employed as traditional full-time or  
21 permanent employees; and

1           (I) potential funding models, including both worker- and  
2           consumer-driven funding models, for mechanisms that could replace or  
3           augment traditional social safety nets for workers who are not employed as  
4           traditional full-time or permanent employees.

5           (2) As used in this subsection:

6           (A) “Contingent worker” means a worker who is not considered a  
7           permanent employee, including a temporary employee, leased employee, home  
8           worker, freelance worker, consultant, or an individual classified as an  
9           independent contractor.

10           (B) “Traditional social safety nets” means governmental and  
11           employer provided insurance and benefit programs such as group health  
12           insurance, employer-sponsored life insurance, employer-sponsored retirement  
13           plans, unemployment insurance, and workers’ compensation.

14           (d) Assistance. The Committee shall have the administrative, technical,  
15           and legal assistance of the Departments of Labor and of Financial Regulation.

16           (e)(1) Commissioner of Labor; survey of employers. On or before  
17           September 15, 2021, the Commissioner of Labor shall conduct a survey of  
18           Vermont employers relating to the Committee’s study of contingent work and  
19           workers as set forth in subdivisions (c)(1)(A) through (c)(1)(E) of this section.  
20           The Commissioner shall report to the Committee on the results of the survey  
21           on or before November 15, 2021.

1           (2) Any employer surveyed by the Commissioner in relation to this  
2           section shall provide the requested information to the Commissioner within  
3           30 days of receiving the survey.

4           (3) An individual employer's responses pursuant to this section shall be  
5           exempt from public inspection and copying under the Public Records Act and  
6           shall be kept confidential.

7           (4) The Commissioner may aggregate the information provided in  
8           employer responses and shall only disclose or publish information provided by  
9           employers in aggregated or statistical form.

10          (f) Report. On or before January 15, 2022, the Committee shall submit a  
11          written report to the General Assembly with its findings and any  
12          recommendations for legislative action.

13          (g) Meetings.

14           (1) The Commissioner of Labor shall call the first meeting of the  
15           Committee to occur on or before September 15, 2021.

16           (2) The Committee shall select a chair from among its members at the  
17           first meeting.

18           (3) A majority of the membership shall constitute a quorum.

19           (4) The Committee shall cease to exist on January 15, 2022.



1       Sec. 7. DOMESTIC AND SEXUAL VIOLENCE SURVIVOR'S  
2               TRANSITIONAL EMPLOYMENT PROGRAM; UTILIZATION;  
3               IMPROVEMENTS; REPORT

4               (a) On or before January 15, 2022, the Commissioner of Labor shall, in  
5               consultation with the Vermont Network Against Domestic and Sexual  
6               Violence and other Vermont organizations that advocate for victims of  
7               domestic and sexual violence, prepare and submit a written report to the House  
8               Committee on Commerce and Economic Development and the Senate  
9               Committee on Economic Development, Housing and General Affairs that  
10              examines the awareness and utilization of the Domestic and Sexual Violence  
11              Survivor's Transitional Employment Program and potential related  
12              improvements to the Program. In particular, the report shall examine:

13              (1) the current methods for making employees, employers, advocacy  
14              organizations, and the general public aware of the Program and the benefits it  
15              provides;

16              (2) the utilization of the Program since its creation;

17              (3) potential measures for improving outreach and public awareness of  
18              the Program;

19              (4) potential measures to improve utilization of the Program by victims  
20              of domestic and sexual violence; and

1           (5) whether victims of domestic and sexual violence would be better  
2           served if, in lieu of the benefits provided by the Program, they were eligible to  
3           receive unemployment insurance benefits after leaving employment due to  
4           domestic or sexual violence.

5           (b) The report may include a recommendation for legislative action and  
6           funding necessary to implement or facilitate measures identified pursuant to  
7           subdivisions (a)(3)–(5) of this section.

8           Sec. 8. IMPROVING ACCESSIBILITY TO UNEMPLOYMENT

9                         INSURANCE FOR INDIVIDUALS WITH LIMITED ENGLISH  
10                        PROFICIENCY; REPORT

11           (a) On or before January 15, 2022, the Commissioner of Labor shall, in  
12           consultation with AALV, the Vermont Field Office for the U.S. Committee for  
13           Refugees and Immigrants, and other Vermont organizations that advocate for  
14           individuals with limited English proficiency, prepare and submit a written  
15           report to the House Committee on Commerce and Economic Development and  
16           the Senate Committee on Economic Development, Housing and General  
17           Affairs that examines how to improve access to unemployment insurance for  
18           individuals who have limited English proficiency. The report shall do the  
19           following:

1           (1) identify the current measures the Department of Labor employs to  
2           provide access to and information regarding the unemployment insurance  
3           program to individuals with limited English proficiency;

4           (2) identify the five most commonly spoken languages in Vermont  
5           besides English;

6           (3) identify the cost of providing unemployment insurance related  
7           information, written materials, and forms through the Department’s website in  
8           the languages identified pursuant to subdivision (2) of this subsection;

9           (4) identify additional specific actions that the Department can take to  
10           improve access to the unemployment insurance program for individuals with  
11           limited English proficiency;

12           (5) provide a detailed plan for how the Department will improve access  
13           to the unemployment insurance program for individuals with limited English  
14           proficiency; and

15           (6) identify any legislative action and funding necessary to implement or  
16           facilitate the actions and plan described pursuant to subdivisions (4) and (5) of  
17           this subsection.

18           (b) As used in this section, “individuals with limited English proficiency”  
19           includes individuals who do not speak English.

20           Sec. 9. EFFECTIVE DATE

21           This act shall take effect on July 1, 2021.