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H.479

Introduced by Representative Rachelson of Burlington

Referred to Committee on

Date:

Subject: Labor; employment practices; portable benefits

Statement of purpose of bill as introduced: This bill proposes to establish a system of portable benefits for workers who provide services to consumers through contracting agents that act as an intermediary between the consumer and the worker.

An act relating to portable benefits for intermediary workers

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

Sec. 1. 21 V.S.A. chapter 10 is added to read:

CHAPTER 10. PORTABLE BENEFITS FOR INTERMEDIARY

WORKERS

§ 801. DEFINITIONS

As used in this chapter:

(1) “Commissioner” means the Commissioner of Financial Regulation.

(2) “Contracting agent” means a person that facilitates the provision of services by workers to consumers seeking the services and makes payments to the workers that are reported for tax purposes on IRS Form 1099.

1 (3) “Department” means the Department of Financial Regulation.

2 (4) “Intermediary worker” means a person who provides services to
3 consumers through a contracting agent that acts as an intermediary between the
4 consumer and the intermediary worker. The term intermediary worker does
5 not include:

6 (A) a person who contracts to solicit orders in Vermont as the sales
7 representative of a principal;

8 (B) a person whose work is subject to a collective bargaining
9 agreement that specifies wages, terms, and conditions of employment;

10 (C) a person engaged in the sale of financial products or services; or

11 (D) a person who is licensed as a real estate broker or a real estate
12 salesperson pursuant to 26 V.S.A. chapter 41.

13 (5) “Principal” means a person who:

14 (A) manufactures, produces, imports, or distributes a product for
15 wholesale;

16 (B) contracts with a sales representative to solicit orders for the
17 product; and

18 (C) compensates the sales representative, at least in part, by
19 commission.

20 (6) “Qualified benefits provider” means a nonprofit organization that is
21 eligible to provide benefits to intermediary workers pursuant to this chapter.

1 § 802. COVERAGE

2 A contracting agent shall be subject to the provisions of this chapter if it has
3 facilitated the provision of services by at least 50 intermediary workers in
4 Vermont during the past 12 months.

5 § 803. CONTRIBUTIONS

6 (a) A contracting agent that is subject to the provisions of this chapter shall
7 contribute funds to the qualified benefits provider designated by each of its
8 intermediary workers as required by the provisions of this section.

9 (b)(1) Contributions made pursuant to this section shall be equal to the
10 lesser of:

11 (A) 25 percent of the total fee collected from a consumer for each
12 transaction of services provided; or

13 (B) \$6.00 for every hour that the intermediary worker provided
14 services to the consumer.

15 (2) If determined on an hourly basis, the contribution amount shall be
16 prorated per minute.

17 (3) The contribution amount required pursuant to this section may be
18 added to the invoice or bill submitted to the consumer for the services
19 provided.

20 (4) If multiple intermediary workers provided services for a transaction,
21 the contribution amount shall be divided proportionately among the workers.

1 (c) Contributions shall be made to an intermediary worker's designated
2 qualified benefits provider on a monthly basis or more frequently.

3 § 804. BENEFITS

4 (a) Based on the contributions received pursuant to section 803 of this
5 chapter, a qualified benefits provider shall ensure that benefits are provided to
6 workers as set forth in this section.

7 (b) A qualified benefits provider shall provide all workers entitled to
8 benefits based on contributions made pursuant to section 803 of this chapter
9 with workers' compensation insurance pursuant to the provisions of chapter 9
10 of this title.

11 (c)(1) In addition to the workers' compensation insurance coverage
12 required pursuant to subsection (b) of this section, a qualified benefits provider
13 shall make available one or more of the following benefits to intermediary
14 workers:

15 (A) health insurance, including subsidies to purchase health
16 insurance;

17 (B) paid time off;

18 (C) retirement benefits; and

19 (D) other benefits determined by the qualified benefits provider
20 based on input from intermediary workers.

1 (2) An intermediary worker may elect not to receive any benefits offered
2 pursuant to this subsection, in which case the worker shall receive one-half of
3 the contributions made on the intermediary worker's behalf pursuant to section
4 803 of this chapter as compensation.

5 (3) Each qualified benefits provider shall solicit input from intermediary
6 workers regarding additional types of benefits to offer pursuant to this
7 subsection.

8 § 805. SELECTION OF BENEFITS PROVIDER

9 (a) An intermediary worker entitled to benefits pursuant to this chapter
10 shall designate a qualified benefits provider upon commencing work with a
11 contracting agent.

12 (b) An intermediary worker shall be permitted to select a different qualified
13 benefits provider once per year.

14 (c) Upon commencing work with a contracting agent and at the beginning
15 of the annual period to select a different qualified benefits provider, each
16 intermediary worker shall be provided with information regarding available
17 qualified benefits providers and the benefits offered by each of those providers.

18 § 806. REQUIREMENTS FOR QUALIFIED BENEFITS PROVIDERS

19 (a) A qualified benefits provider shall use not more than five percent of the
20 contributions received pursuant to section 803 of this chapter for
21 administrative expenses.

1 (b) A qualified benefits provider shall ensure that it remains in compliance
2 with all applicable laws and rules related to the provision of insurance,
3 workers' compensation, and taxation.

4 § 807. ADOPTION OF RULES; LIST OF QUALIFIED BENEFITS

5 PROVIDERS

6 (a) The Commissioner shall adopt rules as necessary to implement and
7 administer the provisions of this chapter, including rules for:

8 (1) monitoring compliance by contracting agents;

9 (2) monitoring qualified benefits providers and a process for removing
10 qualified benefits providers who fail to comply with the requirements of this
11 chapter and the rules adopted by the Commissioner; and

12 (3) procedures for intermediary workers to select a qualified benefits
13 provider.

14 (b) The Commissioner shall adopt rules establishing requirements to
15 become and operate as a qualified benefits provider. The rules shall require, at
16 a minimum, that each qualified benefits provider satisfies the following
17 criteria:

18 (1) The organization is a nonprofit organization exempt from income tax
19 pursuant to subdivision 501(c)(3) of the Internal Revenue Code.

1 (2) The organization is authorized to transact workers' compensation
2 insurance in this State pursuant to Title 8 or has contracted with an entity that
3 is authorized to transact workers' compensation insurance in this State.

4 (3) At least one-half of the organization's board of directors is
5 composed of intermediary workers or representatives of independent
6 organizations that represent intermediary workers.

7 (4) The organization is independent of any person that would pursue a
8 financial interest in conflict with the interests of the intermediary workers.

9 (5) All actions of the organization with respect to the provision of
10 benefits are for the purpose of maximizing benefits for intermediary workers.

11 (6) The board of directors of the organization have a fiduciary duty to
12 the intermediary workers with respect to the provision of the benefits.

13 (7) The organization has, to the satisfaction of the Commissioner,
14 demonstrated sufficient financial viability to ensure the payment of benefits.
15 The organization shall demonstrate financial viability by:

16 (A) having sufficient cash reserves as determined by the
17 Commissioner;

18 (B) having liability insurance in an amount required by the
19 Commissioner by rule;

20 (C) having access to bonding; and

1 (D) demonstrating that it satisfies any other financial requirements
2 established by the Commissioner by rule.

3 (c) The Department shall post a list of all qualified benefits providers on its
4 website.

5 § 808. ENFORCEMENT

6 (a) A contracting agent who fails to comply with the requirements of this
7 chapter shall be subject to an administrative penalty of up to \$10,000.00 for
8 each violation.

9 (b) A qualified benefits provider who fails to comply with the requirements
10 of this chapter shall be subject to an administrative penalty of up to \$10,000.00
11 for each violation. In addition, the Commissioner may seek to impose any
12 applicable penalties pursuant to the provisions of Title 8 against a qualified
13 benefits provider who fails to comply with the requirements of this chapter.

14 (c) An intermediary worker whose contracting agent fails to make
15 contributions as required pursuant to section 803 of this chapter may bring an
16 action in the Civil Division of the Superior Court seeking an order requiring
17 the contracting agent to make the required contributions, as well as
18 compensatory and punitive damages, restitution of benefits, costs, attorney's
19 fees, and other appropriate relief.

1 § 809. EMPLOYMENT STATUS; NO DETERMINATION

2 The compliance of a contracting agent with the requirements of this chapter
3 and the receipt of benefits by an intermediary worker pursuant to this chapter
4 shall not be considered in the determination of the intermediary worker's
5 employment status under the provisions of any other law.

6 Sec. 2. IMPLEMENTATION

7 (a) On or before July 1, 2023, the Commissioner of Financial Regulation
8 shall adopt rules necessary to implement the provisions of 21 V.S.A.
9 chapter 10.

10 (b) Beginning on January 1, 2024, intermediary workers shall be permitted
11 to designate a qualified benefits provider and contracting agents shall begin
12 collecting contributions on behalf of intermediary workers.

13 Sec. 3. EFFECTIVE DATE

14 This act shall take effect on July 1, 2022.