

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.

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

*An act relating to employment decisions based on credit information,  
allowing school employees to be paid wages over the course of a year, and  
union organizing*

15 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.~~

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~~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 (b) 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.~~

~~Sec. 1. FINDINGS~~

~~The general assembly finds that:~~

~~(1) Studies on middle and low income households have found that most~~  
~~indebted families go into debt to pay for basic expenses, such as groceries,~~  
~~utilities, child care, and health care. A study has shown that families with~~  
~~medical debt had 43 percent more credit card debt than those without~~  
~~medical debt.~~

~~(2) Employer surveys conducted by the Society of Human Resources~~  
~~Management suggest that over the last 15 years, employers' use of credit~~  
~~reports in the hiring process has increased from a practice used by fewer than~~  
~~one in five employers in 1996 to six of every 10 employers in 2010.~~

(3) Social science research thus far has shown that information contained in a credit report has no correlation to job performance. The Palmer-Koppes study conducted in 2004 found that those employees who were late on payments were more likely to be associated with a positive job performance.

(4) Further, there is no common standard among employers as to how to interpret credit reports, which reinforces the fact that credit reports do not provide meaningful insight into a candidate's character, responsibility, or prospective job performance.

(5) The Equal Employment Opportunity Commission has stated that: "Inquiry into an applicant's current or past assets, liabilities, or credit rating . . . generally should be avoided because they tend to impact more adversely on minorities and females."

Sec. 2. 21 V.S.A. § 495i is added to read:

§ 495i. EMPLOYMENT BASED ON CREDIT INFORMATION; PROHIBITIONS

(a) For purposes of this section:

(1) "Confidential financial information" means sensitive financial information of commercial value that a customer or client of the employer gives explicit authorization for the employer to obtain, process, and store and that the employer entrusts only to managers or employees as a necessary function of their job duties.

(2) "Credit history" means information obtained from a third party, whether or not contained in a credit report, that reflects or pertains to an individual's prior or current:

(A) borrowing or repaying behavior, including the accumulation, payment, or discharge of financial obligations; or

(B) financial condition or ability to meet financial obligations, including debts owed, payment history, savings or checking account balances, or savings or checking account numbers.

(3) "Credit report" has the same meaning as in 9 V.S.A. § 2480a.

(b) An employer shall not:

(1) Fail or refuse to hire or recruit; discharge; or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit report or credit history.

(2) Inquire about an applicant or employee's credit report or credit history.

(c)(1) An employer is exempt from the provisions of subsection (b) of this section if one or more of the following conditions are met:

(A) The information is required by state or federal law or regulation.

(B) The position of employment involves access to confidential financial information.

(C) The employer is a financial institution as defined in 8 V.S.A. § 11101(32) or a credit union as defined in 8 V.S.A. § 30101(5).

(D) The position of employment is that of a law enforcement officer as defined in 20 V.S.A. § 2358, emergency medical personnel as defined in 24 V.S.A. § 2651(6), or a firefighter as defined in 20 V.S.A. § 3151(3).

(E) The position of employment requires a financial fiduciary responsibility to the employer or a client of the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts.

(F) The employer can demonstrate that the information is a valid and reliable predictor of employee performance in the specific position of employment.

(G) The position of employment involves access to an employer's payroll information.

(2) An employer that is exempt from the provisions of subsection (b) of this section may not use an employee's or applicant's credit report or history as the sole factor in decisions regarding employment, compensation, or a term, condition, or privilege of employment.

(d) If an employer seeks to obtain or act upon an employee's or applicant's credit report or credit history pursuant to subsection (c) of this section that contains information about the employee's or applicant's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers, the employer shall:

(1) Obtain the employee's or applicant's written consent each time the employer seeks to obtain the employee's or applicant's credit report.

(2) Disclose in writing to the employee or applicant the employer's reasons for accessing the credit report, and if an adverse employment action is taken based upon the credit report, disclose the reasons for the action in writing. The employee or applicant has the right to contest the accuracy of the credit report or credit history.

(3) Ensure that none of the costs associated with obtaining an employee's or an applicant's credit report or credit history are passed on to the employee or applicant.

(4) Ensure that the information in the employee's or applicant's credit report or credit history is kept confidential and, if the employment is terminated or the applicant is not hired by the employer, provide the employee or applicant with the credit report or have the credit report destroyed in a secure manner which ensures the confidentiality of the information in the report.

(e) An employer shall not discharge or in any other manner discriminate against an employee or applicant who has filed a complaint of unlawful employment practices in violation of this section or who has cooperated with the attorney general or a state's attorney in an investigation of such practices or who is about to lodge a complaint or cooperate in an investigation or because the employer believes that the employee or applicant may lodge a complaint or cooperate in an investigation.

(f) Notwithstanding subsection (c) of this section, an employer shall not seek or act upon credit reports or credit histories in a manner that results in adverse employment discrimination prohibited by federal or state law, including section 495 of this title and Title VII of the Civil Rights Act of 1964.

(g) This section shall apply only to employers, employees, and applicants for employment and only to employment-related decisions based on a person's credit history or credit report. It shall not affect the rights of any person, including financial lenders or investors, to obtain credit reports pursuant to other law.

Sec. 3. 21 V.S.A. § 342 is amended to read:

§ 342. WEEKLY PAYMENT OF WAGES

(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) A school district employee may elect in writing to have a set amount

or set percentage of his or her after-tax wages withheld by the school district in a district-held bank account each pay period. The percentage or amount withheld shall be determined by the employee. At the option of the employee, the school district shall disburse the funds to the employee in either a single payment at the time the employee receives his or her final paycheck of the school year, or in equal weekly or biweekly sums beginning at the end of the school year. The school district shall disburse funds from the account in any sum as requested by the employee and, at the end of the school year or at the employee's option over the course of the period between the current and next school year, or upon separation from employment, shall remit to the employee any remaining funds, including interest earnings, held in the account. For employees within a bargaining unit organized pursuant to either chapter 22 of this title or 16 V.S.A. chapter 57, the school district shall implement this election in a manner consistent with the provisions of this subdivision and as determined through negotiations under those chapters. For employees not within a bargaining unit, the school district shall, in a manner consistent with this subdivision, determine the manner in which to implement this subdivision.

\* \* \*

Sec. 4. 21 V.S.A. § 496a is added to read:

§ 496a. STATE FUNDS; UNION ORGANIZING

On an annual basis, an employer that is the recipient of a grant of state funds in a single grant of more than \$1,001.00 shall certify to the state that none of the funds will be used to interfere with or restrain the exercise of an employee's rights with respect to unionization and upon request shall provide records to the secretary of administration which attest to such certification.