

1 H.566

2 Introduced by Representative Sullivan of Dorset

3 Referred to Committee on

4 Date:

5 Subject: Labor; employment practices; arbitration

6 Statement of purpose of bill as introduced: This bill proposes to provide that
7 in any arbitration of a dispute related to employment that is substantially
8 located in Vermont employers shall bear the burden of proof for all contested
9 issues of law or of fact.

10 An act relating to the arbitration of employment disputes

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

12 Sec. 1. 21 V.S.A. § 310 is added to read:

13 § 310. ARBITRATION OF EMPLOYMENT DISPUTES; BURDEN OF

14 PROOF

15 (a) As used in this section:

16 (1) “Employment contract” means an agreement executed after July 1,
17 2020 that governs the terms and conditions of the employee’s performance of
18 services for an employer. An employment contract does not include an
19 agreement between an employer and an independent contractor.

1 (2) “Independent contractor” means a person who performs services for
2 an employer where the employer can show that:

3 (A) the person has been and will continue to be free from control or
4 direction over the performance of the services, both under the contract of
5 service and in fact;

6 (B) the services are either outside the usual course of business of the
7 employer, or the services are performed outside of all the places of business of
8 the employer; and

9 (C) the person is customarily engaged in an independently
10 established trade, occupation, profession, or business.

11 (3) “Pre-dispute arbitration agreement” means a provision in an
12 employment contract by which the employer and employee agree to arbitrate a
13 dispute that has not yet arisen at the time the contract is executed.

14 (4) “Substantially performed in Vermont” means that the majority of the
15 services performed by an employee were:

16 (A) physically performed in Vermont; or

17 (B) provided to or for the benefit of a business doing business in
18 Vermont.

19 (b) Notwithstanding any provision of law to the contrary, in a dispute
20 between an employer and an employee that is submitted to arbitration pursuant
21 to a pre-dispute arbitration agreement, upon a showing by the employee that

1 the services performed pursuant to the employment contract were substantially
2 performed in Vermont, the employer shall bear the burden of proof with
3 respect to all contested issues of law or of fact that are subject to the
4 arbitration.

5 (c) Nothing in this section shall be construed to alter the rights of the
6 parties or their burden of proof with respect to any issue of law or fact if the
7 employer waives its right to compel arbitration and agrees to submit the
8 dispute to a court of competent jurisdiction.

9 Sec. 2. EFFECTIVE DATE

10 This act shall take effect on July 1, 2020.