

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on General, Housing and Military Affairs to which was  
3 referred House Bill No. 208 entitled “An act relating to absence from work for  
4 health care and safety” respectfully reports that it has considered the same and  
5 recommends that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

7 Sec. 1. FINDINGS

8 The General Assembly finds:

9 (1) According to the VT Department of Labor 2011 Fringe benefits  
10 study, roughly 75 percent of all private sector employers provide some form of  
11 paid time off and 43 percent provide paid time that is specifically permitted for  
12 use as sick time. An estimated 38 percent of all private sector workers in the  
13 State do not have access to specifically designated earned sick time and an  
14 estimated 20 percent of all Vermont workers do not have access to any paid  
15 time off.

16 (2) This figure represents nearly 60,000 working Vermonters, of which  
17 approximately 2,000 are employed as temporary workers for the State of  
18 Vermont.

19 Sec. 2. 21 V.S.A. § 384 is amended to read:

20 § 384. EMPLOYMENT; WAGES

21 \* \* \*

1        (d) For the purposes of earned sick time, an employer must comply with  
2        the provisions required under subchapter 3A of this title.

3        Sec. 3. 21 V.S.A. chapter 5, subchapter 3A is added to read:

4                                Subchapter 3A. Earned Sick Time

5        § 401. DEFINITIONS

6        As used in this subchapter:

7                (1) “Combined time off” means a policy wherein the employer provides  
8        time off for vacation, sickness, personal reasons, or holidays, the employee has  
9        the option to use all of their leave for whatever purpose they choose.

10               (2) “Commissioner” means the Commissioner of Labor.

11               (3) “Differential” means compensation paid in addition to the usual  
12        compensation to an employee of a health care facility as defined in 18 V.S.A.  
13        § 9432(8) who does not work on a regular schedule and who works only when  
14        he or she indicates that he or she is available to work and has no obligation to  
15        work when he or she does not indicate availability.

16               (4) “Earned sick time” means discretionary time earned and accrued  
17        under the provisions of this subchapter, with a constant cap of 56 hours that  
18        cannot accumulate or use annually an amount more than 56 hours, and used for  
19        the purposes listed in subdivisions 403(a)(1)–(4) of this title.

20               (5) “Employee” has the same meaning as set forth in section 341 of this  
21        title.

1           (6) “Employer” means an individual, organization, or governmental  
2           body, partnership, association, corporation, legal representative, trustee,  
3           receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,  
4           air, or express company doing business in or operating within this State  
5           employing five or more individuals.

6           (7) “Full-time employee” means an employee who works more than 30  
7           hours per week.

8           § 402. EARNED SICK TIME

9           (a) An employee shall accrue not less than one hour of earned sick time for  
10           every 30 hours worked.

11           (b) In the absence of a more generous paid time plan or collective  
12           bargaining agreement provision, an employer may:

13           (1) limit the amount of earned sick time accrued pursuant to section 402  
14           of this title to a maximum of 56 hours in a 12-month period; or

15           (2) limit to 40 hours the number of hours in the workweek for which  
16           full-time employees not subject to the overtime provisions of the Federal Fair  
17           Labor Standards Act (29 U.S.C. § 213(a)(1)) may accrue earned sick time  
18           pursuant to section 402 of this title.

19           (c) Earned sick time accrued pursuant to section 402 of this title shall be  
20           compensated at the same hourly rate and with the same benefits, including  
21           health care benefits, as the employee normally earns for hours worked.

1        (d) Service or tipped employees shall be compensated at an amount that is  
2        not less than the minimum wage required for nonservice or nontipped  
3        employees pursuant to section 384 of this title.

4        (e) At the employer's discretion, an employee may borrow earned sick time  
5        accrued pursuant to section 402 of this title before the time is actually accrued.

6        (f) An employer with a paid time policy that is comparable to or more  
7        generous than the earned sick time provided under this section is not required  
8        to provide additional earned sick time.

9        (g) If an employer offers combined time off that does not specifically  
10       include **paid** sick time, an employee may use all or a portion of that time for  
11       the purposes listed in subdivisions 403(a)(1)–(4) of this title.

12       (h) Nothing in this section shall be construed to interfere with the  
13       enforcement of or require a change in a collective bargaining agreement that is  
14       comparable or more generous than the paid time provided under this section.

15       § 403. USE OF EARNED SICK TIME

16       (a) An employee may use earned sick time accrued pursuant to section 402  
17       of this title for any of the following reasons:

18           (1) The employee is ill or injured.

19           (2) The employee obtains professional diagnostic, preventive, routine, or  
20        therapeutic health care.

1           (3) The employee cares for a sick or injured child, parent, parent-in-law,  
2           grandparent, grandparent-in-law, spouse, domestic partner, stepchild, foster  
3           child, grandchild, or ward of the employee, including helping that individual  
4           obtain diagnostic, preventive, routine, or therapeutic health treatment.

5           (4) The employee is arranging for social or legal services or obtaining  
6           medical care or counseling for the employee or for the employee’s child,  
7           parent, parent-in-law, grandparent, grandparent-in-law, spouse, stepchild,  
8           foster child, grandchild, or ward of the employee who is a victim of domestic  
9           violence, sexual assault, or stalking or who is relocating as the result of  
10           domestic violence, sexual assault, or stalking. As used in this section,  
11           “domestic violence,” “sexual assault,” or “stalking” shall have the same  
12           meaning as in 15 V.S.A. § 1151.

13           (b) An employee shall use earned sick time accrued pursuant to section 402  
14           of this title in the smallest time increment that the employer’s payroll system  
15           uses to account for other absences when the employee’s absence is shorter than  
16           a normal workday.

17           (c) Earned sick time that is accrued pursuant to section 402 of this title but  
18           unused has no monetary value until used by the employee.

19           (d) An employee may use no more than 56 hours of earned sick time  
20           accrued pursuant to section 402 of this title in any one year. Unused hours

1 shall be carried over to the next year and the employee has the right to earn the  
2 balance between the unused portion and the maximum allowed.

3 (e) Upon separation from employment, an employee shall not be entitled to  
4 payment for unused earned sick time accrued pursuant to section 402 of this  
5 title unless agreed upon by the employer.

6 (f) If, at an employer's discretion, an employer pays an employee for  
7 unused earned sick time accrued pursuant to section 402 of this title at the end  
8 of an annual period, then the amount for which the employee was compensated  
9 does not carry over to the next year.

10 (g) An employee who is rehired within 12 months after a separation from  
11 employment shall retain earned sick time accrued pursuant to section 402 of  
12 this title but unused at the time of separation, unless the employee was  
13 compensated for the earned sick time accrued pursuant to section 402 of this  
14 title at the time of separation from employment.

15 (h) An employer may require an employee to make reasonable efforts to  
16 find a replacement for planned absences.

17 (i) An employer may require an employee planning to take earned sick  
18 time accrued pursuant to section 402 of this title to:

19 (1) make reasonable efforts to avoid scheduling routine or preventive  
20 health care during regular work hours; or

1           (2) notify the employer as soon as practicable of the intent to take  
2           earned sick time accrued pursuant to section 402 of this title and the expected  
3           duration of the employee's absence.

4           (j) An employer shall post notice of the provisions of this section in a form  
5           provided by the Commissioner in a place conspicuous to employees at the  
6           employer's place of business. An employer shall also notify an employee of  
7           the provisions of this section at the time of the employee's hiring.

8           (k) This section shall not apply to an employee of a health care facility as  
9           defined in 18 V.S.A. § 9432(8) if the employee:

10           (1) is under no obligation to work a regular schedule;

11           (2) works only when he or she indicates that he or she is available to  
12           work and has no obligation to work when he or she does not indicate  
13           availability; and

14           (3) receives higher pay in the form of a differential as defined in section  
15           401 of this title, or some other increased compensation than that paid to an  
16           employee of a health care facility performing the same job on a regular  
17           schedule.

18           (4) An employer may agree to provide earned sick time to an employee  
19           covered by this subsection.

20           (l) This section shall not apply to an employee of a school district,  
21           supervisory district, or supervisory union as defined in 16 V.S.A. § 11 that is

1 employed pursuant to a school district or supervisory union policy on  
2 substitute educators as required by the State Board of Education Rule  
3 5381; and

4 (1) is under no obligation to work a regular schedule; and

5 (2) is not under contract or written agreement to provide at least one  
6 period of long-term substitute coverage which is defined as 30 or more  
7 consecutive calendar days in the same assignment.

8 (m) An employee who uses paid sick leave accrued pursuant to section 402  
9 of this title shall not forfeit his or her rights to leave under sections 472 and  
10 472a of this title.

11 (n) An employer, employment agency, or labor organization shall not  
12 discharge or in any other manner discriminate against or penalize an employee  
13 because the employee:

14 (1) requests or uses earned sick leave accrued pursuant to section 402 of  
15 this title either in accordance with section 402 of this title or in accordance  
16 with the employer's own paid sick leave policy, if any; or

17 (2) has lodged a complaint with the Commissioner alleging the  
18 employer's violations of sections 402 and 403 of this title.

19 (o) An employer may adopt an earned sick time policy more generous than  
20 the earned sick time policy provided by this subchapter. Nothing in this  
21 subchapter shall be construed to diminish an employer's obligation to comply

1 with any collective bargaining agreement or any employment benefit program  
2 or plan which provides greater sick time rights than the rights provided by this  
3 subchapter. A collective bargaining agreement or employment benefit  
4 program or plan may not diminish rights provided by this subchapter.

5 (p) An employer who violates this section shall be subject to the penalty  
6 provisions of section 345 of this title.

7 (q) The Commissioner shall enforce this section in accordance with the  
8 procedures established in section 342a of this title.

9 Sec. 4. 21 V.S.A. § 345 is amended to read:

10 § 345. NONPAYMENT OF WAGES AND BENEFITS

11 (a) Each employer who violates sections ~~342 and 343~~ 342, 343, 402, and  
12 403 of this title shall be fined not more than \$5,000.00. Where the employer is  
13 a corporation, the president or other officers who have control of the payment  
14 operations of the corporation shall be considered employers and liable to the  
15 employee for actual wages due when the officer has willfully and without good  
16 cause participated in knowing violations of this chapter.

17 \* \* \*

18 Sec. 5. DEPARTMENT OF LABOR SURVEY

19 The Department of Labor shall commission a survey to report the effects of  
20 this legislation on employers and employees one year after implementation.

1 Survey topics shall include the health and economic effects on employees and  
2 employers, and shall be reported to the appropriate committees.

3 Sec. 6. EFFECTIVE DATE

4 This act shall take effect on January 1, 2015.

5

6 (Committee vote: \_\_\_\_\_)

7

\_\_\_\_\_

8

Representative [surname]

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FOR THE COMMITTEE