

**No. 124. An act relating to restoring solvency to the unemployment trust fund.**

(S.290)

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

Sec. 1. 21 V.S.A. § 1309 is amended to read:

§ 1309. –REPORTS; SOLVENCY OF TRUST FUND

~~Before the first day of July~~ On or before January 31 of each year, the commissioner shall submit to the governor and the chairs of the senate committee on economic development, housing and general affairs and on finance and the house committees on commerce and economic development and on ways and means a report covering the administration and operation of this chapter during the preceding calendar year. The report shall include a balance sheet of the moneys in the fund and data as to probable reserve requirements based upon accepted actuarial principles, with respect to business activity, and other relevant factors for the longest available period. The report shall also include ~~such~~ recommendations for amendments of this chapter as the board considers proper. Whenever the commissioner believes that the solvency of the fund is in danger, ~~he or she~~ the commissioner shall promptly ~~so~~ inform the governor and the chairs of the senate committees on economic development, housing and general affairs and on finance, and the house committees on commerce and economic development and on ways and means,

and make recommendations ~~with respect thereto~~ for preserving an adequate level in the trust fund.

Sec. 2. 21 V.S.A. § 1321 is amended to read:

§ 1321. CONTRIBUTIONS; TAXABLE WAGE BASE CHANGES

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(b) Base of Contributions. Subsequent to December 31, 1982, the term “wages” shall not include that part of remuneration which, after remuneration equal to \$8,000.00 has been paid in a calendar year to an individual by an employer with respect to employment during a calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the period January 1, 2010, through December 31, 2010, the term “wages” shall not include that part of remuneration which, after remuneration equal to \$10,000.00 has been paid in a calendar year to an individual by an employer with respect to employment during a calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. The term “wages” shall not include that part of remuneration which, after remuneration equal to \$13,000.00 on January 1, 2011, and \$16,000.00 on January 1, 2012, has been paid in a calendar year to an individual by an employer with respect

to employment during a calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

After January 1, 2012, whenever the unemployment compensation fund has a positive balance and all advances made to the state unemployment compensation fund pursuant to Title XII of the Social Security Act have been repaid as of June 1, the base of contribution amount shall be adjusted on January 1 of the following year by the same percentage as any increase in the state annual average wage as calculated by subsection 1338(g) of this title.

When the unemployment contribution rate schedule established by subsection 1326(e) of this title is reduced to schedule III, the base of contribution amount shall be reduced by \$2,000.00 on January 1 of the following year and shall be adjusted annually thereafter on January 1 of the following year by the same percentage as any increase in the state annual average wage as calculated by subsection 1338(g) of this title. When the unemployment contribution rate schedule established by subsection 1326(e) of this title is reduced to schedule I, the base of contribution amount shall be reduced by \$2,000.00 on January 1 of the following year and shall be adjusted annually thereafter on January 1 of the following year by the same percentage as any increase in the state annual average wage as calculated by subsection 1338(g) of this title. For the purposes of this subsection:

(1) Any employer who acquired the entire or a distinct and severable portion of the organization, trade, or business of an employer shall be treated as a single unit with its predecessor for the calendar year in which such acquisition occurs; and

(2) The term employment shall include service constituting employment under any unemployment compensation law of another state.

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Sec. 3. 21 V.S.A. § 1338 is amended to read:

§ 1338. WEEKLY BENEFITS

\* \* \*

(e) For benefit years beginning on January 3, 1988 and subsequent thereto, an individual's weekly benefit amount shall be determined by dividing the individual's two high quarter total subject wages required under subdivision (d)(1) of this section by 45; provided that the weekly benefit amount so determined shall not exceed the maximum weekly benefit amount computed as provided in this section. The base period wages shall not include any wages paid by an employing unit based on a separation for gross misconduct under subdivision 1344(a)(2)(B) of this title.

(f) The maximum weekly benefit amount shall be \$425.00 ~~for the period July 1, 2009, through June 30, 2010. Thereafter,~~ When the state unemployment compensation fund has a positive balance and all advances

made to the state unemployment compensation fund pursuant to Title XII of the Social Security Act have been repaid as of December 31 of the last completed calendar year, on the first day of the first calendar week of July, the maximum weekly benefit amount shall be adjusted by a percentage equal to the percentage change during the preceding calendar year in the state average weekly wage as determined by subsection (g) of this section, ~~provided the maximum weekly benefit amount shall not increase in any year that advances made to the State Unemployment Compensation Fund pursuant to Title XII of the Social Security Act, as amended, remain unpaid.~~ When the unemployment contribution rate schedule established by subsection 1326(e) of this title is at schedule III, the maximum weekly benefit amount shall be adjusted on the first day of the first calendar week in July to an amount equal to 57 percent of the state annual average weekly wage as determined by subsection (g) of this section. The maximum weekly benefit amount shall not increase in any year that advances made to the state unemployment compensation fund pursuant to Title XII of the Social Security Act, as amended, remain unpaid.

\* \* \*

(i) Income tax withholding.

(1) An individual filing a new claim for unemployment compensation shall, at the time of filing of such claim, be advised that:

\* \* \*

(D) the individual who elects to have federal income tax deducted and withheld shall have state income tax withheld ~~in accordance with the rates shown at section 5822 of Title 32~~ at 24 percent of the federal rate; and

\* \* \*

Sec. 4. 21 V.S.A. § 1338a is amended to read:

§ 1338a. DISREGARDED EARNINGS

(a) An individual shall be deemed “partially unemployed” in any week of less than full-time work if the wages earned by the individual with respect to such week are less than the weekly benefit amount the individual would be entitled to receive if totally unemployed and eligible. As used in this section “wages” in any one week includes only that amount of remuneration to the nearest dollar which is in excess of 30 percent of the individual’s weekly ~~benefit wage~~, or \$40.00, whichever amount is greater.

(b) Notwithstanding subsection (a) of this section, an individual shall not be deemed to be “partially unemployed” if the individual performed less than full-time work only because there was a holiday in that week for which the individual was entitled to holiday pay.

Sec. 5. 21 V.S.A. § 1340 is amended to read:

§ 1340. COMPUTATION OF BENEFITS

(a) Except as provided in subchapter 2 of this chapter, the maximum total amount of benefits payable to any eligible individual during any benefit year

shall not exceed the lesser of 26 times his or her weekly benefit amount or 46 percent of the total wages paid to the individual during his or her base period.

(b) An individual who is discharged by his or her last employing unit for misconduct connected with his or her work under section 1344(a)(1)(A) of this title is limited to a maximum amount during the benefit year which is the lesser of the maximum amount determined under subsection (a) of this section or 23 times his or her weekly benefit amount, provided that the individual has not already received more than 23 weeks in his or her benefit year.

Sec. 6. 21 V.S.A. § 1343 is amended to read:

§ 1343. CONDITIONS

(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the commissioner finds that all of the following requirements are met and the individual:

(1) Has registered for work at and thereafter has continued to report at an employment office in accordance with ~~such~~ regulations ~~as~~ prescribed by the board may prescribe.

(2) Has made a claim for benefits in accordance with the provisions of section 1346 of this title.

(3) Is able to work, and is available for work; provided, that in determining the availability of any individual during any week, the commissioner may require, in addition to registration at any employment

office, that the individual participate in reemployment services, or at any time make such other efforts to secure suitable work as the commissioner may reasonably direct under the circumstances and to supply proper evidence thereof; and shall, if the individual fails without good cause to do so, be ineligible for each week such failure continues; provided further that no claimant shall be considered ineligible in any week of unemployment for failure to comply with the provisions of this subdivision if such failure is due to an illness or disability which occurs after the claimant has registered for work, filed a claim for benefits and during a week for which the individual was entitled to waiting period credit or benefit payments, and no work which would have been considered suitable but for the illness or disability has been offered after the beginning of such illness or disability.

(4) Prior to any week for which an individual claims benefits, the individual has been totally or partially unemployed for a waiting period of one week during the individual's benefit year and any extended eligibility period.

No week shall be counted as a week of total or partial unemployment:

(A) If benefits have been paid with respect to that week.

(B) Unless the individual is eligible for benefits with respect to that week in all respects except for the requirements of subdivision (2) of this subsection or of section 1344(a)(5)(C) of this title.

(C) Unless it occurs after benefits first become payable to any individual under this chapter.

\* \* \*

Sec. 7. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

(1) For not more than ~~12~~ 15 weeks nor less than six weeks immediately following the filing of a claim for benefits (in addition to the waiting period) as may be determined by the commissioner according to the circumstances in each case, if the commissioner finds that:

(A) He or she has been discharged by his or her last employing unit for misconduct connected with his or her work; or

(B) He or she was separated from his or her last employing unit because he or she became unable to perform all or an essential part of his or her normal duties in such employment without good cause attributable to such employing unit because of the consequences which flow from his or her conviction of a felony or misdemeanor or from an action or order of a judge or court in any criminal or civil matter. In the event a conviction or the action or order of any judge or court in any criminal or civil matter is rescinded or expunged, the individual may be eligible for benefits from the time the individual would have otherwise been eligible for benefits.

(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 separation.

(B) He or she has been discharged by his or her last employing unit for gross misconduct connected with his or her work. For purposes of this section, "gross misconduct" means conduct directly related to the employee's work performance that demonstrates a flagrant, wanton, and intentional disregard of the employer's business interest, and that has direct and significant impact upon the employer's business interest, including but not limited to theft, fraud, intoxication, intentional serious damage to property, intentional infliction of personal injury, any conduct that constitutes a felony, or repeated incidents after written warning of either unprovoked insubordination or public use of profanity. An individual shall not suffer more than one disqualification by reason of such separation.

\* \* \*

(5) For any week with respect to which ~~he or she~~ the individual is receiving or has received remuneration in the form of:

(A) Wages in lieu of notice; or

(B) Vacation pay or holiday pay; ~~or~~.

(i) Vacation pay due at time of separation in accordance with a work agreement (whether a formal contract or established custom) shall be allocated to the period immediately following separation, or if due subsequent to separation, it shall be allocated to the week in which due or the next following week, and that number of weeks immediately following as required to equal the total of the weeks of pay due. Any mutual agreement between the employer and employee(s) (whether or not payment is made), allocating such remuneration to any period during which work is performed, within four weeks prior to the date of separation, shall not be valid for the purpose of determining unemployment compensation entitlement or waiting period credit purposes and such payment shall be allocated to the period immediately following separation.

(ii) There shall be no disqualification amount for any holiday.

(C) ~~Back pay award or settlement; or~~ Severance pay;

(i) ~~Back back pay awards, and back pay settlements. These~~ payments, awards, and settlements shall be allocated to the week(s) and in the

manner as specified in the order or agreement, or, in the absence of such specificity, to the week(s) and in the manner which, in the judgment of the commissioner, would be reasonable.

\* \* \*

~~(F) A cash severance payment, unless and to the extent the paying employer elects to treat it as nondisqualifying or unless it is paid in accordance with a work agreement (whether a formal contract or established custom).~~

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Sec. 8. 21 V.S.A. § 1314 is amended to read:

§ 1314. –REPORTS AND RECORDS; SEPARATION INFORMATION;

DETERMINATION OF ELIGIBILITY

\* \* \*

(c) If an employing unit fails to comply with the provisions of subsection (b) of this section, ~~and/or after October 1, 1986,~~ and section 1314a of this title, the commissioner shall determine the benefit rights of a claimant upon such information as is available. Prompt notice in writing of the determination shall be given to the employing unit. The determination shall be final with respect to a noncomplying employer as to any charges against its experience-rating record for benefits paid to the claimant ~~and its experience rating record shall not be relieved of those charges unless, within 30 days after notice thereof, the employer files an appeal from the determination and the determination is~~

ultimately reversed, or before the week following the receipt of the employing unit's reply. The employing unit's experience rating record shall not be relieved of these charges, notwithstanding any other provision of this chapter, unless the amount of benefits is recovered from the claimant, or unless the commissioner determines that failure to comply was due to unavoidable accident or mistake.

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Sec. 9. 21 V.S.A. § 1458 is amended to read:

§ 1458. SHORT-TIME COMPENSATION BENEFITS

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(e) Provisions of this subchapter and Vermont employment security board rules applicable to unemployment compensation claimants shall apply to STC claimants to the extent that they are not inconsistent with this subchapter. An individual who files a new initial claim for STC benefits shall be provided, if eligible therefor, a monetary determination of entitlement to STC benefits and shall serve a waiting week as required under § 1343(a)(4) of this title.

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Sec. 10. DEPARTMENT OF LABOR; JOINT FISCAL OFFICE;  
UNEMPLOYMENT INSURANCE FUND MODELING

The department of labor and the joint fiscal office shall work cooperatively in order to develop the joint fiscal office's ability to model changes to the unemployment insurance fund within the joint fiscal office.

Sec. 11. STUDY

(a) A committee is created to study the feasibility of enacting a self-employment assistance program.

(b) The committee shall be composed of the following members:

(1) the commissioner of the department of labor or designee;

(2) two members appointed by the governor;

(3) two members appointed by the speaker of the house of representatives;

(4) two members appointed by the committee on committees of the senate.

(c) The committee shall meet as needed. The department of labor shall provide administrative support. The committee shall issue written recommendations to the house committees on commerce and economic development and on ways and means, and the senate committees on economic development, housing and general affairs and on finance on or before January 15, 2011. The committee shall be dissolved on January 15, 2011.

Sec. 12. REPORT; ONE-WEEK WAITING PERIOD

The commissioner of the department of labor shall report to the house committees on commerce and economic development and on ways and means and the senate committees on economic development, housing and general affairs and on finance on the implementation of the one-week waiting period. The report shall include an analysis of the relationship between the one-week waiting period and the rate at which claimants return to work. The report shall be made no later than January 15, 2015.

Sec. 13. REEMPLOYMENT SERVICES

The department of labor shall implement reemployment services in its district offices. The department shall implement a policy that prioritizes claimants for services in the regional offices.

Sec. 14. CONTACT OF EMPLOYERS BY CLAIMANTS;

COMMISSIONER'S UPDATE OF SYSTEM

The commissioner of labor shall modify all systems by which unemployment insurance recipients update their employment or eligibility status by internet or, where applicable, personal interview so the claimant, when required to show proof that he or she is seeking to re-enter the workforce, must provide the name and phone number of the employers who the unemployment insurance recipient contacted.

## Sec. 15. EFFECTIVE DATES

This section shall take effect upon passage. Sec. 3 shall take effect on July 1, 2011, except that subsection (i) (relating to income tax withholding) shall be effective on passage. Sec. 5 shall take effect on July 1, 2011. Sec. 7 shall take effect July 1, 2011, except that subsection (a)(1) (relating to period of disqualification from benefits) and subsection (a)(2)(B) (relating to the definition of “gross misconduct”) shall take effect on passage. Sec. 10 of this act shall take effect July 1, 2011. Secs. 4 and 9 of this act shall take effect July 1, 2012. Sec. 6 of this act shall take effect July 1, 2012, except that subsection (a)(3) (relating to participation in reemployment services) shall take effect on passage. The remaining sections shall take effect on July 1, 2010.

## Sec. 16. REPEALS

21 V.S.A. § 1343(a)(4) (one-week waiting period to be eligible for unemployment compensation benefits) shall be repealed effective July 1, 2017, or when the balance of the unemployment compensation fund has a positive balance, whichever is later.

Approved: May 24, 2010