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H.190

Introduced by Representatives Botzow of Pownal, Carr of Brandon, Cross of
Winooski, Kitzmiller of Montpelier, Kupersmith of South
Burlington, Marcotte of Coventry, Ralston of Middlebury, and
Young of Glover

Referred to Committee on

Date:

Subject: Labor; unemployment compensation

Statement of purpose of bill as introduced: This bill proposes to make changes
to the unemployment compensation statutes.

An act relating to unemployment compensation

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

Sec. 1. 21 V.S.A. § 7 is added to read:

§ 7. POWERS OF COMMISSIONER

In addition to all other powers granted the Commissioner by this title, the
Commissioner or designee may, upon presenting appropriate credentials, at
reasonable times and without disrupting critical business operations, enter and
inspect any place of business or employment, question any employees, and
investigate any facts, conditions, or matters necessary and material to the
administration of chapters 9 and 17 of this title. The Commissioner shall

1 inform the employer of his or her right to refuse entry. If entry is refused, the
2 Commissioner may apply to the Civil Division of the Superior Court of
3 Washington County for an order to enforce the rights given the Commissioner
4 under this section.

5 Sec. 2. 21 V.S.A. § 1101 is amended to read:

6 § 1101. APPRENTICESHIP DIVISION AND COUNCIL

7 The ~~apprenticeship division and state apprenticeship council~~ Apprenticeship
8 Division and State Apprenticeship Council, hereinafter referred to as the
9 ~~“council,”~~ “Council,” shall be located within the ~~department of labor~~
10 Department of Labor. The ~~commissioner of labor~~ Commissioner of Labor
11 shall supervise the work of the ~~division~~ Division, and shall be the ~~chair of the~~
12 ~~council~~ Chair of the Council. The ~~council~~ Council shall consist of ~~12~~ 15
13 members, four ex officio members, and ~~eight~~ 11 members who shall be
14 appointed by the ~~governor~~ Governor. Of the ex officio members, one shall be
15 the ~~commissioner of labor~~ Commissioner of Labor or designee, one shall be
16 the ~~commissioner of public safety~~ Commissioner of Public Safety or designee,
17 one shall be the ~~commissioner of education~~ Secretary of Education or
18 designee, and one shall be the ~~director of the apprenticeship division~~ Director
19 of the Apprenticeship Division who shall act as ~~secretary~~ Secretary of the
20 ~~council~~ Council without vote. The ~~council~~ Council shall be composed of
21 persons familiar with apprenticeable occupations. Of the appointed members,

1 three shall be individuals who represent employers, three shall be individuals
2 who represent employee organizations, one shall be an active union member of
3 the Vermont Building and Construction Trades Council as recommended by
4 the Building Trade president, one shall be a woman recommended by the
5 Vermont Commission on Women, one shall be a current apprentice as
6 recommended by the Commissioner of Labor, and two shall be members of the
7 public. Appointment of the employer and the employee members shall be
8 made for the term of three years except the employer and employee members
9 first appointed shall be appointed for the term of one, two, and three years
10 respectively. The ~~governor~~ Governor shall annually designate one member of
11 the ~~council~~ Council as chair. Each member of the ~~council~~ Council who is not a
12 salaried official or employee of the state shall be entitled to compensation and
13 expenses as provided in 32 V.S.A. § 1010.

14 Sec. 3. 21 V.S.A. § 1254 is amended to read:

15 § 1254. CONDITIONS

16 An individual who is otherwise covered by this chapter and who voluntarily
17 left his or her most recent employment due to domestic violence shall be
18 eligible to receive payments with respect to any week, only if the
19 ~~commissioner~~ Commissioner finds that the individual complies with all of the
20 following requirements:

1 (1) ~~Files~~ files a claim certifying that he or she did not work during the
2 week;

3 (2) ~~Is is~~ not eligible for unemployment compensation benefits; and

4 (3) ~~Is taking steps to become employed~~ is seeking employment pursuant
5 to section 1343 of this title.

6 Sec. 4. 21 V.S.A. § 1306 is amended to read:

7 § 1306. ADVISORY COUNCIL; MEMBERS; TERMS

8 (a) The ~~governor~~ Governor shall appoint a state ~~department of labor~~
9 ~~advisory council~~ Department of Labor Advisory Council composed of ~~eight~~
10 ~~members from the general public to include four employer representatives and~~
11 ~~four employee representatives who may fairly be regarded as employees~~
12 ~~because of their vocations, employment, and affiliations. Appointment of the~~
13 ~~four employee representatives, at least one of whom shall have experience in~~
14 ~~workers' compensation law and one of whom shall be a member of a building~~
15 ~~trade, shall be made from a list of qualified individuals submitted by the~~
16 ~~Vermont state labor council, the Vermont state employees' association, and the~~
17 ~~Vermont national education association. Appointment of the four employer~~
18 ~~representatives shall be made from a list of qualified individuals submitted by~~
19 ~~the Vermont chamber of commerce, associated general contractors of~~
20 ~~Vermont, and Vermont businesses for social responsibility~~ representatives
21 recommended by the Commissioner of Labor from Vermont business and trade

1 organizations, labor unions, and other interested stakeholders. The Council
2 shall have five members from business and trade organizations, including
3 business owners, trade organization staff, and active or retired members, and
4 five members from labor organizations, including union staff and active or
5 retired union members, and three members representing women, minority, and
6 immigrant populations, and persons with employment barriers. The
7 Commissioner of Labor shall act as Chair of the Council. The Council shall be
8 convened at least twice a year at the call of the Commissioner for the purpose
9 of discussing current issues and problems facing the business work force in
10 Vermont. The ~~council~~ Council members shall be appointed for staggered
11 terms of four years. ~~The council shall meet at least three times a year.~~

12 * * *

13 Sec. 5. 21 V.S.A. § 1314a is amended to read:

14 § 1314a. QUARTERLY WAGE REPORTING; MISCLASSIFICATION;
15 PENALTIES

16 * * *

17 (g) Notwithstanding any other provisions of this section, the ~~commissioner~~
18 Commissioner may where practicable require of employing units with ~~25~~ 10 or
19 more employees that the reports required to be filed pursuant to subsections (a)
20 through (d) of this section be filed in an electronic media form.

1 Sec. 6. 21 V.S.A. § 1325 is amended to read:

2 § 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS;

3 DISCLOSURE TO SUCCESSOR ENTITY;~~EMPLOYEE PAID~~

4 ~~\$1,000.00 OR LESS DURING BASE PERIOD~~

5 * * *

6 (d) Notwithstanding any other provision of law, the following shall apply
7 to assignment of rates and transfers of experience:

8 (1) If an employer transfers its trade or business, or a portion thereof, to
9 another employer and, at the time of the transfer, there is substantially common
10 ownership, management, or control of the two employers, the ~~employment~~
11 unemployment experience attributable to the transferred trade or business shall
12 be transferred to the employer to whom such business is so transferred. The
13 rates of both employers shall be recalculated and made effective immediately
14 upon the date of the transfer of trade or business.

15 * * *

16 Sec. 7. 21 V.S.A. § 1451 is amended to read:

17 § 1451. DEFINITIONS

18 ~~For the purpose of this subchapter~~ As used in this subchapter:

19 (1) "Affected unit" means a specific plan, department, shift, or other
20 definable unit consisting of not less than five employees to which an approved
21 short-time compensation plan applies.

1 (2) “Defined benefit plan” means a plan described in 26 U.S.C. § 414(j).

2 (3) “Defined contribution plan” means a plan described in 26 U.S.C.

3 § 414(i).

4 (4) “Short-time compensation” or “STC” means the unemployment
5 benefits payable to employees in an affected unit under an approved short-time
6 compensation plan as distinguished from the unemployment benefits otherwise
7 payable under the conventional unemployment compensation provisions of this
8 chapter.

9 ~~(3)~~(5) “Short-time compensation plan” means a plan of an employer
10 under which there is a reduction in the number of hours worked by employees
11 of an affected unit rather than temporary layoffs. The term “temporary
12 layoffs” for this purpose means the total separation of one or more workers in
13 the affected unit ~~for an indefinite period expected to last for more than two~~
14 ~~months but not more than six months.~~

15 (4)(6) “Short-time compensation employer” means an employer who has
16 one or more employees covered by an approved “Short-Time Compensation
17 Plan.” “Short-time compensation employer” includes an employer with
18 experience-rating records and an employer who makes payments in lieu of tax
19 contributions to the unemployment compensation trust fund and that meets the
20 following:

1 (A) ~~Has~~ has five or more employees covered by an approved short-
2 time compensation plan;

3 (B) ~~Is~~ is not delinquent in the payment of contributions or
4 reimbursement, or in the reporting of wages; and

5 (C) ~~Is~~ is not a negative balance employer. For the purposes of this
6 section, a negative balance employer is an employer who has for three or more
7 consecutive calendar years prior to applying for the STC plan paid more in
8 unemployment benefits to its employees than it has contributed to its
9 unemployment insurance account. In the event that an employer has been a
10 negative balance employer for three consecutive years, the employer shall be
11 ineligible for participation unless the ~~commissioner~~ Commissioner grants a
12 waiver based upon extenuating economic conditions or other good cause.

13 ~~(5)(7)~~ (7) “Usual weekly hours of work” means the normal hours of work
14 for full-time and regular part-time employees in the affected unit when that
15 unit is operating on its normally full-time basis not less than 30 hours and not
16 to exceed 40 hours and not including overtime.

17 ~~(6)(8)~~ (8) “Unemployment compensation” means the unemployment
18 benefits payable under this chapter other than short-time compensation and
19 includes any amounts payable pursuant to an agreement under any federal law
20 providing for compensation, assistance, or allowances with respect to
21 unemployment.

1 ~~(7)~~(9) “Fringe benefits” means benefits, including health insurance,
2 retirement benefits, paid vacations and holidays, sick leave, and similar
3 benefits that are incidents of employment.

4 ~~(8)~~(10) “Intermittent employment” means employment that is not
5 continuous but may consist of intervals of weekly work and intervals of no
6 weekly work.

7 ~~(9)~~(11) “Seasonal employment” means employment with an employer
8 who experiences at least a 20-percent difference between its highest level of
9 employment during a particular season and its lowest level of employment
10 during the off-season in each of the previous three years as reported to the
11 ~~department~~ Department, or employment with an employer on a temporary
12 basis during a particular season.

13 Sec. 8. 21 V.S.A. § 1452 is amended to read:

14 § 1452. CRITERIA FOR APPROVAL

15 An employer wishing to participate in an STC program shall submit a
16 ~~department of labor~~ Department of Labor electronic application or a signed
17 written short-time compensation plan to the ~~commissioner~~ Commissioner for
18 approval. The ~~commissioner~~ Commissioner may approve an STC plan only if
19 the following criteria are met:

20 * * *

1 (3) ~~the plan outlines to the commissioner the extent to which fringe~~
2 ~~benefits, including health insurance, of employees participating in the plan~~
3 ~~may be reduced, which shall be factored into the evaluation of the business~~
4 ~~plan for resolving the conditions that lead to the need for the STC plan~~
5 provides that if the employer provides fringe benefits, including health benefits
6 and retirement benefits under a defined benefit plan or contributions under a
7 defined contribution plan, to any employee whose workweek is reduced under
8 the program, that the benefits will continue to be provided to employees
9 participating in the short-time compensation program under the same terms
10 and conditions as though the workweek had not been reduced. However,
11 reductions in the benefits of short-time compensation plan participants are
12 permitted to the extent that the reductions also apply to nonparticipant
13 employees;

14 * * *

15 (5) the plan certifies that the aggregate reduction in work hours is in lieu
16 of ~~temporary~~ total layoffs of one or more workers which would have resulted
17 in an equivalent reduction in work hours and which the ~~commissioner~~
18 Commissioner finds would have caused an equivalent dollar amount to be
19 payable in unemployment compensation;

20 * * *

1 (11) the plan certifies that the collective bargaining agent or agents for
2 the employees, if any, have agreed to participate in the program. If there is no
3 bargaining unit, the employer specifies how he or she will notify the
4 employees in the affected group and work with them to implement the program
5 once the plan is approved; ~~and~~

6 (12) in addition to subdivisions (1) through (11) of this section, the
7 ~~commissioner~~ Commissioner shall take into account any other factors and
8 require other provisions that are appropriate for, and which may be pertinent to
9 the approval and proper implementation of the plan;

10 (13) the plan describes the manner in which the requirements of this
11 section will be implemented and where feasible how notice will be given to an
12 employee whose workweek is to be reduced and an estimate of the number of
13 layoffs that would have occurred absent the ability to participate in the
14 short-time compensation program and any other information that the U.S.
15 Secretary of Labor determines is appropriate; and

16 (14) the employer certifies that the plan is consistent with employer
17 obligations under applicable state and federal laws.

18 Sec. 9. 31 V.S.A. § 703 is amended to read:

19 § 703. PASSENGER TRAMWAY BOARD

20 There is hereby created a ~~passenger tramway board~~ Passenger Tramway
21 Board within the ~~department of labor~~ Department of Labor which shall consist

1 of the ~~commissioner of labor~~ Commissioner of Labor, ex officio, who shall
2 serve as ~~chairman~~ chair, and four appointive members. The appointive
3 members of ~~said board~~ the Board shall be appointed by the ~~governor~~ Governor.
4 Two of the appointive members who are first appointed shall be designated to
5 serve terms of two years and two of the appointive members shall be
6 designated to serve terms of four years, but thereafter appointive members
7 shall be appointed for terms of four years, except that all vacancies shall be
8 filled for the unexpired term. An appointive member shall hold office until his
9 or her successor has been appointed and has qualified. Two appointive
10 members shall be engaged in the industry and two shall be representatives of
11 the public at large who shall have no current connection to the tramway
12 industry, but who have experience in building trades. Appointive members of
13 the ~~board~~ Board shall receive as compensation the sum of \$15.00 per diem for
14 their services and their necessary expenses when in the performance of their
15 duties.

16 Sec. 10. STUDY OF UNEMPLOYMENT COMPENSATION TRAINING
17 PROGRAMS

18 The Commissioner of Labor shall study the benefits and feasibility of
19 developing and implementing a job training program for persons collecting
20 unemployment benefits in Vermont that allows the Department of Labor to
21 place persons collecting unemployment into job sites for job training and skill

1 development in order to enhance the individual's job prospects and career
2 development. The study shall examine conformity issues with federal and
3 state unemployment and wage and hour laws. The Commissioner shall solicit
4 public input and engage interested parties from the business and labor
5 communities in determining the benefits of a job training program. The
6 Commissioner shall report his or her findings on or before January 15, 2014 to
7 the House Committees on Appropriations and on Commerce and Economic
8 Development and to the Senate Committees on Appropriations and on
9 Economic Development, Housing and General Affairs.

10 Sec. 11. EFFECTIVE DATE

11 This act shall take effect on July 1, 2013.