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H.770

Introduced by Representatives Pearson of Burlington, Moran of Wardsboro,  
Christie of Hartford, Davis of Washington, McCullough of  
Williston, Stevens of Waterbury, and Wizowaty of Burlington

Referred to Committee on

Date:

Subject: Labor; employment practices; employment; wages; paid family leave;  
housing

Statement of purpose of bill as introduced: This bill proposes to raise the  
minimum wage to a livable wage, provide for paid family leave, provide for  
paid sick days, change Vermont from an at-will employment State into a  
just-cause employment State, and create a rental housing registry.

An act relating to an “Economic Bill of Rights”

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

Sec. 1. 21 V.S.A. § 384 is amended to read:

§ 384. EMPLOYMENT; ~~WAGES~~ LIVABLE WAGE

(a) An employer shall not employ an employee at a rate of less than ~~\$7.25,~~  
\$15.00, and, beginning January 1, ~~2007,~~ 2016 and on each subsequent  
January 1, the ~~minimum~~ livable wage rate shall be increased by five percent or  
the percentage increase of the Consumer Price Index, CPI-U, U.S. city

1 average, not seasonally adjusted, or successor index, as calculated by the  
2 U.S. Department of Labor or successor agency for the 12 months preceding the  
3 previous September 1, whichever is smaller, but in no event shall the ~~minimum~~  
4 livable wage be decreased. The ~~minimum~~ livable wage shall be rounded off to  
5 the nearest \$0.01. An employer in the hotel, motel, tourist place, and  
6 restaurant industry shall not employ a service or tipped employee at a basic  
7 wage rate less than ~~\$3.65~~ \$7.65 an hour, and beginning January 1, 2008, and  
8 on each January 1 thereafter, this basic tip wage rate shall be increased at the  
9 same percentage rate as the ~~minimum~~ livable wage rate. ~~For the purposes of~~  
10 As used in this subsection, “a service or tipped employee” means an employee  
11 of a hotel, motel, tourist place, or restaurant who customarily and regularly  
12 receives more than \$120.00 per month in tips for direct and personal customer  
13 service. If the minimum wage rate established by the ~~United States~~ U.S.  
14 government is greater than the rate established for Vermont for any year, the  
15 ~~minimum~~ livable wage rate for that year shall be the rate established by the  
16 ~~United States~~ U.S. government.

17

\* \* \*

1 Sec. 2. 21 V.S.A. § 471 is amended to read:

2 § 471. DEFINITIONS

3 As used in this subchapter:

4 (1) “Employer” means an individual, organization, or governmental  
5 body, partnership, association, corporation, legal representative, trustee,  
6 receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,  
7 air, or express company doing business in or operating within this ~~state~~ State  
8 which for the purposes of ~~parental~~;

9 (A) parental leave, employs ten or more individuals who are  
10 employed for an average of at least 30 hours per week during a year ~~and for the~~  
11 ~~purposes of family~~;

12 (B) family leave, employs 15 or more individuals who are employed  
13 for an average of at least 30 hours per week during a year; or

14 (C) paid health care time, employs one or more individuals.

15 (2)(A) ~~“Employee” means a person~~ “Employee,” for the purpose of  
16 parental or family leave, means an individual who, in consideration of direct or  
17 indirect gain or profit, has been continuously employed by the same employer  
18 for a period of one year for an average of at least 30 hours per week.

19 (B) For the purposes of paid health care time, employee has the same  
20 meaning as set forth in section 341 of this title.

21 \* \* \*

1 Sec. 3. 21 V.S.A. § 472c is added to read:

2 § 472c. PAID HEALTH CARE TIME

3 (a) An employee shall accrue not less than one hour of paid health care  
4 time for every 30 hours worked. In the absence of a more generous paid health  
5 care time plan, an employer may:

6 (1) limit the amount of paid health care time accrued to a maximum of  
7 56 hours in a 12-month period;

8 (2) limit to 40 hours the number of hours in the workweek for which  
9 full-time employees not subject to the overtime provisions of the Federal Fair  
10 Labor Standards Act (29 U.S.C. § 213(a)(1)) may accrue paid health care  
11 time; or

12 (3) incorporate paid health care time within a complement of paid leave  
13 for its employees that provides no less than the minimum required by this  
14 subsection.

15 (b) Paid health care time shall be compensated at the same hourly rate and  
16 with the same benefits, including health care benefits, as the employee  
17 normally earns for hours worked. Service or tipped employees shall be  
18 compensated at an amount that is not less than the minimum wage required for  
19 nonservice or nontipped employees pursuant to section 384 of this title.

20 (c) An employee may use paid health care time for any of the following  
21 reasons:

1           (1) The employee is ill or injured.

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

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

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

15           (d) Unless an employer and its employees agree to paid health care time  
16 provisions more generous to employees with respect to accrual rates and  
17 maximum hours:

18           (1) An employee shall use paid health care time in the smallest time  
19 increment that the employer's payroll system uses to account for other  
20 absences when the employee's absence is shorter than a normal workday.

1           (2) Paid health care time that is accrued but unused shall be carried over  
2           to the next year, but an employee may use no more than 56 hours of paid  
3           health care in any one year, unless the employer provides a more generous  
4           allotment.

5           (3) Upon separation from employment, an employee shall not be entitled  
6           to payment for unused paid health care time unless agreed upon by the  
7           employer.

8           (4) At the employer's discretion, an employee may borrow paid health  
9           care time before the time is actually accrued.

10           (5) An employee who is rehired within 12 months after a separation  
11           from employment shall retain paid health care time accrued but unused at the  
12           time of separation.

13           (e) An employer with a paid health care time policy that is comparable to  
14           or more generous than the paid health care time provided under this section is  
15           not required to provide additional paid health care time.

16           (f) An employer may not require an employee to look for or provide a  
17           replacement worker for the time during which the employee uses or is  
18           expected to use paid health care time.

19           (g) An employer may require an employee planning to take paid health care  
20           time to:

1           (1) make reasonable efforts to avoid having to do so for routine or  
2 preventive health care; or

3           (2) notify the employer as soon as practicable by providing an  
4 explanation of the reason for taking paid health care time and for the expected  
5 duration of the employee's absence.

6           (h)(1) An employer may require certification from a health care provider to  
7 verify the need for paid health care time when the employee is absent or plans  
8 to be absent for more than three consecutive workdays.

9           (2) If the reason that the employee has been absent for more than three  
10 consecutive workdays is due to domestic violence, sexual assault, or stalking,  
11 the employee may provide certification by means of a sworn statement from  
12 the employee or law enforcement or court records or other documentation from  
13 an attorney or legal advisor, member of the clergy, or health care provider. An  
14 employer receiving information relating to domestic violence, sexual assault,  
15 or stalking shall not disclose the information unless the employee has  
16 consented in writing to the disclosure. If the employer is required by law to  
17 disclose this information, the employer shall notify the employee at the time  
18 the notice or request for disclosure is received by the employer and prior to  
19 disclosure.

20           (3) The employee shall provide the certification no later than 30 days  
21 after it is requested by the employer. The employer shall pay the cost of or

1 reimburse the employee for any out-of-pocket costs related to providing this  
2 certification.

3 (i) An employer shall post notice of the provisions of this section in a form  
4 provided by the Commissioner in a place conspicuous to employees at the  
5 employer's place of business.

6 Sec. 4. 21 V.S.A. § 472a(a) is amended to read:

7 (a) In addition to the leave provided in ~~section 472~~ sections 472 and 472d  
8 of this title, an employee shall be entitled to take unpaid leave not to exceed  
9 four hours in any 30-day period and not to exceed 24 hours in any 12-month  
10 period. An employer may require that leave be taken in a minimum of  
11 two-hour segments and may be taken for any of the following purposes:

12 \* \* \*

13 Sec. 5. 21 V.S.A. § 472d is added to read:

14 § 472d. EMPLOYEE-FUNDED PAID FAMILY LEAVE

15 (a) As used in this subchapter:

16 (1) "Employee" means a person who, in consideration of direct or  
17 indirect gain or profit, has been employed for a period of one year for an  
18 average of at least 20 hours per week while earning at least the minimum  
19 hourly wage, as defined in section 384 of this title, and has paid into the fund  
20 established under subsection (m) of this section for at least one year prior to  
21 the date of leave.



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

5           (3) “Family leave” means a leave of absence from employment by an  
6 employee who works for an employer for one of the following reasons:

7                   (A) the serious illness of the employee;

8                   (B) the serious illness of the employee’s child, stepchild, ward who  
9 lives with the employee, foster child, parent, spouse, or parent of the  
10 employee’s spouse;

11                   (C) the birth of the employee’s child; or

12                   (D) the initial placement of a child 16 years of age or younger with  
13 the employee for the purpose of adoption.

14           (4) “Livable wage” means an hourly rate of not less than the livable  
15 wage determined in accordance with 2 V.S.A. § 505.

16           (5) “Serious illness” means an accident, disease, or physical or mental  
17 condition that:

18                   (A) poses imminent danger of death;

19                   (B) requires inpatient care in a hospital; or

20                   (C) requires continuing in-home care under the direction of  
21 a physician.

1           (6) “Wage” means the average weekly wage earned by the employee  
2           during the previous calendar quarter.

3           (b) During any 12-month period, an employee shall be entitled to take paid  
4           family leave for a total period not to exceed six weeks. After benefits begin,  
5           the six-week leave may be used intermittently or consecutively by the hour,  
6           day, or week during the year.

7           (c) An employee shall file an application for benefits under this section  
8           with the Commissioner on a form provided by the Commissioner at least five  
9           days before the arrival of a child and as soon as practicable for a serious health  
10           condition of the employee or a member of the employee’s immediate family.  
11           The Commissioner shall determine eligibility of the employee based on the  
12           following criteria:

13                   (1) The employee is qualified.

14                   (2) The purposes for which the claim is made are documented.

15                   (3) The employee provided the employer with reasonable advanced  
16           notice of the requested leave.

17           (d) An employee awarded benefits under this section shall receive the  
18           employee’s average weekly wage. The highest possible amount any employee  
19           may receive under this section shall be capped at the amount equivalent to six  
20           40-hour work weeks paid at a rate double that of the livable wage.

1       (e) The employer shall continue employment benefits for the duration of  
2       the leave at the level and under the conditions that would be provided if the  
3       employee were employed continuously for the duration of the leave. The  
4       employer may require that the employee contribute to the cost of the benefits  
5       during the leave at the existing rate of employee contribution.

6       (f) The employer shall post and maintain in a conspicuous place in and  
7       about each of his or her places of business printed notices of the provisions of  
8       this subchapter on forms provided by the Commissioner of Labor.

9       (g) An employee shall give reasonable written notice to the employer of  
10       intent to take leave under this subchapter. Notice shall include the date the  
11       leave is expected to commence and the estimated duration of the leave. In the  
12       case of the adoption or birth of a child, an employer shall not require that  
13       notice be given more than six weeks prior to the anticipated commencement of  
14       the leave. In the case of serious illness of the employee or a member of the  
15       employee's family, an employee shall give notice as soon as practicable. In  
16       the case of serious illness of the employee or a member of the employee's  
17       family, an employer may require certification from a physician to verify the  
18       condition and the amount and necessity for the leave requested. An employee  
19       may return from leave earlier than estimated upon approval of the employer.  
20       An employee shall provide reasonable notice to the employer of his or her need  
21       to extend leave to the extent provided by this chapter.

1        (h) Upon return from leave taken under this subchapter, an employee shall  
2        be offered the same or comparable job at the same level of compensation,  
3        employment benefits, seniority or any other term or condition of the  
4        employment existing on the day leave began. This subchapter shall not apply  
5        if, prior to requesting leave, the employee had been given notice or had given  
6        notice that the employment would terminate. This subsection shall not apply if  
7        the employer can demonstrate by clear and convincing evidence that:

8                (1) during the period of leave the employee's job would have been  
9                terminated or the employee laid off for reasons unrelated to the leave or the  
10               condition for which the leave was granted; or

11               (2) the employee performed unique services and hiring a permanent  
12               replacement during the leave, after giving reasonable notice to the employee of  
13               intent to do so, was the only alternative available to the employer to prevent  
14               substantial and grievous economic injury to the employer's operation.

15               (i) An employer may adopt a leave policy more generous than the leave  
16               policy provided by this subchapter. Nothing in this subchapter shall be  
17               construed to diminish an employer's obligation to comply with any collective  
18               bargaining agreement or any employment benefit program or plan which  
19               provides greater leave rights than the rights provided by this subchapter. A  
20               collective bargaining agreement or employment benefit program or plan may  
21               not diminish rights provided by this subchapter. Notwithstanding the

1 provisions of this subchapter, an employee may, at the time a need for parental  
2 or family leave arises, waive some or all the rights under this subchapter  
3 provided the waiver is informed and voluntary and any changes in conditions  
4 of employment related to any waiver shall be mutually agreed upon between  
5 employer and employee.

6 (j) Except for serious illness of the employee, an employee who does not  
7 return to employment with the employer who provided the leave shall return to  
8 the employer the value of any compensation paid to or on behalf of the  
9 employee during the leave, except payments for accrued sick leave or  
10 vacation leave.

11 (k) If two employees from the same family request leave under this section,  
12 the employer may require that the employees take leave at separate times.

13 (l) The Commissioner shall make a determination of each claim no later  
14 than five days after the date the claim is filed, and benefits shall be paid from  
15 the fund created pursuant to subsection (m) of this section. An employee or  
16 employer aggrieved by a decision of the Commissioner under this chapter may  
17 file with the Commissioner a request for reconsideration within 30 days after  
18 receipt of the Commissioner's decision. Thereafter, an applicant denied  
19 reconsideration may file an appeal to the Civil Division of the Superior Court  
20 in the county where the employment is located.

1       (m) A Paid Parental Leave Fund is created pursuant to 32 V.S.A. chapter 7,  
2       subchapter 5 to be expended by the Commissioner for the benefits awarded  
3       and administration of the paid parental leave. The Fund shall consist of a  
4       0.63 percent contribution to be deducted from employees' wages. The  
5       employer shall submit these taxes to the Commissioner in a form and at times  
6       determined by the Commissioner.

7       (n) A person who willfully makes a false statement or representation for the  
8       purpose of obtaining any benefit or payment under the provisions of this  
9       chapter, either for herself or himself or for any other person, after notice and  
10       opportunity for hearing, may be assessed an administrative penalty of not more  
11       than \$20,000.00 and shall forfeit all or a portion of any right to compensation  
12       under the provisions of this chapter, as determined to be appropriate by the  
13       Commissioner after a determination by the Commissioner that the person has  
14       willfully made a false statement or representation of a material fact. In  
15       addition, an employer found to have violated this section is prohibited from  
16       contracting, directly or indirectly, with the State or any of its subdivisions for  
17       up to three years following the date the employer was found to have made a  
18       false statement or misrepresentation of a material fact, as determined by the  
19       Commissioner in consultation with the Commissioner of Buildings and  
20       General Services or the Secretary of Transportation, as appropriate. Either the  
21       Secretary or the Commissioner, as appropriate, shall be consulted in any

1 contest relating to the prohibition of the employer from contracting with the  
2 State or its subdivisions.

3 Sec. 6. 20 V.S.A. Part 11, chapter 205 is added to read:

4 PART 11. HOUSING

5 CHAPTER 205. RENTAL HOUSING SAFETY AND HABITABILITY

6 § 4641. RENTAL HOUSING SAFETY AND HABITABILITY FUND;

7 ESTABLISHED

8 (a) The Rental Housing Safety and Habitability Fund is established in the  
9 State treasury for the purpose of creating a statewide rental unit registry  
10 program to be administered by the Department for the purposes of collecting  
11 and maintaining data about rental housing units in Vermont and providing  
12 education, training, and support to landlords and tenants to maintain the rental  
13 housing stock and assure its safety and habitability for the benefit of owners,  
14 tenants, and communities. The Fund will provide financing for scheduled,  
15 complaint-based, and emergency inspections of rental housing units and for  
16 enhancing communications among owners, tenants, and compliance personnel.  
17 It is the intent of the General Assembly that Vermonters have a right to  
18 adequate housing.

19 (b) Proceeds from grants, donations, contributions, and other sources of  
20 revenue that may be provided by statute or by rule may be deposited in the

1 Fund. Interest earned on the Fund and any balances remaining at the end of a  
2 fiscal year shall be retained in the fund.

3 § 4642. STATE RENTAL HOUSING REGISTRY; CREATION

4 (a) The Department in consultation with the Department of Health and the  
5 Department of Housing and Community Affairs shall establish a State program  
6 pursuant to which rental housing units are registered and inspected.

7 (b) The Rental Housing Registry Program shall provide:

8 (1) A process for owners to register their rental housing units. The  
9 owners shall pay an annual registration fee for each rental housing unit and  
10 provide basic information about each rental unit. The fee shall be \$50.00 per  
11 unit per year for the first three years of the Program; thereafter, the fee shall be  
12 set by the Commissioner at an amount sufficient to pay for the Program.

13 (2) Inspections of rental housing units on a schedule as determined by  
14 the Commissioner by rule.

15 (3) A procedure for performing inspections based on a health or safety  
16 complaint that shall include antiretaliation protection for tenants who request a  
17 health or safety inspection.

18 (4) Education, training, and technical assistance, including written  
19 materials, field training, and support for owners and tenants.

20 (5) A procedure for issuance of a certificate of habitability that indicates  
21 that the rental housing unit is in compliance with habitability standards as



1 determined by the Department by rule. A copy of the certificate of habitability  
2 for each rental housing unit shall be provided to the owner who shall post a  
3 copy of the certificate in each unit. The certificate shall include an explanation  
4 of the process for initiating a complaint-based inspection.

5 (6) Mechanisms to assure registration of rental housing units, payment  
6 of required fees, timely issuance of compliance orders, and any other  
7 mechanisms necessary to achieve the goals of the registration program.

8 (c) The Department shall:

9 (1) Implement the Rental Housing Registry Program as described in  
10 subsection (b) of this section by creating a registry of rental housing units,  
11 including a registration process with appropriate forms, a procedure and time  
12 frame for complaint-based inspections, a schedule for routine inspections,  
13 enforcement procedures against both owners and tenants, as appropriate, and  
14 the installation of a computerized registry in a format that uses GIS systems  
15 technology to store collected rental housing data.

16 (2) Within a year after implementation of the registry:

17 (A) Adopt rules regarding:

18 (i) Appropriate data to be collected that, to the extent available,  
19 includes the following:

1                   (I) The name, if any, 911 address, and GIS coordinates of the  
2 building, and the name, address, and telephone number of the owner and  
3 manager of the rental housing property.

4                   (II) An appropriate and useful description of the building and  
5 rental housing units, including the number of bedrooms and bathrooms and  
6 whether a unit has been adapted for people with disabilities and a description  
7 of the accessibility adaptations.

8                   (III) Updated inspection data, including the number, reasons  
9 for, and type of inspections performed, the number and description of health or  
10 safety violations, a hazard index, dates of compliance, and the date of first  
11 issuance and subsequent renewals of the certificate of habitability.

12                   (ii) A definition of “high-risk” rental housing units.

13                   (iii) Rental housing habitability and safety standards, including  
14 existing code provisions that allow reasonable time and alternative methods for  
15 compliance, especially in existing units.

16                   (iv) A provision to provide displacement services when an  
17 appropriate Department or Agency of the State orders a tenant to leave a rental  
18 unit for serious health and safety code violations that are not caused by or the  
19 fault of the tenant. Displacement services include reasonable expenses for  
20 temporary housing, moving, and relocation costs that may be charged to the  
21 owner of the rental unit or placed as a lien against the rental property.

1                   (v) A prioritized schedule of inspections.

2                   (vi) Any other rule necessary to implement this section.

3                   (B) Develop a list of “high-risk” rental housing units and implement  
4 an appropriate inspection schedule for those units.

5                   (C) Implement a process for delegating responsibility to  
6 municipalities to conduct inspections of rental housing and enforce fire, safety,  
7 and habitability codes that assure consistency with section 256 of this title.

8                   (D) Coordinate rental housing data with the data collected by the  
9 Vermont Lead Poisoning Prevention and Surveillance Program.

10                  (E) Assume responsibilities currently designated to the Department  
11 of Health and Town Health Officers for rental housing health code  
12 enforcement on or before July 1, 2014. The Department of Public Service may  
13 request assessment and recommendations from the Department of Health and  
14 Municipal Health Officers regarding rental housing health code concerns  
15 related to garbage, surface sewage, water, and vermin.

16                  (3) Within three years after the creation of the registry, implement:

17                   (A) Processes for conducting owner-requested, tenant-requested,  
18 complaint-based, and emergency inspections.

19                   (B) An outreach and support program to help owners find resources  
20 and acquire funding for repairs, improvements, and maintenance of their rental  
21 housing units.

1           (C) An effective system for conducting regularly scheduled statewide  
2 rental housing inspections.

3       Sec. 7. REPORT; DEPARTMENT OF PUBLIC SAFETY; DEPARTMENT  
4           OF HOUSING AND COMMUNITY AFFAIRS; DEPARTMENT OF  
5           HEALTH

6       On or before October 1 of the third year after the rental housing registration  
7 program is in operation, the Commissioner of Public Safety, in cooperation  
8 with the Department of Housing and Community Affairs and the Department  
9 of Health, shall issue a written report to the General Assembly. The report  
10 shall include the progress made to implement the Program, an evaluation of the  
11 effectiveness of the Program to date, including information on the rate of  
12 registration and registration compliance, the amount of fees collected, the type  
13 and extent of the support services provided, enforcement undertaken, and any  
14 other information relevant to the effective operation of the Program. The  
15 report shall also include recommendations for the amount of the annual  
16 per-unit fee to be collected that will ensure ongoing financial support of the  
17 Program, including Program enhancements to maintain the goal of ensuring  
18 habitable, safe, and code-compliant rental housing in Vermont.

1       Sec. 8. APPROPRIATION; POSITIONS AUTHORIZED; DEPARTMENT  
2                   OF PUBLIC SAFETY

3           (a) There is appropriated in fiscal year 2014 from the General Fund to the  
4           Department of Public Safety the amount of \$300,000.00 to fund the creation of  
5           the Rental Apartment Registration Program. The annual rental unit fees  
6           collected by the Department from rental housing owners shall be deposited in  
7           the Rental Apartment Habitability Fund and shall be used first to repay the  
8           General Fund for the initial appropriation of \$300,000.00. Thereafter, the fees  
9           shall be used to reimburse the Department for operating expenses for the  
10          Program, including rental housing inspections, support, and enforcement  
11          activities.

12          (b) The following positions are authorized in the Department Of Public  
13          Safety in fiscal year 2014:

14               (1) One (1) program director, full-time, exempt.

15               (2) Three (3) administrative assistants, full-time, classified.

16               (3) One (1) staff attorney, full-time, exempt.

17               (4) One-quarter (1/4) systems developer, part-time, exempt.

18               (5) One (1) education and technical assistance specialist, full-time,  
19          exempt.

20               (6) Four (4) housing inspectors, full-time, classified.

1       Sec. 9. 21 V.S.A. chapter 5, subchapter 2 is amended to read:

2                               Subchapter 2. Wages and Medium of Payment

3       § 341. DEFINITIONS

4       As used in this subchapter:

5               (1) ~~“Employee” means a person who has entered into the employment of~~  
6 ~~an employer, where the employer is unable to show that:~~

7                       (A) ~~the individual has been and will continue to be free from control~~  
8 ~~or direction over the performance of such services, both under the contract of~~  
9 ~~service and in fact; and~~

10                      (B) ~~the service is either outside all the usual course of business for~~  
11 ~~which such service is performed, or outside all the places of business of the~~  
12 ~~enterprise for which such service is performed; and~~

13                      (C) ~~the individual is customarily engaged in an independently~~  
14 ~~established trade, occupation, profession or business. “Constructive discharge”~~  
15 ~~means the voluntary termination of employment by an employee because of a~~  
16 ~~situation created by an act or omission of the employer which an objective,~~  
17 ~~reasonable person would find so intolerable that voluntary termination is the~~  
18 ~~only reasonable alternative. Constructive discharge does not mean voluntary~~  
19 ~~termination because of an employer’s refusal to promote the employee or~~  
20 ~~improve wages, responsibilities, or other terms and conditions of employment.~~

1           (2) “Employer” means any person having employees in his or her  
2 service.

3           (3) “Commissioner” means the Commissioner of Labor or designee.

4           (4) “Department” means the Department of Labor.

5           (5) “Wages” means all remuneration payable for services rendered by an  
6 employee, including salary, commissions, and incentive pay.

7           (6) “Discharge” includes a constructive discharge as defined in  
8 subdivision (1) of this section and any other termination of employment,  
9 including resignation, elimination of the job, layoff for lack of work, failure to  
10 recall or rehire, and any other cutback in the number of employees for a  
11 legitimate business reason.

12           (7) “Employee” means a person who works for another for hire. The  
13 term does not include a person who is an independent contractor.

14           (8) “Fringe benefits” means the value of any employer-paid vacation  
15 leave, sick leave, medical insurance plan, disability insurance plan, life  
16 insurance plan, and pension benefit plan in force on the date of the termination.

17           (9) “Good cause” means reasonable job-related grounds for dismissal  
18 based on a failure to satisfactorily perform job duties, disruption of the  
19 employer’s operation, or other legitimate business reason. The legal use of a  
20 lawful product by an individual off the employer’s premises during  
21 nonworking hours is not a legitimate business reason.

1           (10) “Lost wages” means the gross amount of wages that would have  
2           been reported to the internal revenue service as gross income on form W-2 and  
3           includes additional compensation deferred at the option of the employee.

4           (11) “Public policy” means a policy in effect at the time of the discharge  
5           concerning the public health, safety, or welfare established by constitutional  
6           provision, statute, or administrative rule.

7   \* \* \*

8           § 349. ELEMENTS OF WRONGFUL DISCHARGE; PRESUMPTIVE

9                               PROBATIONARY PERIOD

10           (a) A discharge is wrongful only if:

11                       (1) it was in retaliation for the employee’s refusal to violate public  
12           policy or for reporting a violation of public policy;

13                       (2) the discharge was not for good cause and the employee had  
14           completed the employer’s probationary period of employment; or

15                       (3) the employer violated the express provisions of its own written  
16           personnel policy.

17           (b)(1) During a probationary period of employment, the employment may  
18           be terminated at the will of either the employer or the employee on notice to  
19           the other for any reason or for no reason.



1           (2) If an employer does not establish a specific probationary period or  
2           provide that there is no probationary period prior to or at the time of hire, there  
3           is a probationary period of six months from the date of hire.

4           § 350. REMEDIES

5           (a) If an employer has committed a wrongful discharge, the employee may  
6           be awarded lost wages and fringe benefits for a period not to exceed four years  
7           from the date of discharge, together with interest on the lost wages and fringe  
8           benefits. Interim earnings, including amounts the employee could have earned  
9           with reasonable diligence, must be deducted from the amount awarded for lost  
10           wages. Before interim earnings are deducted from lost wages, there must be  
11           deducted from the interim earnings any reasonable amounts expended by the  
12           employee in searching for, obtaining, or relocating to new employment.

13           (b) The employee may recover punitive damages otherwise allowed by law  
14           if it is established by clear and convincing evidence that the employer engaged  
15           in actual fraud or actual malice in the discharge of the employee in violation of  
16           subdivision 349(a)(1) of this title.

17           (c) There is no right under any legal theory to damages for wrongful  
18           discharge under this part for pain and suffering, emotional distress,  
19           compensatory damages, punitive damages, or any other form of damages,  
20           except as provided for in subsections (a) and (b) of this section.

1     § 351. LIMITATION OF ACTIONS

2         (a) An action under this part must be filed within one year after the date of  
3     discharge.

4         (b) If an employer maintains written internal procedures, other than those  
5     specified in section 352 of this title, under which an employee may appeal a  
6     discharge within the organizational structure of the employer, the employee  
7     shall first exhaust those procedures prior to filing an action under this part.  
8     The employee's failure to initiate or exhaust available internal procedures is a  
9     defense to an action brought under this part. If the employer's internal  
10    procedures are not completed within 90 days from the date the employee  
11    initiates the internal procedures, the employee may file an action under this  
12    part and for purposes of this subsection the employer's internal procedures are  
13    considered exhausted. The limitation period in subsection (a) is tolled until the  
14    procedures are exhausted. In no case may the provisions of the employer's  
15    internal procedures extend the limitation period in subsection (a) more than  
16    120 days.

17         (c) If the employer maintains written internal procedures under which an  
18     employee may appeal a discharge within the organizational structure of the  
19     employer, the employer shall within seven days of the date of the discharge  
20     notify the discharged employee of the existence of such procedures and shall  
21     supply the discharged employee with a copy of them. If the employer fails to

1 comply with this subsection, the discharged employee need not comply with  
2 subsection (b) of this section.

3 § 352. EXEMPTIONS

4 This part does not apply to a discharge:

5 (1) That is subject to any other State or federal statute that provides a  
6 procedure or remedy for contesting the dispute. The statutes include those that  
7 prohibit discharge for filing complaints, charges, or claims with administrative  
8 bodies or that prohibit unlawful discrimination based on race, national origin,  
9 sex, age, disability, creed, religion, political belief, color, marital status, and  
10 other similar grounds.

11 (2) Of an employee covered by a written collective bargaining  
12 agreement or a written contract of employment for a specific term.

13 § 353. PREEMPTION OF COMMON-LAW REMEDIES

14 Except as provided in this part, no claim for discharge may arise from tort  
15 or express or implied contract.

16 § 354. ARBITRATION

17 (a) A party may make a written offer to arbitrate a dispute that otherwise  
18 could be adjudicated under this part.

19 (b) An offer to arbitrate must be in writing and contain the following  
20 provisions:

21 (1) A neutral arbitrator must be selected by mutual agreement.

1           (2) The arbitration must be governed by the Uniform Arbitration Act,  
2           27 V.S.A. chapter 5. If there is a conflict between the Uniform Arbitration Act  
3           and this subchapter, this subchapter applies.

4           (3) The arbitrator is bound by this part.

5           (c) If a complaint is filed under this part, the offer to arbitrate must be made  
6           within 60 days after service of the complaint and must be accepted in writing  
7           within 30 days after the date the offer is made.

8           (d) A discharged employee who makes a valid offer to arbitrate that is  
9           accepted by the employer and who prevails in such arbitration is entitled to  
10          have the arbitrator's fee and all costs of arbitration paid by the employer.

11          (e) If a valid offer to arbitrate is made and accepted, arbitration is the  
12          exclusive remedy for the wrongful discharge dispute and there is no right to  
13          bring or continue a lawsuit under this part. The arbitrator's award is final and  
14          binding, subject to review of the arbitrator's decision under the provisions of  
15          the Uniform Arbitration Act.

16          § 355. EFFECT OF REJECTION OF OFFER TO ARBITRATE

17          A party who makes a valid offer to arbitrate that is not accepted by the other  
18          party and who prevails in an action under this part is entitled as an element of  
19          costs to reasonable attorney's fees incurred subsequent to the date of the offer.

1       Sec. 10. EFFECTIVE DATES

2           (a) Sec. 1 (livable wage) shall take effect on January 1, 2015, and all  
3       businesses in Vermont must pay their employees the livable wage no later than  
4       January 1, 2018.

5           (b) Secs. 2, 3, and 4 (paid health care time) shall take effect on July 1,  
6       2014.

7           (c) Sec. 5 (baby bonding) shall take effect on January 1, 2016. Employers  
8       shall begin deducting taxes from employees' wages on July 1, 2016 and,  
9       beginning January 1, 2017, qualified employees may begin to receive benefits  
10       under this law.

11           (d) Secs. 6, 7, and 8 (rental housing registry) and this section shall take  
12       effect on passage, and the registry program shall be implemented no later than  
13       July 1, 2014.

14           (e) Sec. 9 (just cause employment) shall take effect on July 1, 2014.