

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred House Bill No. 306 entitled “An act relating to unemployment
4 compensation” 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. 21 V.S.A. § 342a is amended to read:

8 § 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

9 (a) An employee or the Department on its own motion may file a complaint
10 that wages have not been paid to an employee, not later than two years from
11 the date the wages were due. The Commissioner shall provide notice and a
12 copy of the complaint to the employer by service, or by certified mail sent to
13 the employer’s last known address, together with an order to file a response to
14 the specific allegation in the complaint filed by the employee or the
15 Department with the Department within 10 calendar days of receipt.

16 (b) The Commissioner shall investigate the complaint, and may examine
17 the employer’s records, enter and inspect the employer’s business premises,
18 question such employees, subpoena witnesses, and compel the production of
19 books, papers, correspondence, memoranda, and other records necessary and
20 material to investigate the complaint. If a person fails to comply with any
21 lawfully issued subpoena, or a witness refuses to testify to any matter on which

1 he or she may be lawfully interrogated, the Commissioner may seek an order
2 from the Civil Division of the Superior Court compelling testimony or
3 compliance with the subpoena.

4 (c)(1) ~~If after the investigation wages are found to be due, the~~
5 ~~Commissioner shall attempt to settle the matter between the employer and~~
6 ~~employee. If the attempt fails, Following the investigation of the complaint:~~

7 (A) If the Commissioner determines that wages are due the
8 employee, the Commissioner shall attempt to settle the matter between the
9 employer and the employee before issuing a written determination. If the
10 Commissioner is unable to settle the matter, the Commissioner shall issue a
11 written determination and order for collection, stating that wages are due,
12 which shall specify the facts and the conclusions upon which the determination
13 is based. ~~The Department shall collect from the employer the amounts due and~~
14 remit them to the employee.

15 (B) If the Commissioner determines that wages are not due the
16 employee, the Commissioner shall issue a written determination stating that
17 wages are not due, which shall specify the facts and conclusions upon which
18 the determination is based.

19 (2) Notice of the a determination and the order for collection to the
20 employer shall be provided to all interested parties by certified mail or service.
21 If the Commissioner has determined that wages are due the employee, the

1 Commissioner shall issue an order for collection following the resolution of
2 any appeal from the determination filed pursuant to subsection (e) of this
3 section or the expiration of the appeal period set forth in that subsection.

4 (d) If the Commissioner determines that the unpaid wages were willfully
5 withheld by the employer, the order for collection may provide that the
6 employer is liable to pay an additional amount not to exceed twice the amount
7 of unpaid wages, one-half of which will be remitted to the employee and
8 one-half of which shall be retained by the Commissioner to offset
9 administrative and collection costs.

10 (e) Within 30 days after the date of the ~~collection order~~ determination, the
11 employer or employee may file an appeal from the determination to a
12 departmental administrative law judge. The appeal shall, after notice to the
13 employer and employee, be heard by the administrative law judge within a
14 reasonable time. The administrative law judge shall review the complaint de
15 novo, and after a hearing, the determination ~~and order for collection~~ shall be
16 sustained, modified, or reversed by the administrative law judge. Prompt
17 notice in writing of the decision of the administrative law judge and the
18 reasons for it shall be given to all interested parties.

19 * * *

1 Sec. 2. 21 V.S.A. § 1330 is amended to read:

2 § 1330. ASSESSMENT PROVIDED

3 (a) When any employer fails to pay any contributions or payments required
4 under this chapter, ~~the commissioner~~ Commissioner shall make an assessment
5 of contributions against ~~such~~ the employer together with interest and penalty
6 thereon. After making the assessment, ~~due notice shall be given thereof, by~~
7 ~~ordinary or certified mail, to the employer~~ the Commissioner shall provide the
8 employer with notice of the assessment by ordinary or certified mail and the
9 assessment shall be final unless the employer petitions for a hearing on ~~such~~
10 the assessment within the time ~~hereinafter~~ specified by section 1331 of this
11 chapter.

12 (b) If the employer fails to comply with the reporting requirements of
13 section 1314a or 1322 of this chapter, or if the employer files an incorrect or
14 insufficient report pursuant to section 1314a or 1322 of this chapter and fails to
15 file a corrected or sufficient report within 30 days after the Commissioner
16 provides written notice to the employer to correct or supplement the report, the
17 Commissioner shall, on the basis of the information that is available to the
18 Commissioner, make an assessment of the amount of the contribution due from
19 the employer together with interest and penalty.

1 Sec. 3. 21 V.S.A. § 1344 is amended to read:

2 § 1344. DISQUALIFICATIONS

3 (a) An individual shall be disqualified for benefits:

4 * * *

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

7 (A) ~~wages~~ Wages in lieu of notice; ~~or,~~

8 (B) ~~vacation~~ Vacation pay ~~or holiday pay.~~

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

1 There shall be no disqualification amount for any holiday. As used in
2 this section, “holiday” means a legal holiday pursuant to 1 V.S.A. § 317.

3 * * *

4 (F) ~~{Repealed}~~ Sick pay.

5 (G) Bereavement pay.

6 (H) Wages or remuneration for jury duty that are paid by the
7 individual’s employer.

8 * * *

9 Sec. 4. 21 V.S.A. § 1347 is amended to read:

10 § 1347. NONDISCLOSURE OR MISREPRESENTATION

11 (a) Any person who fails, without good cause, to make reasonable effort to
12 secure suitable work when directed to do so by the employment office or the
13 Commissioner and has received any amount as benefits under this chapter with
14 respect to weeks for which the person is determined to be ineligible for such
15 failure, and any person who by nondisclosure or misrepresentation by him or
16 her, or by another, of a material fact (irrespective of whether such
17 nondisclosure or misrepresentation was known or fraudulent) has received any
18 amount as benefits under this chapter while any conditions for the receipt of
19 benefits imposed by this chapter were not fulfilled in his or her case or while
20 he or she was disqualified from receiving benefits, shall be liable for such
21 amount. Notice of determination in such cases shall specify that the person is

1 liable to repay to the Fund the amount of overpaid benefits, the basis of the
2 overpayment, and the week or weeks for which such benefits were paid. The
3 determination shall be made within ~~three~~ six years from the date of such
4 overpayment.

5 (b) Any person who receives remuneration described in subdivision
6 1344(a)(5)(A), ~~(B), (C), (D), (E), or (F)~~ of this title which is allocable in whole
7 or in part to prior weeks during which he or she received any amounts as
8 benefits under this chapter shall be liable for all ~~such~~ amounts of benefits or
9 those portions of ~~such~~ the amounts equal to the portions of ~~such~~ the
10 remuneration properly allocable to the weeks in question. Notice of
11 determination in such cases shall specify that the person is liable to repay to
12 the Fund the amount of overpaid benefits, the basis of the overpayment, and
13 the week or weeks for which ~~such~~ the benefits were paid. The determination
14 shall be made within ~~three~~ six years from the date of such overpayment or
15 within one year from the date of receipt of the remuneration, whichever period
16 is longer.

17 * * *

18 Sec. 5. 21 V.S.A. § 1321 is amended to read:

19 § 1321. CONTRIBUTIONS; TAXABLE WAGE BASE CHANGES

20 * * *

1 (c)(1) Financing benefits paid to employees of nonprofit organizations.
2 Benefits paid to employees of nonprofit organizations shall be financed in
3 accordance with the provisions of this subsection. ~~For the purposes of~~ As used
4 in this subsection, a nonprofit organization is an organization (or group of
5 organizations) described in Section 501(c)(3) of the Internal Revenue Code of
6 the United States which is exempt from income tax under Section 501(a) of
7 such code.

8 (2) Liability for contributions and election of reimbursement. Any
9 nonprofit organization which, pursuant to subdivision 1301(5)(B)(i) of this
10 title, is, or becomes, subject to this chapter on or after January 1, 1972 shall
11 pay contributions under the provisions of this section, unless it elects, in
12 accordance with this subsection, to pay to the Commissioner, for the
13 Unemployment Fund, an amount equal to the amount of regular benefits and of
14 one-half of the extended benefits paid, that is attributable to service in the
15 employ of such nonprofit organization, to individuals for weeks of
16 unemployment which begin during the effective period of such election.

17 * * *

18 (C) Any nonprofit organization which makes an election in
19 accordance with subdivisions (c)(2)(A) and (B) of this section will continue to
20 be liable for payments in lieu of contributions until ~~it files~~ its election is
21 terminated by the Commissioner. An employer shall file with the

1 Commissioner a written notice ~~terminating its election~~ requesting that its
2 election be terminated not later than 30 days prior to the beginning of the
3 calendar year for which such termination ~~shall~~ would first be effective. The
4 Commissioner, in accordance with rules adopted by the Board, shall determine
5 whether the employer is eligible to terminate its election based on the
6 employer's anticipated contributions to the Unemployment Trust Fund and any
7 additional liability expected to be incurred by the Fund as a result of the
8 proposed termination. The Commissioner's determinations shall be subject to
9 reconsideration and to appeal and review in accordance with the provisions of
10 section 1337a of this title.

11 * * *

12 (e) Any municipality, any State institution of higher education, and any
13 political or governmental subdivisions or instrumentalities of the State shall
14 pay contributions unless it elects to pay to the Commissioner for the
15 Unemployment ~~Compensation~~ Trust Fund, an amount equal to the amount of
16 benefits paid, including the full amount of extended benefits paid, attributable
17 to service by individuals in the employ of these entities. Subsections (a) and
18 (b) and subdivisions (3)(C) through (3)(F), inclusive, and subdivisions (4)
19 through (6), inclusive, of subsection (c) of this section as they apply to
20 nonprofit organizations shall also apply to the entities designated in this
21 subsection, except that these entities shall be liable for all benefits paid,

1 including the full amount of extended benefits paid, attributable to service in
2 the employ of these entities.

3 * * *

4 (3) Any entity designated in this subsection which makes an election in
5 accordance with subdivisions (1) and (2) of this subsection will continue to be
6 liable for payments in lieu of contributions until ~~it files with~~ its election is
7 terminated by the Commissioner. The entity shall file with the Commissioner
8 a written notice ~~terminating its election~~ requesting that its election be
9 terminated not later than 30 days prior to the beginning of the calendar year for
10 which the termination ~~shall~~ would first be effective. The Commissioner, in
11 accordance with rules adopted by the Board, shall determine whether the entity
12 is eligible to terminate its election based on the entity's anticipated
13 contributions to the Unemployment Trust Fund and any additional liability
14 expected to be incurred by the Fund as a result of the proposed termination.
15 The Commissioner's determinations shall be subject to reconsideration and to
16 appeal and review in accordance with the provisions of section 1337a of this
17 title.

18 * * *

19 Sec. 6. STUDY; REPORT

20 The Commissioner of Labor shall study whether reimbursable employers
21 pursuant to 21 V.S.A. § 1321(c) should be required to procure and maintain a

1 bond, escrow account, or other surety to fund unemployment compensation
2 benefit liability in the event the employer dissolves or ceases to operate while
3 liability still exists. The Commissioner shall report to the House Committee
4 on Commerce and Economic Development and the Senate Committee on
5 Finance regarding the findings of the study and any recommendations for
6 statutory changes on or before November 15, 2015.

7 Sec. 7. 21 V.S.A. § 1358 is amended to read:

8 § 1358. UNEMPLOYMENT ~~COMPENSATION~~ TRUST FUND;

9 ESTABLISHMENT AND CONTROL

10 There is hereby established as a special fund, to be kept separate and apart
11 from all other public moneys or funds of this ~~state~~ State, an ~~unemployment~~
12 ~~compensation fund~~ Unemployment Trust Fund, which shall be administered by
13 the ~~commissioner~~ Commissioner exclusively for the purposes of this chapter.
14 This ~~fund~~ Fund shall consist of (1) all contributions collected under this
15 chapter; (2) interest earned upon any ~~moneys~~ monies in the ~~fund~~ Fund; (3) any
16 property or securities acquired through the use of ~~moneys~~ monies belonging to
17 the ~~fund~~ Fund; (4) all earnings of such property or securities; (5) all money
18 credited to this ~~state's~~ State's account in the ~~unemployment trust fund~~ federal
19 Unemployment Trust Fund pursuant to ~~section 903 of~~ the Social Security Act,
20 42 U.S.C. § 1103 as amended; and (6) all other ~~moneys~~ monies received for

1 the ~~fund~~ Fund from any other source. All ~~moneys~~ monies in the ~~fund~~ Fund
2 shall be mingled and undivided.

3 Sec. 8. STATUTORY REVISION

4 The Legislative Council, in its statutory revision capacity pursuant to
5 2 V.S.A. § 424, is authorized to correct the name of the Unemployment Trust
6 Fund in the Vermont Statutes Annotated as necessary to reflect the provisions
7 of Sec. 7 of this act (amending 21 V.S.A. § 1358). Such changes may also be
8 made when new legislation is proposed or when there is a republication of a
9 volume of the Vermont Statutes Annotated.

10 Sec. 9. EFFECTIVE DATE

11 This act shall take effect on July 1, 2015.

12

13

14 (Committee vote: _____)

15

16

Representative _____

17

FOR THE COMMITTEE