

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing and General Affairs to
3 which was referred House Bill No. 187 entitled “An act relating to absence
4 from work for health care and safety” respectfully reports that it has considered
5 the same and recommends that the Senate propose to the House that the bill be
6 amended by striking out all after the enacting clause and inserting in lieu
7 thereof the following:

8 Sec. 1. FINDINGS

9 The General Assembly finds:

10 (1) According to the Vermont Department of Labor’s 2013 Fringe
11 Benefits Study, roughly one-half of all private sector employers provide some
12 form of paid leave to their employees.

13 (2) Based on information provided by the 2013 Fringe Benefits Study, it
14 is estimated that slightly less than 50 percent of private sector workers
15 employed by companies with fewer than 20 workers have access to paid leave,
16 while approximately 78 percent of workers employed by larger companies
17 have access to paid leave time.

18 (3) Based on information provided by the 2013 Fringe Benefits Study, it
19 is estimated that more than 60,000 working Vermonters lack access to paid
20 leave.

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1 Sec. 2. PURPOSE

2 (a) The purpose of this act is to promote a healthier environment at work,
3 school, and in public by ensuring that employees are provided with paid leave
4 time for purposes of health care and safety.

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5 (b) It is the intent of the General Assembly that:

6 (1) all employers doing business in or operating in the State of Vermont
7 shall be required to provide earned sick time to their employees as provided by
8 this act; and

9 (2) all bids on State-funded construction projects, including bids from
10 out-of-state employers, shall include the cost of providing employees working
11 on the project with earned sick time as required pursuant to this act.

12 Sec. 3. 21 V.S.A. §_384 is amended to read:

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13 § 384. EMPLOYMENT; WAGES

14 * * *

15 (d) For the purposes of earned sick time, an employer shall comply with the
16 provisions required under subchapter 4B of this chapter.

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17 Sec. 4. 21 V.S.A. chapter 5, subchapter 4B is added to read:

18 Subchapter 4B. Earned Sick Time

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19 § 481. DEFINITIONS

20 As used in this subchapter:

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

5 (2) “Combined time off” means a policy wherein the employer provides
6 time off from work for vacation, sickness, or personal reasons, and the
7 employee has the option to use all of the leave for whatever purpose he or she
8 chooses.

9 (23) “Commissioner” means the Commissioner of Labor.

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

15 (4) “Earned sick time” means discretionary time earned and accrued
16 under the provisions of this subchapter and used by an employee to take time
17 off from work for the purposes listed in subdivisions 483(a)(1)–(5) of this
18 subchapter.

19 (5) “Employee” has the same meaning as set forth in section 341 of this
20 title means a person who, in consideration of direct or indirect gain or profit, is

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1 employed by an employer for an average of no less than 18 hours per week

2 during a year. However, the term “employee” shall not include:

3 (A) An individual who is employed by the federal government.

4 (B) An individual who is employed by an employer:

5 (i) for 20 weeks or fewer in a calendar year; and

6 (ii) in a job scheduled to last 20 weeks or fewer; and,

7 ~~(iii) for the purpose of supporting or supplementing the employer’s~~
8 ~~workforce in certain situations, including employee absences, temporary skill~~
9 ~~shortages, seasonal workloads, and special assignments and projects.~~

10 (C) An individual ~~who that~~ is employed by the State and is exempt or

11 excluded from the State classified service pursuant to 3 V.S.A. ~~§ 311.~~ § 311,

12 but not an individual that is employed by the State in a temporary capacity

13 pursuant to 3 V.S.A. § 331.

14 (D) An employee of a health care facility as defined in 18 V.S.A.

15 § 9432(8) or a facility as defined in 33 V.S.A. § 7102(2) if the employee:

16 (i) is under no obligation to work a regular schedule;

17 (ii) only works only when he or she indicates that he or she is available to
18 work and has no obligation to work when he or she does not indicate
19 availability; and

20 (iii) receives higher pay in the form of a differential as defined in
21 subdivision (3) of this section, or some other increased compensation than that

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1 ~~paid to an employee of a health care facility performing the same job on a~~
2 ~~regular schedule per diem or intermittent basis.~~

3 (E) An employee of a school district, supervisory district, or
4 supervisory union as defined in 16 V.S.A. § 11 that:

5 (i) is employed pursuant to a school district or supervisory union
6 policy on substitute educators as required by the Vermont Standards Board for
7 Professional Educators Rule 5381;

8 (ii) is under no obligation to work a regular schedule; and

9 (iii) is not under contract or written agreement to provide at least
10 one period of long-term substitute coverage which is defined as 30 or more
11 consecutive calendar school days in the same assignment.

12 ~~(F) An individual who is a guest worker employed pursuant to a federal~~
13 ~~work visa program, including guest workers who are exempt from the visa~~
14 ~~issuance process pursuant to 8 C.F.R. § 212.1(b).~~

15 (F) An individual who is under 18 years of age.

16 (G) an individual that is either:

17 (i) a sole proprietor or partner owner of an unincorporated
18 business who is excluded from the provisions of chapter 9 of this title pursuant
19 to subdivision 601(14)(F) of this title; or

20 (ii) an executive officer, manager, or member of a corporation or a
21 limited liability company for whom the Commissioner has approved an

1 exclusion from the provisions of chapter 9 of this title pursuant to
2 subdivision- 601(14)(H) of this title.

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

7 ~~(7)(6) “Paid time off policy” means any policy under which the employer~~
8 ~~provides paid time off from work to the employee that includes a combination~~
9 ~~of one or more of the following:~~

- 10 ~~(A) annual leave;~~
- 11 ~~(B) combined time off;~~
- 12 ~~(C) vacation leave;~~
- 13 ~~(D) personal leave;~~
- 14 ~~(E) sick leave; or~~
- 15 ~~(F) any similar type of leave.~~

16 ~~§- 482. EARNED SICK TIME~~

17 ~~(a) An employee shall accrue not less than one hour of earned sick time for~~
18 ~~every 4052 hours worked.~~

19 ~~(b) An employer may require a waiting period for new hires- of up to one~~
20 ~~year. During this waiting period, an employee shall accrue earned sick time~~
21 ~~pursuant to this sectionchapter, but cannotshall not be permitted to use the~~

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1 earned sick time until after he or she has ~~worked for~~ completed the employer
2 ~~for one year or 1,400 hours, whichever occurs first~~ waiting period.

3 (c) An employer may:

4 (1) limit the amount of earned sick time accrued pursuant to this
5 section to:

6 (A) from January 1, ~~2016, 2017,~~ until December 31, ~~2017, 2018,~~ a
7 maximum of 24 hours in a 12-month period; and

8 (B) after December 31, ~~2017, 2018,~~ a maximum of 40 hours in a 12-
9 month period; or

10 (2) limit to 40 hours the number of hours in each workweek for which
11 full-time employees not subject to the overtime provisions of the Federal Fair
12 Labor Standards Act, 29 U.S.C. §-213(a)(1), may accrue earned sick time
13 pursuant to this section.

14 (d)(1) Earned sick time shall be compensated at a rate that is equal to the
15 greater of either:

16 (A) the normal hourly wage rate of the employee; or

17 (B) the minimum wage rate for an employee pursuant to section 384
18 of this title.

19 (2) ~~Employment Group insurance~~ benefits shall continue during an
20 employee's use of earned sick time at the same level and conditions that
21 coverage would be provided as for normal work hours. The employer may

1 require that the employee contribute to the cost of the benefits during the use
2 of earned sick time at the existing rate of employee contribution.

3 (e) Except as otherwise provided by subsection 484(a) of this subchapter,
4 an employer shall calculate the amount of earned sick time that an employee
5 has accrued pursuant to this section:

6 (1) as it accrues during each pay period; or

7 (2) on a quarterly basis, provided that an employee may use earned sick
8 time as he or she accrues it during each quarter.

9 §- 483. USE OF EARNED SICK TIME

10 (a) An employee may use earned sick time accrued pursuant to section 482
11 of this subchapter for any of the following reasons:

12 (1) The employee is ill or injured.

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

15 (3) The employee cares for a sick or injured parent, grandparent, spouse,
16 child, brother, sister, parent-in-law, grandchild, ~~foster child, or a person for~~
17 ~~whom the employee is primarily responsible to arrange or provide care for who~~
18 ~~is either a family member of the employee or resides with the employee or~~
19 ~~foster child, including helping that individual obtain diagnostic, preventive,~~
20 routine, or therapeutic health treatment.

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1 (4) The employee is arranging for social or legal services or obtaining
2 medical care or counseling for the employee or for the employee’s parent,
3 grandparent, spouse, child, brother, sister, parent-in-law, grandchild, foster
4 child, or a person for whom the employee is primarily responsible to arrange or
5 provide care for who is either a family member of the employee or resides with
6 the employee or foster child, who is a victim of domestic violence, sexual
7 assault, or stalking or who is relocating as the result of domestic violence,
8 sexual assault, or stalking. As used in this section, “domestic violence,”
9 “sexual assault,” and “stalking” shall have the same meaning as in 15
10 V.S.A. § 1151.

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11 (5) The employee cares for a parent, grandparent, spouse, child, brother,
12 sister, parent-in-law, grandchild, foster child, or a person for whom the
13 employee is primarily responsible to arrange or provide care for who is either a
14 family member of the employee or resides with the employee or foster child,
15 because the school or business where that individual is normally located during
16 the employee’s workday is closed for public health or safety reasons.

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17 (b) If an employee’s absence is shorter than a normal workday, the
18 employee shall use earned sick time accrued pursuant to section 482 of this
19 subchapter in the smallest time increments that the employer’s payroll system
20 uses to account for other absences or that the employer’s paid time off policy
21 permits. Nothing in this subsection shall be construed to require an employer

1 to permit an employee to use earned sick time in increments that are shorter
2 than one hour.

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3 (c) An employer may limit the amount of earned sick time accrued
4 pursuant to section 482 of this subchapter that an employee may use to:

5 (1) from January 1, 2016, 2017, until December 31, 2017, 2018, no more
6 than 24 hours of earned sick time accrued pursuant to section 482 of this
7 subchapter in a 12-month period; and

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8 (2) after December 31, 2017, 2018, no more than 40 hours of earned sick
9 time accrued pursuant to section 482 of this subchapter in a 12-month period.

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10 (d)(1) Except as otherwise provided in subsection 484(a) of this
11 subchapter, earned sick time that remains unused at the end of an annual period
12 shall be carried over to the next annual period and the employee ~~has the right~~
13 ~~to earn the balance between the unused portion and the maximum allowed~~ shall
14 continue to accrue earned sick time as provided pursuant to section 482 of this
15 subchapter. However, nothing in this subdivision shall be construed to permit
16 an employee to use more earned sick time during an annual period than any
17 limit on the use of earned sick time that is established by his or her employer
18 pursuant to subsection (c) of this section.

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19 (2) If, at an employer's discretion, an employer pays an employee for
20 unused earned sick time accrued pursuant to section 482 of this subchapter at

1 the end of an annual period, then the amount for which the employee was
2 compensated does not carry over to the next annual period.

3 (e) Upon separation from employment, an employee shall not be entitled to
4 payment for unused earned sick time accrued pursuant to section 482 of this
5 subchapter unless agreed upon by the employer.

6 (f)(1) An employee who is discharged by his or her employer after he or
7 she has completed the waiting period pursuant to subsection 482(b) of this
8 subchapter and is subsequently rehired by the same employer within 12 months
9 after separationthe discharge from employment shall begin to accrue and may
10 use earned sick time without any waiting period, but. However, the employee,
11 shall not be entitled to retain any unused earned sick time that had accrued
12 pursuant to section 482 of this subchapter before the time of separationhis or
13 her discharge, unless agreed uponto by the employer.

14 (2) An employee that voluntarily separates from employment after he or
15 she has completed the waiting period pursuant to subsection 482(b) of this
16 subchapter and is subsequently rehired by the same employer within 12 months
17 after the separation from employment shall not be entitled to accrue and use
18 earned sick time without a waiting period unless agreed to by the employer.

19 (g) An employer shall not require an employee to find a replacement for
20 absences, including absences for professional diagnostic, preventive, routine,
21 or therapeutic health care.

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1 (h) An employer may require an employee planning to take earned sick
2 time accrued pursuant to section 482 of this subchapter to:

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

5 (2) notify the employer as soon as practicable of the intent to take
6 earned sick time accrued pursuant to section 482 of this subchapter and the
7 expected duration of the employee's absence.

8 (i)(1) If an employee is absent from work for one of the reasons listed in
9 subsection (a) of this section, the employee shall not be required to use earned
10 sick time accrued pursuant to section 482 of this subchapter and the employer
11 will not be required to pay for the time that the employee was absent if the
12 employer and the employee mutually agree that either:

13 (1A) the employee will work an equivalent number of hours as the
14 number of hours for which the employee is absent during the same pay
15 period; or

16 (2B) the employee will trade hours with a second employee so that
17 the second employee works during the hours for which the employee is absent
18 and the employee works an equivalent number of hours in place of the second
19 employee during the same pay period.

20 (2) Nothing in this subsection shall be construed to prevent an employer
21 from adopting a policy that requires an employee to use earned sick time

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1 accrued pursuant to subsection 482(a) of this subchapter for an absence from
2 work for one of the reasons set forth in subsection (a) of this section.

3 (j) 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. An employer shall also notify an employee of
6 the provisions of this section at the time of the employee's hiring.

7 (k) An employee who uses earned sick time accrued pursuant to section
8 482 of this subchapter shall not diminish his or her rights under sections 472
9 and 472a of this title.

10 (l) The provisions against retaliation set forth in section 397 of this title
11 shall apply to this subchapter.

12 (m) ~~An~~(1) The Commissioner shall investigate complaints that an
13 employer ~~who violates~~ has not complied with the requirements of this section
14 shall be subject subchapter.

15 (2) If following an investigation and hearing, the Commissioner
16 determines that an employer has failed to the penalty provisions of comply
17 with the requirements of this subchapter, he or she may order appropriate
18 relief, including payment for sick days unlawfully withheld and the assessment
19 of a fine pursuant to section 345 of this title.

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1 ~~(#3) The Commissioner shall enforce this section in accordance~~
2 ~~with adopt rules to carry out the procedures established in section~~
3 ~~342 provisions of this subsection.~~

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4 § 484. COMPLIANCE WITH EARNED SICK TIME REQUIREMENT

5 (a) An employer shall be in compliance with this subchapter if either of the
6 following occurs:

7 (1) The employer offers a paid time off policy or is a party to a
8 collective bargaining agreement that provides the employee with paid time off
9 from work that:

10 (A) he or she may use for all of the reasons set forth in subsection
11 483(a) of this subchapter; and

12 (B) accrues and may be used at a rate that is equal to or greater than
13 the rate set forth in sections 482 and 483 of this subchapter.

14 (2) The employer offers a paid time off policy or is a party to a
15 collective bargaining agreement that provides the employee with at least the
16 full amount of paid time off from work required pursuant to sections 482 and
17 483 of this subchapter at the beginning of each annual period and the employee
18 may use it at any time during the annual period for the reasons set forth in
19 subsection 483(a) of this subchapter. If the employer provides an employee
20 with the full amount of paid time off at the beginning of each annual period,

1 the paid time off shall not carry over from one annual period to the next as
2 provided in subdivision 483(d)(1) of this subchapter.

3 ~~(b)~~ Nothing in this subchapter shall be construed to require an employer
4 that satisfies the requirements of subsection (a) of this section to provide
5 additional earned sick time to an employee that chooses to use paid time off
6 that could be used for the reasons set forth in subdivisions 483(a)(1)–(5) of this
7 subchapter for a different purpose.

8 ~~(c)~~ Nothing in this subchapter shall be construed to prevent an employer
9 from providing a paid time off policy or agreeing to a collective bargaining
10 agreement that provides a paid time off policy that is more generous than the
11 earned sick time provided by this subchapter.

12 ~~(ed)(1)~~ Nothing in this subchapter shall be construed to diminish an
13 employer's obligation to comply with any collective bargaining agreement or
14 paid time off policy that provides greater earned sick time rights than the rights
15 provided by this subchapter.

16 ~~(d) A2)~~ Nothing in this subchapter shall be construed to preempt or
17 override the terms of a collective bargaining agreement ~~or~~ that is in effect
18 before January 1, 2017.

19 ~~(e)~~ A paid time off policy may not diminish the rights provided by this
20 subchapter.

21 §- 485. SEVERABILITY OF PROVISIONS

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1 If any provision of this subchapter or the application of such provision to
2 any person or circumstances shall be held invalid, the remainder of the
3 subchapter and the application of such provisions to persons or circumstances
4 other than those as to which it is held invalid shall not be affected thereby.

5 § 486. NEW EMPLOYER EXEMPTION

6 (a) Notwithstanding any provision of this subchapter to the contrary, new
7 employers shall not be subject to the provisions of this subchapter for a period
8 of one year after the employer hires its first employee.

9 (b) For purposes of enforcement under subsections 483(l) and (m) of this
10 subchapter, an employer shall be presumed to be subject to the provisions of
11 this subchapter unless the employer proves that a period of no more than one
12 year elapsed between the date on which the employer hired its first employee
13 and the date on which the employer is alleged to have violated the provisions
14 of this subchapter.

15 (c) No employer shall transfer an employee to a second employer with
16 whom there is, at the time of the transfer, substantially common ownership,
17 management, or control for the purposes of either employer claiming an
18 exemption pursuant to subsection (a) of this section.

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1 Sec. 5. 21 V.S.A. § 345 is amended to read:

2 § 345. NONPAYMENT OF WAGES AND BENEFITS

3 (a) Each employer who violates sections ~~342 and 343~~ 342, 343, 482, and
4 483 of this title shall be fined not more than \$5,000.00. Where the employer is
5 a corporation, the president or other officers who have control of the payment
6 operations of the corporation shall be considered employers and liable to the
7 employee for actual wages due when the officer has willfully and without good
8 cause participated in knowing violations of this chapter.

9 * * *

10 Sec. 6. DEPARTMENT OF LABOR REPORT

11 The Department of Labor shall, on or before January 15, 2017, report to the
12 House Committee on General, Housing and Military Affairs and the Senate
13 Committee on Economic Development, Housing and General Affairs regarding
14 the number of inquiries and complaints submitted to the Department in relation
15 to this act and the number of investigations and enforcement actions
16 undertaken by the Department in relation to this act during the first year after
17 its effective date.

18 Sec. 7. EFFECTIVE DATE

19 This act shall take effect on January 1, ~~2016~~2017.

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(Committee vote: _____)

Senator _____

FOR THE COMMITTEE

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