

1 TO THE HONORABLE SENATE:

2 The Committee on Finance to which was referred House Bill No. 306
3 entitled “An act relating to unemployment compensation” respectfully reports
4 that it has considered the same and recommends that the Senate propose to the
5 House that the bill be amended by striking out all after the enacting clause and
6 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 and order
10 for collection. If the Commissioner is unable to settle the matter, the
11 Commissioner shall issue a written determination and order for collection,
12 which stating that wages are due and an order for collection. The written
13 determination shall specify the facts and the conclusions upon which the
14 determination is based. The Department shall collect from the employer the
15 amounts due and remit them to the employee.

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

1 (2) Notice of the determination and, if applicable, the order for
2 collection to the employer shall be provided to all interested parties by certified
3 mail or service.

4 (3) The Department shall collect from the employer the amounts due
5 and remit them to the employee.

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

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

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1 Sec. 2. 21 V.S.A. § 1329 is amended to read:

2 § 1329. COLLECTION OF UNPAID CONTRIBUTIONS; SUIT

3 * * *

4 (e) No action shall be commenced for the collection of contributions,
5 interest and penalties under this chapter more than ~~three~~ six years after the date
6 on which the contributions became due and payable, unless prior to the
7 expiration of the ~~three-year~~ six-year period:

8 (1) ~~An~~ an assessment proceeding has been instituted under the
9 provisions of section 1330 of this title; or

10 (2) ~~A~~ a civil action has been instituted under subsection (b) of this
11 section; or

12 (3) ~~A~~ a lien has been created under section 1336 of this title.

13 (f) The provisions of subsection (e) of this section shall not apply where an
14 employer by willful failure or refusal to file a report with the ~~commissioner~~
15 Commissioner or to include in any report all wages which he or she has paid,
16 or otherwise has attempted to avoid or reduce liability for the payment of
17 contributions.

18 Sec. 3. 21 V.S.A. § 1330 is amended to read:

19 § 1330. ASSESSMENT PROVIDED

20 (a) When any employer fails to pay any contributions or payments required
21 under this chapter, the ~~commissioner~~ Commissioner shall make an assessment

1 of contributions against ~~such~~ the employer together with interest and penalty
2 thereon. After making the assessment, ~~due notice shall be given thereof, by~~
3 ~~ordinary or certified mail, to the employer~~ the Commissioner shall provide the
4 employer with notice of the assessment by ordinary or certified mail and the
5 assessment shall be final unless the employer petitions for a hearing on ~~such~~
6 the assessment within the time hereinafter specified by section 1331 of this
7 chapter.

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

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

17 § 1347. NONDISCLOSURE OR MISREPRESENTATION

18 (a) Any person who fails, without good cause, to make reasonable effort to
19 secure suitable work when directed to do so by the employment office or the
20 Commissioner and has received any amount as benefits under this chapter with
21 respect to weeks for which the person is determined to be ineligible for such

1 failure, and any person who by nondisclosure or misrepresentation by him or
2 her, or by another, of a material fact (irrespective of whether such
3 nondisclosure or misrepresentation was known or fraudulent) has received any
4 amount as benefits under this chapter while any conditions for the receipt of
5 benefits imposed by this chapter were not fulfilled in his or her case or while
6 he or she was disqualified from receiving benefits, shall be liable for such
7 amount. Notice of determination in such cases shall specify that the person is
8 liable to repay to the Fund the amount of overpaid benefits, the basis of the
9 overpayment, and the week or weeks for which such benefits were paid. The
10 determination shall be made within ~~three~~ six years from the date of such
11 overpayment.

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

1 within one year from the date of receipt of the remuneration, whichever period
2 is longer.

3 * * *

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

5 § 1321. CONTRIBUTIONS; TAXABLE WAGE BASE CHANGES

6 * * *

7 (c)(1) Financing benefits paid to employees of nonprofit organizations.

8 Benefits paid to employees of nonprofit organizations shall be financed in
9 accordance with the provisions of this subsection. ~~For the purposes of~~ As used
10 in this subsection, a nonprofit organization is an organization (or group of
11 organizations) described in Section 501(c)(3) of the U.S. Internal Revenue
12 Code which is exempt from income tax under Section 501(a) of such code.

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

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(C) Any nonprofit organization which makes an election in accordance with subdivisions (c)(2)(A) and (B) of this section will continue to be liable for payments in lieu of contributions until ~~it files~~ its election is terminated by the Commissioner. An employer shall file with the Commissioner a written notice ~~terminating its election~~ requesting that its election be terminated not later than 30 days prior to the beginning of the calendar year for which such termination ~~shall~~ would first be effective. The Commissioner, in accordance with rules adopted by the Board, shall determine whether the employer is eligible to terminate its election based on the employer's anticipated contributions to the Unemployment Trust Fund and any additional liability expected to be incurred by the Fund as a result of the proposed termination. The Commissioner's determinations shall be subject to reconsideration and to appeal and review in accordance with the provisions of section 1337a of this title.

* * *

(e) Any municipality, any State institution of higher education, and any political or governmental subdivisions or instrumentalities of the State shall pay contributions unless it elects to pay to the Commissioner for the Unemployment ~~Compensation~~ Trust Fund, an amount equal to the amount of benefits paid, including the full amount of extended benefits paid, attributable

1 to service by individuals in the employ of these entities. Subsections (a) and
2 (b) and subdivisions (3)(C) through (3)(F), inclusive, and subdivisions (4)
3 through (6), inclusive, of subsection (c) of this section as they apply to
4 nonprofit organizations shall also apply to the entities designated in this
5 subsection, except that these entities shall be liable for all benefits paid,
6 including the full amount of extended benefits paid, attributable to service in
7 the employ of these entities.

8 * * *

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

1 appeal and review in accordance with the provisions of section 1337a of this
2 title.

3 * * *

4 Sec. 6. STUDY; REPORT

5 The Commissioner of Labor shall study whether reimbursable employers
6 pursuant to 21 V.S.A. § 1321(c) should be required to procure and maintain a
7 bond, escrow account, or other surety to fund unemployment compensation
8 benefit liability in the event the employer dissolves or ceases to operate while
9 liability still exists. The Commissioner shall report to the House Committee
10 on Commerce and Economic Development and the Senate Committee on
11 Finance regarding the findings of the study and any recommendations for
12 statutory changes on or before November 15, 2016.

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

14 § 1358. UNEMPLOYMENT ~~COMPENSATION~~ TRUST FUND;
15 ESTABLISHMENT AND CONTROL

16 There is hereby established as a special fund, to be kept separate and apart
17 from all other public ~~moneys monies~~ or funds of this ~~state~~ State, an
18 ~~unemployment compensation fund~~ Unemployment Trust Fund, which shall be
19 administered by the ~~commissioner~~ Commissioner exclusively for the purposes
20 of this chapter. This ~~fund~~ Fund shall consist of (1) all contributions collected
21 under this chapter; (2) interest earned upon any ~~moneys monies~~ in the ~~fund~~

1 Fund; (3) any property or securities acquired through the use of ~~moneys~~
2 monies belonging to the ~~fund~~ Fund; (4) all earnings of such property or
3 securities; (5) all money credited to this ~~state's~~ State's account in the
4 ~~unemployment trust fund~~ federal Unemployment Trust Fund pursuant to
5 ~~section 903 of~~ the Social Security Act, 42 U.S.C. § 1103 as amended; and (6)
6 all other ~~moneys~~ monies received for the ~~fund~~ Fund from any other source. All
7 ~~moneys~~ monies in the ~~fund~~ Fund shall be mingled and undivided.

8 Sec. 8. STATUTORY REVISION

9 (a) When preparing the Vermont Statutes Annotated for publication, the
10 Office of Legislative Council shall make the following revisions throughout
11 21 V.S.A. chapter 17 as needed for consistency with Sec. 7 of this act
12 (amending 21 V.S.A. § 1358), as long as the revisions have no other effect on
13 the meaning of the affected statutes:

14 (1) replace “unemployment compensation fund” with “Unemployment
15 Trust Fund”;

16 (2) replace “unemployment fund” with “Unemployment Trust
17 Fund”; and

18 (3) replace “unemployment compensation trust fund” with
19 “Unemployment Trust Fund.”

20 (b) When preparing the Vermont Statutes Annotated for publication, the
21 Office of Legislative Council shall replace the word “moneys” wherever it

1 appears in Title 21 of the Vermont Statutes Annotated with the word “monies,”
2 as long as the revisions have no other effect on the meaning of the affected
3 statutes

4 **Sec. 9. NOTICE OF PROJECTED REDUCTIONS IN EMPLOYER**

5 **CONTRIBUTIONS**

6 (a) The Commissioner of Labor shall include a plain language statement
7 describing the projected reductions in the statewide employer contributions to
8 the Unemployment Trust Fund for calendar years 2018 through 2022 with the
9 unemployment insurance contribution rate notice sent in June 2016 to each
10 employer subject to 21 V.S.A. chapter 17.

11 (b) The notice shall include the following statement:

12 “In order to help Vermont employers plan for future business activities,
13 the Vermont Department of Labor is providing information regarding projected
14 decreases in statewide employer contributions to the Unemployment Trust
15 Fund during calendar years 2018 through 2022. In 2018, the projected total
16 amount of employer contributions is expected to drop to \$126.6 million, a
17 decrease of approximately \$14.4 million from 2017. In 2019, the projected
18 total amount of employer contributions is expected to decrease by a further
19 \$21.5 million to \$105.1 million. In 2020, the projected total amount of
20 employer contributions is expected to decrease by a further \$3.2 million to
21 \$101.9 million. In 2021, the projected total amount of employer contributions

1 is expected to decrease by a further \$23.1 million to \$78.8 million. Finally, in
2 2022, the projected total amount of employer contributions is expected to
3 decrease by a further \$7.5 million to \$71.3 million.

4 This projected decrease would represent a roughly 49% reduction from
5 the current amount of employer contributions to the Unemployment Trust
6 Fund. These projected reductions in employer contributions are a result of the
7 Unemployment Trust Fund’s recovery and return to good financial health
8 following legislative reforms that were enacted in 2010.

9 The impact of the projected reductions on individual employers will vary
10 based on each employer’s experience and unique circumstances, and changes
11 to the economy could have an impact on the estimates contained in this
12 notice.”

13 **Sec. 10. EFFECTIVE DATES**

14 (a) This section and Sec. 9 shall take effect on passage.

15 (b) The remaining sections shall take effect on July 1, 2016.

16
17
18 (Committee vote: _____)

19 _____

20 Senator _____

21 FOR THE COMMITTEE