

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.

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

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

14 (5) “Employee” means a person who, in consideration of direct or
15 indirect gain or profit, is employed by an employer for an average of no less
16 than 18 hours per week during a year. However, the term “employee” shall not
17 include:

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

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

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

21 (ii) in a job scheduled to last 20 weeks or fewer.

1 (C) An individual that is employed by the State and is exempt or
2 excluded from the State classified service pursuant to 3 V.S.A. § 311, but not
3 an individual that is employed by the State in a temporary capacity pursuant to
4 3 V.S.A. § 331.

5 (D) An employee of a health care facility as defined in 18 V.S.A.
6 § 9432(8) or a facility as defined in 33 V.S.A. § 7102(2) if the employee only
7 works on a per diem or intermittent basis.

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

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

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

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

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

18 (G) An individual that is either:

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

1 (ii) an executive officer, manager, or member of a corporation or a
2 limited liability company for whom the Commissioner has approved an
3 exclusion from the provisions of chapter 9 of this title pursuant to
4 subdivision 601(14)(H) of this title.

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

8 (A) annual leave;

9 (B) combined time off;

10 (C) vacation leave;

11 (D) personal leave;

12 (E) sick leave; or

13 (F) any similar type of leave.

14 § 482. EARNED SICK TIME

15 (a) An employee shall accrue not less than one hour of earned sick time for
16 every 52 hours worked.

17 (b) An employer may require a waiting period for new hires of up to one
18 year. During this waiting period, an employee shall accrue earned sick time
19 pursuant to this chapter, but shall not be permitted to use the earned sick time
20 until after he or she has completed the waiting period.

21 (c) An employer may:

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

3 (A) from January 1, 2017 until December 31, 2018, a maximum of
4 24 hours in a 12-month period; and

5 (B) after December 31, 2018, a maximum of 40 hours in a 12-month
6 period; or

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

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

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

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

16 (2) Group insurance benefits shall continue during an employee's use of
17 earned sick time at the same level and conditions that coverage would be
18 provided as for normal work hours. The employer may require that the
19 employee contribute to the cost of the benefits during the use of earned sick
20 time at the existing rate of employee contribution.

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

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

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

7 § 483. USE OF EARNED SICK TIME

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

10 (1) The employee is ill or injured.

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

13 (3) The employee cares for a sick or injured parent, grandparent, spouse,
14 child, brother, sister, parent-in-law, grandchild, or foster child, including
15 helping that individual obtain diagnostic, preventive, routine, or therapeutic
16 health treatment.

17 (4) The employee is arranging for social or legal services or obtaining
18 medical care or counseling for the employee or for the employee's parent,
19 grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster
20 child, who is a victim of domestic violence, sexual assault, or stalking or who
21 is relocating as the result of domestic violence, sexual assault, or stalking. As

1 used in this section, “domestic violence,” “sexual assault,” and “stalking” shall
2 have the same meanings as in 15 V.S.A. § 1151.

3 (5) The employee cares for a parent, grandparent, spouse, child, brother,
4 sister, parent-in-law, grandchild, or foster child, because the school or business
5 where that individual is normally located during the employee’s workday is
6 closed for public health or safety reasons.

7 (b) If an employee’s absence is shorter than a normal workday, the
8 employee shall use earned sick time accrued pursuant to section 482 of this
9 subchapter in the smallest time increments that the employer’s payroll system
10 uses to account for other absences or that the employer’s paid time off policy
11 permits. Nothing in this subsection shall be construed to require an employer
12 to permit an employee to use earned sick time in increments that are shorter
13 than one hour.

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

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

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

1 (d)(1) Except as otherwise provided in subsection 484(a) of this
2 subchapter, earned sick time that remains unused at the end of an annual period
3 shall be carried over to the next annual period and the employee shall continue
4 to accrue earned sick time as provided pursuant to section 482 of this
5 subchapter. However, nothing in this subdivision shall be construed to permit
6 an employee to use more earned sick time during an annual period than any
7 limit on the use of earned sick time that is established by his or her employer
8 pursuant to subsection (c) of this section.

9 (2) If, at an employer's discretion, an employer pays an employee for
10 unused earned sick time accrued pursuant to section 482 of this subchapter at
11 the end of an annual period, then the amount for which the employee was
12 compensated does not carry over to the next annual period.

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

16 (f)(1) An employee who is discharged by his or her employer after he or
17 she has completed the waiting period pursuant to subsection 482(b) of this
18 subchapter and is subsequently rehired by the same employer within 12 months
19 after the discharge from employment shall begin to accrue and may use earned
20 sick time without any waiting period. However, the employee shall not be

1 entitled to retain any earned sick time that accrued before the time of his or her
2 discharge unless agreed to by the employer.

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

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

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

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

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

18 (i)(1) If an employee is absent from work for one of the reasons listed in
19 subsection (a) of this section, the employee shall not be required to use earned
20 sick time accrued pursuant to section 482 of this subchapter and the employer

1 will not be required to pay for the time that the employee was absent if the
2 employer and the employee mutually agree that either:

3 (A) the employee will work an equivalent number of hours as the
4 number of hours for which the employee is absent during the same pay
5 period; or

6 (B) the employee will trade hours with a second employee so that the
7 second employee works during the hours for which the employee is absent and
8 the employee works an equivalent number of hours in place of the second
9 employee during the same pay period.

10 (2) Nothing in this subsection shall be construed to prevent an employer
11 from adopting a policy that requires an employee to use earned sick time
12 accrued pursuant to subsection 482(a) of this subchapter for an absence from
13 work for one of the reasons set forth in subsection (a) of this section.

14 (j) An employer shall post notice of the provisions of this section in a form
15 provided by the Commissioner in a place conspicuous to employees at the
16 employer's place of business. An employer shall also notify an employee of
17 the provisions of this section at the time of the employee's hiring.

18 (k) An employee who uses earned sick time accrued pursuant to section
19 482 of this subchapter shall not diminish his or her rights under sections 472
20 and 472a of this title.

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

3 (m)(1) The Commissioner shall investigate complaints that an employer
4 has not complied with the requirements of this subchapter.

5 (2) If following an investigation and hearing, the Commissioner
6 determines that an employer has failed to comply with the requirements of this
7 subchapter, he or she may order appropriate relief, including payment for sick
8 days unlawfully withheld and the assessment of a fine pursuant to section 345
9 of this title.

10 (3) The Commissioner shall adopt rules to carry out the provisions of
11 this subsection.

12 § 484. COMPLIANCE WITH EARNED SICK TIME REQUIREMENT

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

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

18 (A) he or she may use for all of the reasons set forth in subsection
19 483(a) of this subchapter; and

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

1 (2) The employer offers a paid time off policy or is a party to a
2 collective bargaining agreement that provides the employee with at least the
3 full amount of paid time off from work required pursuant to sections 482 and
4 483 of this subchapter at the beginning of each annual period and the employee
5 may use it at any time during the annual period for the reasons set forth in
6 subsection 483(a) of this subchapter. If the employer provides an employee
7 with the full amount of paid time off at the beginning of each annual period,
8 the paid time off shall not carry over from one annual period to the next as
9 provided in subdivision 483(d)(1) of this subchapter.

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

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

19 (d)(1) Nothing in this subchapter shall be construed to diminish an
20 employer's obligation to comply with any collective bargaining agreement or

1 paid time off policy that provides greater earned sick time rights than the rights
2 provided by this subchapter.

3 (2) Nothing in this subchapter shall be construed to preempt or
4 override the terms of a collective bargaining agreement that is in effect before
5 January 1, 2017.

6 (e) A paid time off policy may not diminish the rights provided by this
7 subchapter.

8 § 485. SEVERABILITY OF PROVISIONS

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

13 § 486. NEW EMPLOYER EXEMPTION

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

17 (b) For purposes of enforcement under subsections 483(l) and (m) of this
18 subchapter, an employer shall be presumed to be subject to the provisions of
19 this subchapter unless the employer proves that a period of no more than one
20 year elapsed between the date on which the employer hired its first employee

1 and the date on which the employer is alleged to have violated the provisions
2 of this subchapter.

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

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

8 § 345. NONPAYMENT OF WAGES AND BENEFITS

9 (a) Each employer who violates sections ~~342 and 343~~ 342, 343, 482, and
10 483 of this title shall be fined not more than \$5,000.00. Where the employer is
11 a corporation, the president or other officers who have control of the payment
12 operations of the corporation shall be considered employers and liable to the
13 employee for actual wages due when the officer has willfully and without good
14 cause participated in knowing violations of this chapter.

15 * * *

16 Sec. 6. DEPARTMENT OF LABOR REPORT

17 The Department of Labor shall, on or before January 15, 2017, report to the
18 House Committee on General, Housing and Military Affairs and the Senate
19 Committee on Economic Development, Housing and General Affairs regarding
20 the number of inquiries and complaints submitted to the Department in relation
21 to this act and the number of investigations and enforcement actions

1 undertaken by the Department in relation to this act during the first year after
2 its effective date.

3 Sec. 7. EFFECTIVE DATE

4 This act shall take effect on January 1, 2017.

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7 (Committee vote: _____)

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Senator _____

FOR THE COMMITTEE

