

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 (H) An individual that:

6 (i) works on a per diem or intermittent basis;

7 (ii) works only when he or she indicates that he or she is available
8 to work;

9 (iii) is under no obligation to work for the employer offering the
10 work; and

11 (iv) has no expectation of continuing employment with the
12 employer.

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

16 (A) annual leave;

17 (B) combined time off;

18 (C) vacation leave;

19 (D) personal leave;

20 (E) sick leave; or

21 (F) any similar type of leave.

1 § 482. EARNED SICK TIME

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

4 (b) An employer may require a waiting period for newly hired employees
5 of up to one year. During this waiting period, an employee shall accrue earned
6 sick time pursuant to this subchapter, but shall not be permitted to use the
7 earned sick time until after he or she has completed the waiting period.

8 (c) An employer may:

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

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

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

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

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

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

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

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

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

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

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

14 § 483. USE OF EARNED SICK TIME

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

17 (1) The employee is ill or injured.

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

20 (3) The employee cares for a sick or injured parent, grandparent, spouse,
21 child, brother, sister, parent-in-law, grandchild, or foster child, including

1 helping that individual obtain diagnostic, preventive, routine, or therapeutic
2 health treatment.

3 (4) The employee is arranging for social or legal services or obtaining
4 medical care or counseling for the employee or for the employee’s parent,
5 grandparent, spouse, child, brother, sister, parent-in-law, grandchild, or foster
6 child, who is a victim of domestic violence, sexual assault, or stalking or who
7 is relocating as the result of domestic violence, sexual assault, or stalking. As
8 used in this section, “domestic violence,” “sexual assault,” and “stalking” shall
9 have the same meanings as in 15 V.S.A. § 1151.

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

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

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

3 (1) from January 1, 2017 until December 31, 2018, no more than 24
4 hours in a 12-month period; and

5 (2) after December 31, 2018, no more than 40 hours in a 12-month
6 period.

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

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

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

1 (f)(1) An employee who is discharged by his or her employer after he or
2 she has completed a waiting period required pursuant to subsection 482(b) of
3 this subchapter and is subsequently rehired by the same employer within 12
4 months after the discharge from employment shall begin to accrue and may use
5 earned sick time without a waiting period. However, the employee shall not be
6 entitled to retain any earned sick time that accrued before the time of his or her
7 discharge unless agreed to by the employer.

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

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

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

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

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

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

9 (A) the employee will work an equivalent number of hours as the
10 number of hours for which the employee is absent during the same pay
11 period; or

12 (B) the employee will trade hours with a second employee so that the
13 second employee works during the hours for which the employee is absent and
14 the employee works an equivalent number of hours in place of the second
15 employee during the same pay period.

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

20 (j) An employer shall post notice of the provisions of this section in a form
21 provided by the Commissioner in a place conspicuous to employees at the

1 employer's place of business. An employer shall also notify an employee of
2 the provisions of this section at the time of the employee's hiring.

3 (k) An employee who uses earned sick time accrued pursuant to section
4 482 of this subchapter shall not diminish his or her rights under sections 472
5 and 472a of this title.

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

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

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

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

17 § 484. COMPLIANCE WITH EARNED SICK TIME REQUIREMENT

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

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

4 (A) he or she may use for all of the reasons set forth in subsection
5 483(a) of this subchapter; and

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

8 (2) The employer offers a paid time off policy or is a party to a
9 collective bargaining agreement that provides the employee with at least the
10 full amount of paid time off from work required pursuant to sections 482 and
11 483 of this subchapter at the beginning of each annual period and the employee
12 may use it at any time during the annual period for the reasons set forth in
13 subsection 483(a) of this subchapter. If the employer provides an employee
14 with the full amount of paid time off at the beginning of each annual period,
15 the paid time off shall not carry over from one annual period to the next as
16 provided in subdivision 483(d)(1) of this subchapter.

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

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

5 (d)(1) Nothing in this subchapter shall be construed to diminish an
6 employer's obligation to comply with any collective bargaining agreement or
7 paid time off policy that provides greater earned sick time rights than the rights
8 provided by this subchapter.

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

12 (e) A collective bargaining agreement or paid time off policy may not
13 diminish the rights provided by this subchapter.

14 § 485. SEVERABILITY OF PROVISIONS

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

1 § 486. NEW EMPLOYER EXEMPTION

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

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

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

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

16 § 345. NONPAYMENT OF WAGES AND BENEFITS

17 (a) Each employer who violates sections ~~342 and 343~~ 342, 343, 482, and
18 483 of this title shall be fined not more than \$5,000.00. Where the employer is
19 a corporation, the president or other officers who have control of the payment
20 operations of the corporation shall be considered employers and liable to the

1 employee for actual wages due when the officer has willfully and without good
2 cause participated in knowing violations of this chapter.

3 * * *

4 Sec. 6. DEPARTMENT OF LABOR REPORT

5 The Department of Labor shall, on or before January 15, 2019, report to the
6 House Committee on General, Housing and Military Affairs and the Senate
7 Committee on Economic Development, Housing and General Affairs regarding
8 the number of inquiries and complaints submitted to the Department in relation
9 to this act and the number of investigations and enforcement actions
10 undertaken by the Department in relation to this act during the first two years
11 after its effective date.

12 Sec. 7. EFFECTIVE DATE

13 (a) This act shall take effect on January 1, 2017.

14 (b) An employer may require a waiting period of up to one year for its
15 existing employees on January 1, 2017. The waiting period pursuant to this
16 subsection shall begin on January 1, 2017 and shall end no later than
17 December 31, 2017. During this waiting period, an employee shall accrue
18 earned sick time pursuant to this subchapter, but shall not be permitted to use
19 the earned sick time until after he or she has completed the waiting period.

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1 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE