

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred Senate Bill No. 10 entitled “An act relating to extending certain
4 unemployment insurance provisions related to COVID-19” respectfully reports
5 that it has considered the same and recommends that the House propose to the
6 Senate that the bill be amended by striking out all after the enacting clause and
7 inserting in lieu thereof the following:

8 * * * Experience Rating Relief for Calendar Year 2020 * * *

9 Sec. 1. 21 V.S.A. § 1325 is amended to read:

10 § 1325. EMPLOYERS’ EXPERIENCE-RATING RECORDS;

11 DISCLOSURE TO SUCCESSOR ENTITY

12 (a)(1) The Commissioner shall maintain an experience-rating record for
13 each employer. Benefits paid shall be charged against the experience-rating
14 record of each subject employer who provided base-period wages to the
15 eligible individual. Each subject employer’s experience-rating charge shall
16 bear the same ratio to total benefits paid as the total base-period wages paid by
17 that employer bear to the total base-period wages paid to the individual by all
18 base-period employers. The experience-rating record of an individual subject
19 base-period employer shall not be charged for benefits paid to an individual
20 under any of the following conditions:

21 * * *

1 (G) ~~The~~ During calendar year 2020, the individual voluntarily
2 separated from that employer as provided by subdivision 1344(a)(2)(A) of this
3 chapter for one of the following reasons:

4 * * *

5 (3)(A) Subject to the provisions of ~~subdivision~~ subdivisions (B) and (C)
6 of this subdivision (a)(3), an employer shall be relieved of charges for benefits
7 paid to an individual during calendar year 2020 for a period of up to eight
8 weeks with respect to benefits paid because:

9 (i) the employer temporarily ceased operation, either partially or
10 completely, at the individual’s place of employment in response to a request
11 from a public health authority with jurisdiction that the employer cease
12 operations because of COVID-19, in response to an emergency order or
13 directive issued by the Governor or the President related to COVID-19, or
14 because the employer voluntarily ceased operations due to the actual exposure
15 of workers at that place of employment to COVID-19;

16 (ii) the individual becomes unemployed as a direct result of a
17 state of emergency declared by the Governor or the President in relation to
18 COVID-19 or an order or directive issued by the Governor or President in
19 relation to COVID-19, including through a change or reduction in the
20 employer’s operation at the individual’s place of employment that is a direct
21 result of such a state of emergency, order, or directive; or

1 (iii) the employer has temporarily laid off the individual ~~has been~~
2 ~~recommended or requested~~ based on a recommendation or request by a
3 medical professional or a public health authority with jurisdiction ~~to~~ that the
4 individual be isolated or quarantined as a result of COVID-19, regardless of
5 whether the individual has been diagnosed with COVID-19.

6 (B)(i) ~~As~~ Unless extended by the Commissioner pursuant to
7 subdivision (C) of this subdivision (a)(3), an employer shall only be eligible
8 ~~for relief~~ be relieved of charges for up to eight weeks of benefits paid during
9 calendar year 2020 under the provisions of this subdivision (a)(3) ~~if the~~
10 ~~employer rehires or offers to rehire the individual within a reasonable period of~~
11 ~~time after the employer resumes operations at the individual's place of~~
12 ~~employment, as determined by the Commissioner, or upon the completion of~~
13 ~~the individual's period of isolation or quarantine~~ unless the Commissioner
14 determines that:

15 (I) the employee was not separated from employment for one
16 of the reasons set forth in subdivision (A) of this subdivision (a)(3); or

17 (II) the reason for the individual's separation from employment
18 set forth in subdivision (A) of this subdivision (a)(3) no longer exists and the
19 employer has failed to rehire or offer to rehire the individual without good
20 cause.

1 (ii) If the Commissioner has cause to believe or receives an
2 allegation or other information indicating that an employer may not be entitled
3 to relief from charges pursuant to this subdivision (a)(3), the Commissioner
4 shall examine the employer’s records and any other documents and
5 information necessary to determine if the employer is entitled to relief from
6 charges pursuant to this subdivision (a)(3).

7 (C) The Commissioner may extend the period for which an employer
8 shall be relieved of charges for benefits paid to employees pursuant to
9 subdivision (A)(i) of this subdivision (a)(3) by an amount that the
10 Commissioner determines to be appropriate in light of the terms of any
11 applicable request from a local health official or the Commissioner of Health
12 or any applicable emergency order or directive issued by the Governor or the
13 President and any other relevant conditions or factors.

14 * * *

15 * * * Experience Rating Relief for Calendar Year 2021 * * *

16 **Sec. 2. RELIEF FROM COVID-19-RELATED UNEMPLOYMENT**
17 **BENEFIT CHARGES FOR CALENDAR YEAR 2021**

18 (a) For calendar year 2021, an employer shall be relieved from charges
19 against its unemployment insurance experience rating under 21 V.S.A. § 1325
20 for benefits paid because:

1 (1)(A) the individual voluntarily separated from employment with the
2 employer for one of the reasons set forth in 21 V.S.A. § 1344(a)(2)(A)(ii)–(vi);

3 (B) the employer temporarily ceased operation, either partially or
4 completely, at the individual’s place of employment in response to a request
5 from a public health authority with jurisdiction that the employer cease
6 operations because of COVID-19, in response to an emergency order or
7 directive issued by the Governor or the President related to COVID-19, or
8 because the employer voluntarily ceased operations due to the actual exposure
9 of workers at that place of employment to COVID-19;

10 (C) the individual became unemployed as a direct result of a state of
11 emergency declared by the Governor or the President in relation to COVID-19
12 or an order or directive issued by the Governor or President in relation to
13 COVID-19, including through a change or reduction in the employer’s
14 operation at the individual’s place of employment that was a direct result of
15 such a state of emergency, order, or directive; or

16 (D) the employer temporarily laid off the individual based on a
17 recommendation or request by a medical professional or a public health
18 authority with jurisdiction that the individual be isolated or quarantined as a
19 result of COVID-19, regardless of whether the individual was diagnosed with
20 COVID-19; and

1 (2)(A) the employer rehired or offered to rehire the employee within a
2 reasonable time, not to exceed 30 days after the reason for the individual's
3 separation from employment set forth in subdivision (1) of this subsection (a)
4 no longer exists; or

5 (B) the employer demonstrates to the satisfaction of the
6 Commissioner that it had good cause for failing to rehire or offer to rehire the
7 employee within the time period set forth in subdivision (A) of this subdivision
8 (a)(2).

9 (b) On or before July 1, 2021, the Commissioner of Labor shall adopt
10 procedures and an application form for employers to apply for relief from
11 charges pursuant to subsection (a) of this section.

12 (c) The Commissioner shall not be required to initiate rulemaking pursuant
13 to 3 V.S.A. § 831(c) in relation to any procedures adopted under subsection (b)
14 of this section.

15 (d) On or before May 15, 2021, the Commissioner shall:

16 (1) submit to the House Committee on Commerce and Economic
17 Development and the Senate Committee on Economic Development, Housing
18 and General Affairs a report summarizing the procedures and application form
19 to be adopted pursuant to subsection (b) of this section; and

1 (2) commence a public outreach campaign to notify employers and
2 employees of the requirements and procedures to obtain relief from charges
3 under this section.

4 * * * Extension of Unemployment Insurance-Related Sunset

5 from 2020 Acts and Resolves No. 91 * * *

6 Sec. 3. 2020 Acts and Resolves No. 91, Sec. 38(3) is amended to read:

7 (3) Secs. 32 and 33 shall take effect on ~~March 31, 2021~~ the first day of
8 the calendar quarter following the calendar quarter in which the state of
9 emergency declared in response to COVID-19 pursuant to Executive Order 01-
10 20 is terminated, provided that if the state of emergency is terminated within
11 the final 30 days of a calendar quarter, Secs. 32 and 33 shall take effect on the
12 first day of the second calendar quarter following the calendar quarter in which
13 the state of emergency is terminated.

14 * * * Implementation of Continued Assistance Act Provisions * * *

15 Sec. 4. TEMPORARY SUSPENSION OF CERTAIN REQUIREMENTS

16 FOR TRIGGERING AN EXTENDED BENEFIT PERIOD

17 For purposes of determining whether the State is in an extended benefit
18 period during the period from November 1, 2020 through December 31, 2021,
19 the Commissioner shall disregard the requirement in 21 V.S.A. § 1421 that no
20 extended benefit period may begin before the 14th week following the end of a
21 prior extended benefit period.

*** Unemployment Insurance Benefits ***

Sec. 5. 21 V.S.A. § 1338 is amended to read:

§ 1338. WEEKLY BENEFITS

(f)(1) The maximum weekly benefit amount shall be \$425.00. ~~When the State Unemployment Compensation Fund has a positive balance and all advances made to the State Unemployment Compensation Fund pursuant to Title XII of the Social Security Act have been repaid as of December 31 of the last completed calendar year, on the first day of the first calendar week of July, the maximum weekly benefit amount shall be adjusted by a percentage equal to the percentage change during the preceding calendar year in the State average weekly wage as determined by subsection (g) of this section. When the unemployment contribution rate schedule established by subsection 1326(e) of this title is at schedule III, the maximum weekly benefit amount shall be annually adjusted on the first day of the first calendar week in July to an amount equal to 57 percent of the State annual average weekly wage as determined by subsection (g) of this section.~~

(2) Notwithstanding any provision of subdivision (1) of this subsection to the contrary:

1 (A) The maximum weekly benefit amount shall not increase in any
2 year that advances made to the State Unemployment Compensation Fund
3 pursuant to Title XII of the Social Security Act, as amended, remain unpaid.

4 (B) The maximum weekly benefit amount shall not decrease.

5 * * *

6 * * * Unemployment Insurance Contribution Relief * * *

7 Sec. 6. 21 V.S.A. § 1326 is amended to read:

8 § 1326. RATE BASED ON BENEFIT EXPERIENCE

9 * * *

10 (d) The Commissioner shall compute a current fund ratio, and a highest
11 benefit cost rate, as follows:

12 (1) ~~the~~ The current fund ratio shall be determined by dividing the
13 available balance of the Unemployment Compensation Fund on December 31
14 of the preceding calendar year by the total wages paid for employment during
15 ~~the said~~ that calendar year as reported by employers by the following
16 March 31~~;~~;

17 (2)(A) ~~the~~ The highest benefit cost rate shall be determined by dividing
18 the highest amount of benefit payments made during a consecutive ~~12-month~~
19 12-month period which that ended within the ~~10-year~~ 10-year period ended
20 with ending on the preceding December 31, by the total wages paid during the

1 four calendar quarter periods ~~which~~ that ended within ~~such 12-month~~ that 12-
2 month period.

3 (B) Notwithstanding any provision of subdivision (A) of this
4 subdivision (d)(2) to the contrary, when computing the tax rate schedule to
5 become effective on July 1, 2021 and on each subsequent July 1, the
6 Commissioner shall calculate the highest benefit cost rate without
7 consideration of benefit payments made in calendar year 2020.

8 * * *

9 Sec. 7. REVISED UNEMPLOYMENT INSURANCE TRUST FUND

10 TARGET BALANCE; REPORT

11 (a)(1) The Commissioner of Labor shall conduct a review of the solvency
12 of the Unemployment Insurance Trust Fund during the period since January 1,
13 2000 and the impact on the Trust Fund of the statutes related to unemployment
14 insurance contributions and benefits and any changes made to those statutes
15 during that time period.

16 (2) The review shall also:

17 (A) include an assessment and consideration of:

18 (i) the amount necessary to ensure the continued solvency of the
19 Trust Fund during a future economic recession based on the economic cycles
20 experienced by the State since January 1, 2000; and

1 (ii) how potential future statutory changes related to
2 unemployment insurance contributions and benefits may impact the amount
3 determined pursuant to subdivision (i) of this subdivision (a)(2)(A); and

4 (B) develop a range of amounts needed to ensure the continued
5 solvency of the Trust Fund during a future economic recession based on the
6 potential future statutory changes considered during the review.

7 (b)(1) In conducting the review, the Commissioner shall convene and
8 consult with a working group composed of representatives of employers and
9 employees, economists, and other individuals with relevant knowledge or
10 experience as determined by the Commissioner.

11 (2) The Commissioner shall provide the members of the working group
12 with an opportunity to review and comment on the analysis and determinations
13 made pursuant to subsection (a) of this section.

14 (c)(1) On or before November 15, 2021, the Commissioner of Labor shall
15 submit a written report documenting the results of the review conducted
16 pursuant to subsection (a) of this section and the consultation with the working
17 group pursuant to subsection (b) of this section to the Senate Committee on
18 Economic Development, Housing and General Affairs and the House
19 Committee on Commerce and Economic Development.

20 (2) The report shall include a detailed explanation of the potential
21 statutory changes considered for purposes of the analysis and determinations

1 made pursuant to subsection (a) of this section and the basis for the amount
2 determined to be necessary to ensure the continued solvency of the Trust Fund
3 during a future economic recession.

4 (3) The report shall specifically identify the members of the working
5 group, summarize their comments regarding the analysis and determinations
6 made pursuant to subsection (a) of this section, and identify any revisions to
7 the Commissioner’s analysis and determinations that were made based on the
8 comments received.

9 (4) The Commissioner shall also provide each member of the working
10 group with an opportunity to submit a written statement responding to the
11 Commissioner’s review, which shall be included as part of the report submitted
12 pursuant to this subsection.

13 * * * Prevention of Employee and Employer Fraud * * *

14 Sec. 8. UNEMPLOYMENT INSURANCE; FRAUD; OVERPAYMENTS;
15 DETECTION; PREVENTION; REPORT

16 (a) On or before November 15, 2021, the Commissioner of Labor shall
17 submit to the Senate Committee on Economic Development, Housing and
18 General Affairs and the House Committee on Commerce and Economic
19 Development a written report regarding the detection and prevention of
20 unemployment insurance fraud and the reduction and effective recovery of
21 overpaid unemployment insurance benefits. The report shall:

1 (1) with respect to unemployment insurance fraud:

2 (A) review the Department of Labor’s existing practices for detecting
3 fraud and preventing claimants from intentionally misrepresenting or
4 knowingly failing to disclose material facts;

5 (B) identify effective strategies and measures employed by other
6 states to detect fraud and prevent claimants from intentionally misrepresenting
7 or knowingly failing to disclose material facts;

8 (C) identify potential actions for improving the Department’s ability
9 to detect fraud and prevent claimants from intentionally misrepresenting or
10 knowingly failing to disclose material facts;

11 (D) identify potential actions for improving the Department’s ability
12 to effectively communicate with claimants regarding reporting requirements,
13 application procedures, and program rules;

14 (E) identify any additional resources, including staff, funding,
15 technology, and training, that may be necessary to improve claimants’ ability
16 to fully and accurately provide the Department with required information;

17 (F) examine the extent to which overpayments flagged as fraud are
18 attributable to intentional fraud as opposed to the claimant’s mistake, the
19 claimant’s misunderstanding of unemployment insurance rules and
20 requirements, or a miscommunication by a departmental staff person;

1 (G) to the extent practicable, identify the number of fraud
2 determinations that are appealed and the percentage of those determinations
3 that are reversed following the appeal;

4 (H) examine and identify when it may be appropriate for the
5 Commissioner to reduce or waive the period of disqualification imposed in
6 relation to a fraud determination pursuant to 21 V.S.A. § 1347(e);

7 (I) examine whether a period of disqualification imposed pursuant to
8 21 V.S.A. § 1347(e) should expire or be waived after the passage of a certain
9 period of time;

10 (J) examine and identify when it may be appropriate to refer
11 unemployment insurance fraud for criminal prosecution;

12 (K) for any instances of unemployment insurance fraud that are
13 determined to be appropriate for criminal prosecution, examine whether they
14 can be effectively prosecuted under existing statutes and, if not, identify any
15 statutory changes necessary to allow for effective criminal prosecution; and

16 (L) identify any additional resources, including staff, funding, and
17 training, that may be necessary to enable effective criminal prosecution of
18 unemployment insurance fraud; and

19 (2) with respect to the overpayment of unemployment insurance
20 benefits:

1 (A) review existing practices for preventing, reducing, and collecting
2 overpayments of benefits;

3 (B) identify effective strategies employed by other states to prevent,
4 reduce, and collect overpayments of benefits;

5 (C) identify potential actions for improving the Department’s ability
6 to prevent, reduce, and collect overpayments of benefits, including hiring
7 additional staff and making improvements to technology and training; and

8 (D) identify the instances in which an individual’s liability for an
9 overpayment could potentially be reduced or waived, such as when the
10 claimant is not at fault or the overpayment results from a mistake or lack of
11 understanding regarding the unemployment insurance rules, and the criteria, if
12 any, that the Department would employ to determine whether a reduction or
13 waiver is appropriate.

14 (b) In preparing the report, the Department shall consult with the Attorney
15 General, the Department of State’s Attorneys and Sheriffs, representatives of
16 employers, representatives of employees, and representatives of claimants.
17 The report shall specifically identify the parties that the Department consulted
18 with.

19 (c)(1) The report shall specifically identify any legislative action necessary
20 to implement any measures identified pursuant to subsection (a) of this section
21 to improve the Department’s ability to prevent and detect unemployment

1 insurance fraud and its ability to reduce and more effectively recover overpaid
2 unemployment insurance benefits.

3 (2) The Department may omit from the report information regarding
4 techniques, procedures, and guidelines for unemployment insurance fraud
5 investigations or prosecution if the disclosure of that information could
6 reasonably be expected to risk circumvention of the law.

7 (d) As used in this section:

8 (1) “Overpayment of unemployment insurance benefits” includes
9 overpayments due to a mistake on the part of a claimant or the Department, a
10 claimant’s unintentional misrepresentation or nondisclosure of a material fact,
11 or a claimant’s intentional misrepresentation or nondisclosure of a material
12 fact.

13 (2) “Unemployment insurance fraud” means the intentional
14 misrepresentation or knowing nondisclosure of a material fact by a claimant or
15 any other entity for purposes of obtaining unemployment insurance benefits.

16 Sec. 9. 2020 Acts and Resolves No. 85, Sec. 9(a)(1) is amended to read:

17 (a)(1) On or before ~~January 15, 2022~~ November 15, 2021, the Attorney
18 General and the Commissioner of Labor shall submit a written report to the
19 House Committees on Commerce and Economic Development and on General,
20 Housing, and Military Affairs and the Senate Committees on Economic
21 Development, Housing and General Affairs and on Finance regarding the

1 enforcement of employment laws related to employee misclassification
2 pursuant to 21 V.S.A. §§ 346, 387, 712, and 1379 and by the Commissioner of
3 Labor pursuant to 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A.
4 chapters 9 and 17.

5 Sec. 10. 3 V.S.A. § 2222d is amended to read:

6 § 2222d. EMPLOYEE MISCLASSIFICATION TASK FORCE

7 * * *

8 (f) On or before ~~January 15, 2022~~ November 15, 2021, the Task Force shall
9 submit a written report to the House Committee on Commerce and Economic
10 Development and the Senate Committee on Economic Development, Housing
11 and General Affairs regarding ways to improve the effectiveness and
12 efficiency of the system of joint enforcement by the Commissioner of Labor
13 and the Attorney General of the laws related to employee misclassification that
14 is established pursuant to 21 V.S.A. §§ 3, 346, 387, 712, and 1379. In
15 particular, the Report shall examine:

16 * * *

17 * * * Report on Charge Relief for Reimbursable Employers * * *

18 Sec. 11. REIMBURSABLE EMPLOYERS; CHARGE RELIEF; REPORT

19 On or before November 15, 2021, the Commissioner of Labor shall submit
20 a written report to the House Committee on Commerce and Economic
21 Development and the Senate Committee on Economic Development, Housing

1 and General Affairs regarding potential statutory changes to mitigate the
2 impact of benefit charges attributed to reimbursable employers who paid
3 wages to a claimant during the claimant’s base period but did not cause the
4 claimant to become unemployed. The report shall identify the potential costs
5 to the Unemployment Insurance Trust Fund for each potential statutory change
6 identified.

7 * * * Effective Dates * * *

8 Sec. 12. EFFECTIVE DATES

9 This section and the remaining sections shall take effect on passage, except
10 that Sec. 3 (extension of sunset) shall take effect retroactively on March 31,
11 2021.

12 and that after passage the title of the bill be amended to read: “An act
13 relating to miscellaneous COVID-19-related unemployment insurance
14 amendments”

15
16
17
18 (Committee vote: _____)

19 _____
20 Representative _____

21 FOR THE COMMITTEE