

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was  
3 referred House Bill No. 29 entitled “An act relating to notifying prospective  
4 employees of ineligibility for unemployment insurance benefits” respectfully  
5 reports that it has considered the same and recommends 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. 21 V.S.A. § 1301 is amended to read:

9 § 1301. DEFINITIONS

10 ~~The following words and phrases, as As used in this chapter, shall have the~~  
11 ~~following meanings unless the context clearly requires otherwise:~~

12 \* \* \*

13 (6)(A)(i) “Employment,” subject to the other provisions of this  
14 subdivision (6), means service within the jurisdiction of this State, ~~performed~~  
15 ~~prior to January 1, 1978, which was employment as defined in this subdivision~~  
16 ~~prior to such date and, subject to the other provisions of this subdivision,~~  
17 ~~service performed after December 31, 1977, performed~~ by an employee, as  
18 defined in subsections 3306(i) and (o) of the Federal Unemployment Tax Act,  
19 including service in interstate commerce, performed for wages or under any  
20 contract of hire, written or oral, expressed or implied. Services partly within  
21 and partly ~~without~~ outside this State may by election as ~~hereinbefore~~ provided

1 in subdivision (5)(E)(i) of this section be treated as if wholly within the  
2 jurisdiction of this State. ~~And whenever~~ If an employing unit ~~shall have~~ has  
3 elected to come under the provisions of a similar act of a state where a part of  
4 the services of an employee are performed, the Commissioner, upon ~~his or her~~  
5 ~~approval of said~~ approving the election as to ~~any such~~ the employee, may treat  
6 the services covered by ~~said~~ the approved election as having been performed  
7 wholly ~~without~~ outside the jurisdiction of this State.

8 \* \* \*

9 (ix) The term “employment” shall also include service for any  
10 employing unit ~~which is performed after December 31, 1971~~ by an individual  
11 in the employ of a religious, charitable, educational, or other organization ~~but~~  
12 ~~only if:~~

13 ~~(I)~~ the service is excluded from “employment” as defined in the  
14 Federal Unemployment Tax Act solely by reason of ~~section~~ subdivision  
15 3306(c)(8) of that act; ~~and~~

16 ~~(II) the organization had four or more individuals in~~  
17 ~~employment for some portion of a day in each of 20 different weeks, whether~~  
18 ~~or not such weeks were consecutive, within either the current or preceding~~  
19 ~~calendar year, regardless of whether they were employed at the same moment~~  
20 ~~of time.~~

21 \* \* \*



1           (A) ~~Any nonprofit organization which is, or becomes, subject to this~~  
2 ~~chapter on January 1, 1972 may elect to become liable for payments in lieu of~~  
3 ~~contributions for a period of not less than one calendar year beginning with~~  
4 ~~January 1, 1972 provided it files with the Commissioner a written notice of its~~  
5 ~~election within the 30 day period immediately following such date or within a~~  
6 ~~like period immediately following April 16, 1971, whichever occurs later.~~

7 [Repealed.]

8           (B) Any nonprofit organization ~~which~~ that becomes subject to this  
9 chapter ~~after January 1, 1972~~ may elect to become liable for payments in lieu  
10 of contributions for a period of not less than 12 months ~~beginning with the date~~  
11 ~~on which such subjectivity begins~~ by filing a written notice of its election with  
12 the Commissioner not later than 30 days immediately following the date of the  
13 determination ~~of such subjectivity~~ that the organization is subject to this  
14 chapter.

15           (C) Any nonprofit organization ~~which~~ that makes an election in  
16 accordance with ~~subdivisions (c)(2)(A) and~~ subdivision (2)(B) of this section  
17 ~~will~~ subsection (c) shall continue to be liable for payments in lieu of  
18 contributions until it files with the Commissioner a written notice terminating  
19 its election not later than 30 days prior to the beginning of the calendar year for  
20 which ~~such~~ the termination shall first be effective.

1           (D) Any nonprofit organization ~~which that~~ has been paying  
2 contributions under this chapter ~~for a period subsequent to January 1, 1972~~  
3 may ~~change to a reimbursable basis~~ elect to become liable for payments in lieu  
4 of contributions by filing with the Commissioner not later than 30 days prior to  
5 the beginning of any calendar year a written notice of election to become liable  
6 for payments in lieu of contributions. ~~Such~~ An election under this subdivision  
7 (c)(2)(D) shall not be terminable by the organization for that year and the next  
8 year.

9           (E) The Commissioner may for good cause extend the period within  
10 which a notice of election, or a notice of termination, must be filed and may  
11 permit an election to be retroactive ~~but not any earlier than with respect to~~  
12 ~~benefits paid after December 31, 1969.~~

13           (F) The Commissioner, in accordance with ~~such~~ any applicable rules  
14 as adopted by the Board ~~may prescribe~~, shall notify each nonprofit  
15 organization of any determination ~~which he or she may make of that the~~  
16 Commissioner makes with regard to its status as an employer and ~~of the~~  
17 effective date of any election ~~which it~~ that the organization makes and of any  
18 termination of ~~such~~ an election. ~~Such~~ The determinations shall be subject to  
19 reconsideration and to appeal and review in accordance with the provisions of  
20 section 1337a of this title.

1           (G)(i) A nonprofit organization that elects to become liable for  
2           payments in lieu of contributions shall, within 30 days after making its  
3           election, either execute and file with the Commissioner a surety bond or  
4           deposit with the Commissioner money or another form of security approved by  
5           the Commissioner.

6           (ii) The amount of the bond, deposit, or other form of security  
7           shall be two percent of the nonprofit organization’s wages paid during the four  
8           completed calendar quarters immediately preceding the effective date of the  
9           election. If the nonprofit organization did not pay wages in each of those four  
10           calendar quarters, the amount of the bond, deposit, or other form of security  
11           shall be determined by the Commissioner.

12           (iii) The bond, deposit, or other form of security shall be required  
13           to be in force for a period of not less than two calendar years, as determined by  
14           the Commissioner. Upon the expiration of the bond, deposit, or other form of  
15           security, the nonprofit organization shall be required to execute and file with  
16           the Commissioner a new surety bond, or deposit with the Commissioner  
17           money or another form of security approved by the Commissioner. The  
18           Commissioner shall determine the amount of the new bond, deposit, or other  
19           form of security in accordance with subdivision (ii) of this subdivision

20           (c)(2)(G).

1                    (iv) If a nonprofit organization fails to reimburse the Trust Fund  
2                    for the full amount of the benefits attributable to service in its employ as  
3                    provided pursuant to subdivision (3) of this subsection (c), the Commissioner  
4                    shall be permitted to recover from the bond, deposit, or other form of security  
5                    the unpaid amount plus any applicable penalties and interest.

6                    (3) Reimbursement payments. Payments in lieu of contributions shall  
7                    be made in accordance with the provisions of this subdivision, including either  
8                    subdivision (A) or subdivision (B).

9                    (A) At the end of each calendar quarter, or at the end of any other  
10                    period as determined by the Commissioner, the Commissioner shall bill each  
11                    nonprofit organization, or group of ~~such~~ nonprofit organizations, ~~which that~~  
12                    has elected to make payments in lieu of contributions for an amount equal to  
13                    the full amount of regular benefits plus one-half of the amount of extended  
14                    benefits paid during ~~such~~ the quarter or other prescribed period that is  
15                    attributable to service in the employ of ~~such~~ the organization.

16                    (B)(i) Each nonprofit organization that has elected payments in lieu  
17                    of contributions may request permission to make ~~such~~ payments as provided in  
18                    this subdivision (c)(3)(B). ~~Such method of payment~~ Payment pursuant to the  
19                    provisions of this subdivision (c)(3)(B) shall become effective upon approval  
20                    of the Commissioner.

1                   (ii) At the end of each calendar quarter, the Commissioner shall  
2 bill each nonprofit organization approved to make payments pursuant to the  
3 provisions of this subdivision (c)(3)(B) for an amount representing ~~one of the~~  
4 ~~following:~~

5                   ~~(I) For 1972, two tenths of one percent of its total payroll for~~  
6 ~~1971.~~

7                   ~~(II) For years after 1972, such a percentage of its total payroll~~  
8 ~~for the immediately preceding calendar year as that the Commissioner ~~shall~~~~  
9 ~~determine. The determination shall be determines to be appropriate based each~~  
10 ~~year~~ on the average benefit costs attributable to service in the employ of  
11 nonprofit organizations during the preceding calendar year.

12                   ~~(III) For The Commissioner may determine a different rate for~~  
13 ~~any organization which that did not pay wages throughout the four calendar~~  
14 ~~quarters of the preceding calendar year, such percentage of its payroll during~~  
15 ~~that year as the Commissioner shall determine.~~

16                   (iii) At the end of each calendar year, the Commissioner may  
17 modify the quarterly percentage of payroll thereafter payable by the nonprofit  
18 organization in order to minimize excess or insufficient payments.

19                   (iv) At the end of each calendar year, the Commissioner shall  
20 determine whether the total of payments for ~~such~~ the year made by a nonprofit  
21 organization is less than, or in excess of, the total amount of regular benefits

1 plus one-half of the amount of extended benefits paid to individuals during  
2 ~~such the~~ taxable year based on wages attributable to service in the employ of  
3 ~~such the~~ organization. Each nonprofit organization whose total payments for  
4 ~~such the~~ year are less than the amount ~~se~~ determined shall be liable for  
5 payment of the unpaid balance to the Fund in accordance with subdivision  
6 (3)(C) of this subsection (c). If the total payments exceed the amount ~~se~~  
7 determined for the taxable year, all or a part of the excess shall, at the election  
8 of the nonprofit organization, be refunded from the Fund or retained in the  
9 Fund as part of the payments ~~which that~~ may be required for the next calendar  
10 year.

11 (C) Payment of any bill rendered under subdivision (2) or ~~subdivision~~  
12 (3) of this subsection (c) shall be made not later than 30 days after the bill is  
13 mailed to the last known address of the nonprofit organization or is otherwise  
14 delivered to it; unless there has been an application for redetermination by the  
15 Commissioner or a petition for hearing before a referee in accordance with  
16 subdivision (3)(E) of this subsection (c).

17 (D) Payments made by any nonprofit ~~corporation~~ organization under  
18 the provisions of this section shall not be deducted or deductible, in whole or in  
19 part, from the remuneration of individuals in the employ of the organization.

20 (E)(i) The amount due specified in any bill from the Commissioner  
21 shall be conclusive on the organization unless, not later than 30 days after the

1 date of the bill, the organization files an application for reconsideration by the  
2 Commissioner, or a petition for a hearing before a referee, setting forth the  
3 grounds for ~~such~~ the application or petition.

4 (ii) The Commissioner shall promptly review and reconsider the  
5 amount due specified in the bill and shall thereafter issue a redetermination in  
6 any case in which ~~such~~ an application for redetermination has been filed. Any  
7 such redetermination shall be conclusive on the organization unless, not later  
8 than 30 days after the date of the redetermination, the organization files a  
9 petition for a hearing before a referee, setting forth the grounds for the petition.

10 (iii) Proceedings on the petition for a hearing before a referee on  
11 the amount of a bill rendered under this section or a redetermination of ~~such~~  
12 the amount shall be in accordance with the provisions of section 1331 of this  
13 title, and the decision of the referee shall be subject to the provisions of that  
14 section. Review of the decision of the referee by the Employment Security  
15 Board shall be in accordance with, and its decision shall be subject to, the  
16 provisions of section 1332 of this title.

17 (F) Any employer, including the State of Vermont ~~which,~~ that makes  
18 payments in lieu of contributions under this section shall be subject to the  
19 provisions of sections 1314, 1322, 1328, 1329, 1334, and 1336 of this title as  
20 follows:

1 (i) ~~that~~ The employer shall be liable for any reports ~~as required by~~  
2 the Commissioner ~~may require~~ pursuant to sections 1314 and 1322 of this  
3 title;

4 (ii) ~~that~~ The employer shall be liable for any penalty imposed  
5 pursuant to sections 1314 and 1328 of this title;

6 (iii) ~~that~~ The employer shall be liable for the same interest on past  
7 due payments pursuant to subsection 1329(a) of this title;

8 (iv) ~~that~~ The employer shall be subject to a civil action for the  
9 collection of past due payments as if those payments were contributions  
10 pursuant to subsections 1329(b) and 1334(a) of this title; ~~and~~.

11 (v) ~~that~~ The employer shall be subject to ~~those~~ actions for the  
12 collection of past due payments as if those payments were contributions  
13 pursuant to subsections 1329(c) and (d), 1334(b) and (c), and section 1336 of  
14 this title; however, those provisions shall not apply to the State of Vermont.

15 (4) Authority to terminate elections. If any nonprofit organization is  
16 delinquent in making payments in lieu of contributions as required under this  
17 subsection, the Commissioner may terminate ~~such~~ the organization's election  
18 to make payments in lieu of contributions as of the beginning of the next  
19 taxable year, and the termination shall be effective for that and the next taxable  
20 year.

1 (5) Allocation of benefit costs.

2 (A) Each employer that is liable for payments in lieu of contributions  
3 shall pay to the Commissioner for the Fund the amount of regular benefits plus  
4 the amount of one-half of extended benefits paid that are attributable to service  
5 in the employ of ~~such~~ the employer.

6 (B) If benefits paid to an individual are based on wages paid by more  
7 than one employer and one or more of ~~such~~ the employers are liable for  
8 payments in lieu of contributions, the amount payable to the Fund by each  
9 employer that is liable for ~~such~~ payments in lieu of contributions shall be  
10 ~~determined in accordance with subdivisions (5)(A) and (B) of this subsection~~  
11 ~~(c):~~

12 ~~(A) Proportionate allocation when fewer than all base period~~  
13 ~~employers are liable for reimbursement. If benefits paid to an individual are~~  
14 ~~based on wages paid by one or more employers that are liable for payments in~~  
15 ~~lieu of contributions and on wages paid by one or more employers who are~~  
16 ~~liable for contributions, the amount of benefits payable by each employer that~~  
17 ~~is liable for payments in lieu of contributions shall be an amount which that~~  
18 ~~bears the same ratio to the total benefits paid to the individual as the total base-~~  
19 ~~period wages paid to the individual by ~~such~~ the employer bear to the total base-~~  
20 ~~period wages paid to the individual by all of ~~his or her~~ the individual's base-~~  
21 ~~period employers.~~

1           ~~(B) Proportionate allocation when all base period employers are~~  
2           ~~liable for reimbursement. If benefits paid to an individual are based on wages~~  
3           ~~paid by two or more employers that are liable for payments in lieu of~~  
4           ~~contributions, the amount of benefits payable by each employer shall be an~~  
5           ~~amount which bears the same ratio to the total benefits paid to the individual as~~  
6           ~~the total base period wages paid to the individual by the employer bear to the~~  
7           ~~total base period wages paid to the individual by all of his or her base period~~  
8           ~~employers.~~

9           (6) Group accounts. Two or more employers that have become liable  
10          for payments in lieu of contributions, in accordance with the provisions of this  
11          section and section 1380 of this title, may file a joint application to the  
12          Commissioner for the establishment of a group account for the purpose of  
13          sharing the cost of benefits paid that are attributable to service in the employ of  
14          such the employers. Each application shall identify and authorize a group  
15          representative to act as the group's agent for the purpose of this section. Upon  
16          his or her approval of the application, the Commissioner shall establish a group  
17          account for such the employers effective as of the beginning of the calendar  
18          quarter in which he or she the Commissioner receives the application and shall  
19          notify the group's representative of the effective date of the account. The  
20          account shall remain in effect for not less than two years and thereafter until  
21          terminated at the discretion of the Commissioner or upon application by the

1 group. Upon establishment of the account, each member of the group shall be  
2 liable for payments in lieu of contributions with respect to each calendar  
3 quarter in the amount that bears the same ratio to the total benefits paid in ~~such~~  
4 the quarter that are attributable to service performed in the employ of all  
5 members of the group as the total wages paid for service in employment by  
6 ~~such~~ the member in ~~such~~ the quarter bear to the total wages paid during ~~such~~  
7 the quarter for service performed in the employ of all members of the group.  
8 The Board shall ~~prescribe regulations~~ adopt rules as it deems necessary with  
9 respect to applications for establishment, maintenance, and termination of  
10 group accounts that are authorized by this subdivision, for addition of new  
11 members to, and withdrawal of active members from, such accounts, and for  
12 the determination of the amounts that are payable under this ~~section~~ subsection  
13 by members of the group and the time and manner of ~~such~~ the payments.

14 (7) ~~Notwithstanding any of the foregoing provisions of this section, any~~  
15 ~~nonprofit organization that prior to January 1, 1969, paid contributions~~  
16 ~~required by this section, and, pursuant to subsection (c) of this section, elects~~  
17 ~~within 30 days after January 1, 1972, to make payments in lieu of~~  
18 ~~contributions, shall not be required to make any such payment on account of~~  
19 ~~any regular or extended benefits paid, on the basis of wages paid by such~~  
20 ~~organization to individuals for weeks of unemployment which begin on and~~  
21 ~~after the effective date of the election until the total amount of benefits equals~~

1 ~~the amount (1) by which the contributions paid by the organization with~~  
2 ~~respect to the two-year period before the effective date of the election under~~  
3 ~~subsection (b) of this section exceed (2) the total amount of unemployment~~  
4 ~~benefits paid for the same period that were attributable to service performed in~~  
5 ~~the employ of the organization and were charged to the experience rating~~  
6 ~~record of the organization. [Repealed.]~~

7 \* \* \*

8 (f) Any employer who makes payments in lieu of contributions under the  
9 provisions of this section is considered to be self-insuring and shall pay to the  
10 Commissioner for the Unemployment Compensation Trust Fund ~~such any~~  
11 amounts as the Commissioner finds to be due under this chapter, including  
12 benefits paid but denied on appeal or benefits paid in error ~~which that~~ cannot  
13 be properly charged either against another employer who makes payments in  
14 lieu of contributions or against the experience-rating record of another  
15 employer who pays contributions. Benefits improperly paid where repayment  
16 by the claimant is ordered pursuant to subsection 1347(a) or (b) of this title  
17 will be credited to the employer's account when repayment from the claimant  
18 is actually received by the Commissioner.

1       Sec. 3. PROVISION OF SECURITY BY CURRENT REIMBURSABLE  
2               EMPLOYERS

3               A nonprofit organization that is liable to make payments in lieu of  
4       contributions pursuant to 21 V.S.A. § 1321(c) on July 1, 2022 shall, on or  
5       before September 30, 2022, either execute and file with the Commissioner a  
6       surety bond or deposit with the Commissioner money or another form of  
7       security approved by the Commissioner in accordance with the provisions of  
8       21 V.S.A. § 1321 (c)(2)(G).

9       Sec. 4. EFFECTIVE DATE

10       This act shall take effect on July 1, 2022.

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(Committee vote: \_\_\_\_\_)

\_\_\_\_\_  
Representative \_\_\_\_\_  
FOR THE COMMITTEE