

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           (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           (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.





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