TO THE HOUSE OF REPRESENTATIVES:

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

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

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

§ 1325. EMPLOYERS’ EXPERIENCE-RATING RECORDS; DISCLOSURE TO SUCCESSOR ENTITY

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

***
(G) During calendar year 2020, the individual voluntarily

separated from that employer as provided by subdivision 1344(a)(2)(A) of this
chapter for one of the following reasons:

* * *

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

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

(ii) the individual becomes unemployed as a direct result of a
state of emergency declared by the Governor or the President in relation to
COVID-19 or an order or directive issued by the Governor or President in
relation to COVID-19, including through a change or reduction in the
employer’s operation at the individual’s place of employment that is a direct
result of such a state of emergency, order, or directive; or
(iii) the employer has temporarily laid off the individual has been recommended or requested based on a recommendation or request by a medical professional or a public health authority with jurisdiction to that the individual be isolated or quarantined as a result of COVID-19, regardless of whether the individual has been diagnosed with COVID-19.

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

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

(II) the reason for the individual’s separation from employment set forth in subdivision (A) of this subdivision (a)(3) no longer exists and the employer has failed to rehire or offer to rehire the individual without good cause.
(ii) If the Commissioner has cause to believe or receives an
allegation or other information indicating that an employer may not be entitled
to relief from charges pursuant to this subdivision (a)(3), the Commissioner
shall examine the employer’s records and any other documents and
information necessary to determine if the employer is entitled to relief from
charges pursuant to this subdivision (a)(3).

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

* * *

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

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

(a) For calendar year 2021, an employer shall be relieved from charges
against its unemployment insurance experience rating under 21 V.S.A. § 1325
for benefits paid because:
(1)(A) the individual voluntarily separated from employment with the employer for one of the reasons set forth in 21 V.S.A. § 1344(a)(2)(A)(ii)–(vi);

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

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

(D) the employer temporarily laid off the individual based on a recommendation or request by a medical professional or a public health authority with jurisdiction that the individual be isolated or quarantined as a result of COVID-19, regardless of whether the individual was diagnosed with COVID-19; and
(2)(A) the employer rehired or offered to rehire the employee within a reasonable time, not to exceed 30 days after the reason for the individual’s separation from employment set forth in subdivision (1) of this subsection (a) no longer exists; or

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

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

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

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

(1) submit to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs a report summarizing the procedures and application form to be adopted pursuant to subsection (b) of this section; and
(2) commence a public outreach campaign to notify employers and employees of the requirements and procedures to obtain relief from charges under this section.

*** Extension of Unemployment Insurance-Related Sunset from 2020 Acts and Resolves No. 91 ***

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

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

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

Sec. 4. TEMPORARY SUSPENSION OF CERTAIN REQUIREMENTS FOR TRIGGERING AN EXTENDED BENEFIT PERIOD

For purposes of determining whether the State is in an extended benefit period during the period from November 1, 2020 through December 31, 2021, the Commissioner shall disregard the requirement in 21 V.S.A. § 1421 that no extended benefit period may begin before the 14th week following the end of a prior extended benefit period.
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:
(A) The maximum weekly benefit amount shall not increase in any year that advances made to the State Unemployment Compensation Fund pursuant to Title XII of the Social Security Act, as amended, remain unpaid.

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

***

*** Unemployment Insurance Contribution Relief ***

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

§ 1326. RATE BASED ON BENEFIT EXPERIENCE

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

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

(2) The highest benefit cost rate shall be determined by dividing the highest amount of benefit payments made during a consecutive 12-month period which ended within the 10-year period ended with ending on the preceding December 31, by the total wages paid during the
four calendar quarter periods which ended within such 12-month period.

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

***

Sec. 7. REVISED UNEMPLOYMENT INSURANCE TRUST FUND TARGET BALANCE; REPORT

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

(2) The review shall also:

(A) include an assessment and consideration of:

(i) the amount necessary to ensure the continued solvency of the Trust Fund during a future economic recession based on the economic cycles experienced by the State since January 1, 2000; and
(ii) how potential future statutory changes related to
unemployment insurance contributions and benefits may impact the amount
determined pursuant to subdivision (i) of this subdivision (a)(2)(A); and

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

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

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

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

(2) The report shall include a detailed explanation of the potential
statutory changes considered for purposes of the analysis and determinations
made pursuant to subsection (a) of this section and the basis for the amount
determined to be necessary to ensure the continued solvency of the Trust Fund
during a future economic recession.

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

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

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

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

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

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

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

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

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

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

(F) examine the extent to which overpayments flagged as fraud are attributable to intentional fraud as opposed to the claimant’s mistake, the claimant’s misunderstanding of unemployment insurance rules and requirements, or a miscommunication by a departmental staff person;
(G) to the extent practicable, identify the number of fraud
determinations that are appealed and the percentage of those determinations
that are reversed following the appeal;

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

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

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

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

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

(2) with respect to the overpayment of unemployment insurance
benefits:
(A) review existing practices for preventing, reducing, and collecting overpayments of benefits;

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

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

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

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

(c)(1) The report shall specifically identify any legislative action necessary to implement any measures identified pursuant to subsection (a) of this section to improve the Department’s ability to prevent and detect unemployment
insurance fraud and its ability to reduce and more effectively recover overpaid
unemployment insurance benefits.

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

(d) As used in this section:

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

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

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

(a)(1) On or before January 15, 2022 November 15, 2021, the Attorney
General and the Commissioner of Labor shall submit a written report to the
House Committees on Commerce and Economic Development and on General,
Housing, and Military Affairs and the Senate Committees on Economic
Development, Housing and General Affairs and on Finance regarding the
enforcement of employment laws related to employee misclassification

pursuant to 21 V.S.A. §§ 346, 387, 712, and 1379 and by the Commissioner of
Labor pursuant to 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A.
chapters 9 and 17.

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

§ 2222d. EMPLOYEE MISCLASSIFICATION TASK FORCE

* * *

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

* * *

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

Sec. 11. REIMBURSABLE EMPLOYERS; CHARGE RELIEF; REPORT

On or before November 15, 2021, the Commissioner of Labor shall submit
a written report to the House Committee on Commerce and Economic
Development and the Senate Committee on Economic Development, Housing
and General Affairs regarding potential statutory changes to mitigate the impact of benefit charges attributed to reimbursable employers who paid wages to a claimant during the claimant’s base period but did not cause the claimant to become unemployed. The report shall identify the potential costs to the Unemployment Insurance Trust Fund for each potential statutory change identified.

* * * Effective Dates * * *

Sec. 12. EFFECTIVE DATES

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

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

(Committee vote: ____________)

_____________________

Representative ___________

FOR THE COMMITTEE