

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 (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 (B) Notwithstanding any provision of subdivision (A) of this
2 subdivision (d)(2) to the contrary, the determination of the highest benefit cost
3 rate shall not take into consideration the 12-month period beginning on January
4 1, 2020.

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

10
11 * * *

12 **Sec. 7. REVISED UNEMPLOYMENT INSURANCE TRUST FUND**

13 **TARGET BALANCE; REPORT**

14 (a)(1) The Commissioner of Labor shall conduct a review of the solvency
15 of the Unemployment Insurance Trust Fund during the period since January 1,
16 2000 and the impact on the Trust Fund of the statutes related to unemployment
17 insurance contributions and benefits and any changes made to those statutes
18 during that time period.

19 (2) The review shall also:

20 (A) include an assessment and consideration of:

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

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

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

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

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

17 (c)(1) On or before November 15, 2021, the Commissioner of Labor shall
18 submit a written report documenting the results of the review conducted
19 pursuant to subsection (a) of this section and the consultation with the working
20 group pursuant to subsection (b) of this section to the Senate Committee on

1 Economic Development, Housing and General Affairs and the House
2 Committee on Commerce and Economic Development.

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

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

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

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

18 **Sec. 8.** UNEMPLOYMENT INSURANCE; FRAUD; OVERPAYMENTS;
19 DETECTION; PREVENTION; REPORT

20 (a) On or before November 15, 2021, the Commissioner of Labor shall
21 submit to the Senate Committee on Economic Development, Housing and

1 General Affairs and the House Committee on Commerce and Economic
2 Development a written report regarding the detection and prevention of
3 unemployment insurance fraud and the reduction and effective recovery of
4 overpaid unemployment insurance benefits. The report shall:

5 (1) with respect to unemployment insurance fraud:

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

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

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

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

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

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

5 (G) to the extent practicable, identify the number of fraud
6 determinations that are appealed and the percentage of those determinations
7 that are reversed following the appeal;

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

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

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

17 (2) with respect to the overpayment of unemployment insurance
18 benefits:

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

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

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

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

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

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

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

5 (d) As used in this section:

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

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

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

15 (a)(1) On or before ~~January 15, 2022~~ November 15, 2021, the Attorney
16 General and the Commissioner of Labor shall submit a written report to the
17 House Committees on Commerce and Economic Development and on General,
18 Housing, and Military Affairs and the Senate Committees on Economic
19 Development, Housing and General Affairs and on Finance regarding the
20 enforcement of employment laws related to employee misclassification
21 pursuant to 21 V.S.A. §§ 346, 387, 712, and 1379 and by the Commissioner of

1 Labor pursuant to 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A.
2 chapters 9 and 17.

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

4 § 2222d. EMPLOYEE MISCLASSIFICATION TASK FORCE

5 * * *

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

14 * * *

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

16 **Sec. 11. REIMBURSABLE EMPLOYERS; CHARGE RELIEF; REPORT**

17 On or before November 15, 2021, the Commissioner of Labor shall submit
18 a written report to the House Committee on Commerce and Economic
19 Development and the Senate Committee on Economic Development, Housing
20 and General Affairs regarding potential statutory changes to mitigate the
21 impact of benefit charges attributed to reimbursable employers who paid

1 wages to a claimant during the claimant’s base period but did not cause the
2 claimant to become unemployed. The report shall identify the potential costs
3 to the Unemployment Insurance Trust Fund for each potential statutory change
4 identified.

5 * * * Effective Dates * * *

6 **Sec. 12. EFFECTIVE DATES**

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

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

13
14
15
16 (Committee vote: _____)

17 _____

18 Representative _____

19 FOR THE COMMITTEE