

1 S.10

2 Representatives Marcotte of Coventry, Kimbell of Woodstock, and
3 Kornheiser of Brattleboro move that the House propose to the Senate that the
4 bill be amended by striking out all after the enacting clause and inserting in
5 lieu thereof the following:

6 * * * Intent * * *

7 Sec. 1. INTENT

8 It is the intent of the General Assembly to:

9 (1) ensure that COVID-19-related protections for unemployment
10 insurance claimants and employers that were enacted as part of 2020 Acts and
11 Resolves No. 91 remain in effect until after the state of emergency declared in
12 relation to the COVID-19 pandemic has been lifted;

13 (2) ensure that the maximum amount of weekly unemployment
14 insurance benefits that a claimant may receive does not decrease;

15 (3) provide claimants with enhanced unemployment insurance benefits;

16 (4) prevent unemployment insurance tax rates from increasing by an
17 amount that is greater than necessary to replenish the Unemployment
18 Insurance Trust Fund;

19 (5) ensure that the Unemployment Insurance Trust Fund is restored to a
20 healthy balance;

1 (6) determine whether the State should increase the amount of
2 unemployment insurance benefits that a claimant may be eligible to receive in
3 the future;

4 (7) develop improved strategies to prevent the Trust Fund from being
5 harmed by unemployment insurance fraud and employee misclassification; and

6 (8) avoid placing additional demands on the Department of Labor’s
7 limited staff and information technology resources, which are already
8 experiencing significant strain from the unprecedented demands placed on the
9 unemployment insurance system by the COVID-19 Pandemic.

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

11 Sec. 2. 21 V.S.A. § 1325 is amended to read:

12 § 1325. EMPLOYERS’ EXPERIENCE-RATING RECORDS;

13 DISCLOSURE TO SUCCESSOR ENTITY

14 (a)(1) The Commissioner shall maintain an experience-rating record for
15 each employer. Benefits paid shall be charged against the experience-rating
16 record of each subject employer who provided base-period wages to the
17 eligible individual. Each subject employer’s experience-rating charge shall
18 bear the same ratio to total benefits paid as the total base-period wages paid by
19 that employer bear to the total base-period wages paid to the individual by all
20 base-period employers. The experience-rating record of an individual subject

1 base-period employer shall not be charged for benefits paid to an individual
2 under any of the following conditions:

3 * * *

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

7 * * *

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

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

19 (ii) the individual becomes unemployed as a direct result of a
20 state of emergency declared by the Governor or the President in relation to
21 COVID-19 or an order or directive issued by the Governor or President in

1 relation to COVID-19, including through a change or reduction in the
2 employer's operation at the individual's place of employment that is a direct
3 result of such a state of emergency, order, or directive; or

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

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

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

18 (II) the reason for the individual's separation from employment
19 set forth in subdivision (A) of this subdivision (a)(3) no longer exists and the
20 employer has failed to rehire or offer to rehire the individual without good
21 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 June 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,
2 employees, and claimants of the requirements and procedures to obtain relief
3 from charges under this section.

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

6 Sec. 4. 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. 5. 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. 6. **21 V.S.A. § 1338(f)** is amended to read:

(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.

1 Sec. 7. 21 V.S.A. § 1338 is amended to read:

2 § 1338. WEEKLY BENEFITS

3 * * *

4 (b) ~~For benefit years beginning prior to January 3, 1988 to qualify for~~
5 ~~benefits an individual must have had at least 20 weeks of work at wages of at~~
6 ~~least \$35.00 per week in employment with an employer subject to this chapter~~
7 ~~in the individual's base period. [Repealed.]~~

8 (c) ~~For benefit years beginning prior to January 3, 1988, an individual's~~
9 ~~weekly benefit amount shall be one half of the average weekly wage earned by~~
10 ~~such individual in employment with an employer subject to this chapter for 20~~
11 ~~of the weeks in the individual's base period, whether or not consecutive, in~~
12 ~~which the wages earned by him or her in that employment were highest. Such~~
13 ~~weekly benefit amount shall be computed as a multiple of \$1.00; provided, that~~
14 ~~the weekly benefit amount so determined:~~

15 ~~(1) shall not exceed 1/40th of the total wages actually used in the~~
16 ~~calculation of the average weekly wage for the highest 20 weeks as~~
17 ~~hereinbefore provided; and~~

18 ~~(2) shall not exceed the maximum weekly benefit amount computed as~~
19 ~~provided in this section. [Repealed.]~~

20 (d)(1) ~~For benefit years beginning on January 3, 1988 and subsequent~~
21 ~~thereto, to To qualify for benefits an individual must:~~

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~~(e)(1) For benefit years beginning on January 3, 1988 and subsequent~~
~~thereto, an~~ An individual's weekly benefit amount shall be determined by
dividing the individual's two high quarter total subject wages required under
subdivision (d)(1) of this section by 45; provided that the weekly benefit
amount so determined shall not exceed the maximum weekly benefit amount
computed as ~~provided in~~ pursuant to subsection (f) of this section.

(2) Notwithstanding the maximum weekly benefit amount computed
pursuant to subsection (f) of this section, an individual shall receive \$25.00 per
week in addition to the amount determined pursuant to subdivision (1) of this
subsection.

* * *

Sec. 8. 21 V.S.A. § 1338(e) is amended to read:

~~(e)(1)~~ An individual's weekly benefit amount shall be determined by
dividing the individual's two high quarter total subject wages required under
subdivision (d)(1) of this section by 45; provided that the weekly benefit
amount so determined shall not exceed the maximum weekly benefit amount
computed pursuant to subsection (f) of this section.

~~(2)~~ Notwithstanding the maximum weekly benefit amount computed
pursuant to subsection (f) of this section, an individual shall receive \$25.00 per

1 week in addition to the amount determined pursuant to subdivision (1) of this
2 subsection.

3 * * * Reports * * *

4 Sec. 9. 21 V.S.A. § 1309 is amended to read:

5 § 1309. REPORTS; SOLVENCY OF TRUST FUND

6 (a)(1) On or before January 31 of each year, the Commissioner shall submit
7 to the Governor and the Chairs of the Senate ~~Committee~~ Committees on
8 Economic Development, Housing and General Affairs and on Finance and the
9 House Committees on Commerce and Economic Development and on Ways
10 and Means a report covering the administration and operation of this chapter
11 during the preceding calendar year.

12 (2) The report shall include:

13 (A) a balance sheet of the monies in the Fund and data as to probable
14 reserve requirements based upon accepted actuarial principles, with respect to
15 business activity, and other relevant factors for the longest available period;

16 The report shall also include:

17 (B) recommendations for amendments of this chapter as the Board
18 considers proper; and

19 (C) an accounting of the amount of supplemental benefits paid to
20 claimants pursuant to subdivision 1338(e)(2) of this chapter.

1 **(b) Whenever the Commissioner believes that the solvency of the Fund is**
2 **in danger or the balance of the Fund drops below \$180,000,000.00, the**
3 **Commissioner shall promptly inform the Governor and the Chairs of the**
4 **Senate Committees on Economic Development, Housing and General Affairs**
5 **and on Finance, and the House Committees on Commerce and Economic**
6 **Development and on Ways and Means, and make recommendations for**
7 **preserving an adequate level in the Trust Fund. The provisions of 2 V.S.A. §**
8 **20(d) (expiration of required reports) shall not apply to the report to be made**
9 **under this section.**

10 **Sec. 10. UNEMPLOYMENT INSURANCE; TRUST FUND; BENEFITS;**
11 **DETECTION AND PREVENTION OF FRAUD AND**
12 **OVERPAYMENTS; REIMBURSABLE EMPLOYERS;**
13 **CONSULTANT; REPORT**

14 **(a) On or before July 15, 2021, the Joint Fiscal Office shall contract with an**
15 **economist or independent consulting entity with expertise in the field of**
16 **unemployment insurance to evaluate certain aspects of Vermont's**
17 **unemployment insurance system in comparison with the unemployment**
18 **insurance systems of other states and in consideration of the needs of Vermont**
19 **claimants, employees, and employers, as well as the potential modernization of**
20 **the Department's information technology systems within the next several**

1 years. The economist or independent consulting entity shall specifically
2 examine:

3 (1) the solvency of Vermont's Unemployment Insurance Trust Fund and
4 the amount necessary to ensure that the Trust Fund remains solvent and able to
5 continue meeting the needs of claimants during a future economic recession
6 and subsequent recovery;

7 (2) the adequacy and appropriateness of Vermont's unemployment
8 insurance benefits, whether Vermont's benefits should be increased, and
9 whether the Vermont statutes related to benefits should be modified in any
10 manner;

11 (3) the Department of Labor's existing practices and procedures for
12 detecting and preventing unemployment insurance fraud;

13 (4) instances in which it may be appropriate to refer unemployment
14 insurance fraud for criminal prosecution, including a reasonable minimum
15 threshold for such a referral;

16 (5) instances for which it may be appropriate to provide the
17 Commissioner with authority to reduce or waive a period of disqualification
18 imposed in relation to a determination of unemployment insurance fraud;

19 (6) potential measures to eliminate or minimize claim processing delays
20 that result from fraud prevention measures;

1 (7) the Department of Labor’s existing practices and procedures for
2 preventing, reducing, and collecting overpayments of unemployment insurance
3 benefits;

4 (8) instances for which it may be appropriate to provide the
5 Commissioner with authority to reduce or waive an individual’s liability to
6 repay overpaid unemployment insurance benefits; and

7 (9) potential statutory changes to mitigate the impact of benefit charges
8 attributed to reimbursable employers who paid wages to a claimant during the
9 claimant’s base period but did not cause the claimant to become unemployed.

10 (b) In performing the evaluation required pursuant to subsection (a), the
11 economist or consulting entity shall do the following:

12 (1) specifically identify:

13 (A) best practices and high performing aspects of other states’
14 unemployment insurance systems;

15 (B) shortcomings, challenges, and opportunities for improvement in
16 Vermont’s unemployment insurance system;

17 (C) potential changes and improvements to the Vermont Department
18 of Labor’s staffing, resources, information technology, training, funding,
19 communications, practices, and procedures that are necessary to address the
20 shortcomings, challenges, and opportunities for improvement identified
21 pursuant to subdivision (B) of this subdivision (b)(1);

1 (D) potential statutory changes necessary to address the
2 shortcomings, challenges, and opportunities for improvement identified
3 pursuant to subdivision (B) of this subdivision (b)(1); and

4 (E) the anticipated cost of implementing the changes and
5 improvements identified pursuant to subdivisions (C) and (D) of this
6 subdivision (b)(1) and any ongoing costs associated with such changes and
7 improvements; and

8 (2) consult with the Department of Labor, the Attorney General, the
9 Department of State’s Attorneys and Sheriffs, representatives of employers,
10 representatives of employees, and representatives of claimants.

11 (c) The Department of Labor shall cooperate with the economist or
12 independent consulting entity and shall to the maximum extent permitted by
13 law provide the economist or independent consulting entity with prompt access
14 to all information requested.

15 (d)(1) On or before November 15, 2020, the economist or independent
16 consulting entity shall submit a written report detailing the findings and
17 recommendations to the Senate Committees on Economic Development,
18 Housing and General Affairs and on Finance and the House Committees on
19 Commerce and Economic Development and on Ways and Means.

20 (2) The economist or independent consulting entity shall omit from the
21 report information regarding techniques, procedures, and guidelines for

1 unemployment insurance fraud investigations or prosecution if the disclosure
2 of that information could reasonably be expected to risk circumvention of the
3 law.

4 (e) As used in this section:

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

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

13 **Sec. 11.** 2020 Acts and Resolves No. 85, Sec. 9(a)(1) is amended to read:

14 (a)(1) On or before ~~January 15, 2022~~ November 15, 2021, the Attorney
15 General and the Commissioner of Labor shall submit a written report to the
16 House Committees on Commerce and Economic Development and on General,
17 Housing, and Military Affairs and the Senate Committees on Economic
18 Development, Housing and General Affairs and on Finance regarding the
19 enforcement of employment laws related to employee misclassification
20 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. 12.** 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 * * * Effective Dates * * *

16 **Sec. 13. EFFECTIVE DATES**

17 (a)(1) Sec. 7 (supplemental weekly benefit) shall take effect 30 days after
18 the termination date for Federal Pandemic Unemployment Compensation set
19 forth in 15 U.S.C. § 9023(e)(2), as amended.

20 (2) Sec. 8 (repeal of supplemental weekly benefit) shall take effect upon
21 the payment of a cumulative total of \$100,000,000.00 in supplemental benefits

1 pursuant to 21 V.S.A. § 1338(e)(2) and shall apply prospectively to all benefit
2 payments in the next week and each subsequent week.

3 (b) This section and the remaining sections shall take effect on passage,
4 except that, notwithstanding 1 V.S.A. § 214, Sec. 4 (extension of sunset) shall
5 take effect retroactively on March 31, 2021.

DRAFT