

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 * * * Intent * * *

9 Sec. 1. INTENT

10 It is the intent of the General Assembly to:

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

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

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

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

1 (5) 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 (6) develop improved strategies to prevent the Trust Fund from being
5 harmed by unemployment insurance fraud and employee misclassification; and

6 (7) 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~~ subdivisions (B) and (C)
9 of this subdivision (a)(3), an employer shall be relieved of charges for benefits
10 paid to an individual ~~for a period of up to eight weeks~~ during calendar year
11 2020 with 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 (ii) If the Commissioner has cause to believe or receives an
2 allegation or other information indicating that an employer may not be entitled
3 to relief from charges pursuant to this subdivision (a)(3), the Commissioner
4 shall examine the employer’s records and any other documents and
5 information necessary to determine if the employer is entitled to relief from
6 charges pursuant to this subdivision (a)(3).

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

14 * * *

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

16 Sec. 3. RELIEF FROM COVID-19-RELATED UNEMPLOYMENT
17 BENEFIT CHARGES FOR CALENDAR YEAR 2021

18 (a) For calendar year 2021, an employer shall be relieved from charges
19 against its unemployment insurance experience rating under 21 V.S.A. § 1325
20 for benefits paid because:

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. 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.

1 * * * Unemployment Insurance Benefits * * *

2 Sec. 6. 21 V.S.A. § 1338 is amended to read:

3 § 1338. WEEKLY BENEFITS

4 * * *

5 (f)~~(1)~~ The maximum weekly benefit amount shall be \$425.00. ~~When the~~
6 ~~State Unemployment Compensation Fund has a positive balance and all~~
7 ~~advances made to the State Unemployment Compensation Fund pursuant to~~
8 ~~Title XII of the Social Security Act have been repaid as of December 31 of the~~
9 ~~last completed calendar year, on the first day of the first calendar week of July,~~
10 ~~the maximum weekly benefit amount shall be adjusted by a percentage equal~~
11 ~~to the percentage change during the preceding calendar year in the State~~
12 ~~average weekly wage as determined by subsection (g) of this section. When~~
13 ~~the unemployment contribution rate schedule established by subsection~~
14 ~~1326(e) of this title is at schedule III, the maximum weekly benefit amount~~
15 ~~shall be annually adjusted on the first day of the first calendar week in July to~~
16 ~~an amount equal to 57 percent of the State annual average weekly wage as~~
17 ~~determined by subsection (g) of this section.~~

18 (2) Notwithstanding any provision of subdivision (1) of this subsection
19 to the contrary:

1 (A) The maximum weekly benefit amount shall not increase in any
2 year that advances made to the State Unemployment Compensation Fund
3 pursuant to Title XII of the Social Security Act, as amended, remain unpaid.

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

5 * * *

6 * * * Unemployment Insurance Contribution Relief * * *

7 Sec. 7. 21 V.S.A. § 1326 is amended to read:

8 § 1326. RATE BASED ON BENEFIT EXPERIENCE

9 * * *

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

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

17 (2)(A) ~~the~~ The highest benefit cost rate shall be determined by dividing
18 the highest amount of benefit payments made during a consecutive ~~12-month~~
19 12-month period ~~which that~~ ended within the ~~10-year~~ 10-year period ~~ended~~
20 with ending on the preceding December 31, by the total wages paid during the

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. 8. REVISED UNEMPLOYMENT INSURANCE TRUST FUND

10 TARGET BALANCE; POTENTIAL FUTURE BENEFIT

11 CHANGES; REPORT

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

17 (2) The Commissioner shall also:

18 (A) assess and consider:

19 (i) the amount necessary to ensure the continued solvency of the
20 Trust Fund during a future economic recession based on the economic cycles
21 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);

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 pursuant to subdivision (A) of
7 this subdivision (a)(2);

8 (C) compare Vermont’s unemployment insurance benefits to the
9 unemployment insurance benefits provided by other states, including the
10 maximum weekly benefit, wage replacement rate, dependent benefits, total
11 benefits, income disregard, waiting weeks, and other related issues; and

12 (D) based on the comparison performed pursuant to subdivision (C)
13 of this subdivision (a)(2), determine whether the benefits provided pursuant to
14 21 V.S.A. § 1338 should be increased or modified and, if so, when the
15 Unemployment Insurance Trust Fund is anticipated to be sufficiently recovered
16 to implement such an increase or modification.

17 (b)(1) In performing the analyses required pursuant to subsection (a) of this
18 section, the Commissioner shall convene and consult with a working group
19 composed of representatives of employers and employees, economists, and
20 other individuals with relevant knowledge or experience as determined by the
21 Commissioner.

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

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

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

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

20 (4) The Commissioner shall also provide each member of the working
21 group with an opportunity to submit a written statement responding to the

1 Commissioner’s analyses and determinations, which shall be included as part
2 of the report submitted pursuant to this subsection.

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

4 Sec. 9. UNEMPLOYMENT INSURANCE; FRAUD; OVERPAYMENTS;
5 DETECTION; PREVENTION; REPORT

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

12 (1) with respect to unemployment insurance fraud:

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

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

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

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

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

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

11 (G) to the extent practicable, identify the number of fraud
12 determinations that are appealed and the percentage of those determinations
13 that are reversed following the appeal;

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

17 (I) examine whether a period of disqualification imposed pursuant to
18 21 V.S.A. § 1347(e) should expire or be waived after the passage of a certain
19 period of time;

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

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

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

8 (2) with respect to the overpayment of unemployment insurance
9 benefits:

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

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

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

17 (D) identify the instances in which an individual’s liability for an
18 overpayment could potentially be reduced or waived, such as when the
19 claimant is not at fault or the overpayment results from a mistake or lack of
20 understanding regarding the unemployment insurance rules, and the criteria, if

1 any, that the Department would employ to determine whether a reduction or
2 waiver is appropriate.

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

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

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

17 (d) As used in this section:

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

1 or a claimant’s intentional misrepresentation or nondisclosure of a material
2 fact.

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

6 Sec. 10. 2020 Acts and Resolves No. 85, Sec. 9(a)(1) is amended to read:

7 (a)(1) On or before ~~January 15, 2022~~ November 15, 2021, the Attorney
8 General and the Commissioner of Labor shall submit a written report to the
9 House Committees on Commerce and Economic Development and on General,
10 Housing, and Military Affairs and the Senate Committees on Economic
11 Development, Housing and General Affairs and on Finance regarding the
12 enforcement of employment laws related to employee misclassification
13 pursuant to 21 V.S.A. §§ 346, 387, 712, and 1379 and by the Commissioner of
14 Labor pursuant to 21 V.S.A. chapter 5, subchapters 2 and 3, and 21 V.S.A.
15 chapters 9 and 17.

16 Sec. 11. 3 V.S.A. § 2222d is amended to read:

17 § 2222d. EMPLOYEE MISCLASSIFICATION TASK FORCE

18 * * *

19 (f) On or before ~~January 15, 2022~~ November 15, 2021, the Task Force shall
20 submit 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 ways to improve the effectiveness and
2 efficiency of the system of joint enforcement by the Commissioner of Labor
3 and the Attorney General of the laws related to employee misclassification that
4 is established pursuant to 21 V.S.A. §§ 3, 346, 387, 712, and 1379. In
5 particular, the Report shall examine:

6 * * *

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

8 Sec. 12. REIMBURSABLE EMPLOYERS; CHARGE RELIEF; REPORT

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

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* * * Effective Dates * * *

Sec. 13. EFFECTIVE DATES

This section and the remaining sections shall take effect on passage, except that, notwithstanding 1 V.S.A. § 214, Sec. 4 (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