

1 S.290

2 Introduced by Committee on Economic Development, Housing and General
3 Affairs

4 Date: February 23, 2010

5 Subject: Labor; unemployment compensation; unemployment trust fund;
6 taxable wage base; weekly benefit amount; solvency

7 Statement of purpose: This bill proposes to make changes to the
8 unemployment compensation program to restore solvency to the Vermont
9 unemployment trust fund by implementing a plan of shared responsibility
10 between employers and workers.

11 An act relating to restoring solvency to the unemployment trust fund

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 ~~Sec. 1. LEGISLATIVE FINDINGS AND PURPOSE~~

14 ~~The general assembly finds:~~

15 ~~(1) The unemployment insurance program is an insurance program that~~
16 ~~provides temporary financial support to workers who become unemployed due~~
17 ~~to no fault of their own.~~

18 ~~(2) With the onset of the worldwide financial recession in the fall of~~
19 ~~2008, the health of the Vermont unemployment trust fund has faltered. In~~

1 ~~January 2010, the state was required to borrow \$58 million to continue to pay~~
2 ~~benefits, which are now approximately \$4.4 million per week.~~

3 (3) A major factor contributing to the current fund solvency crisis is that
4 the unemployment weekly taxable wage base has remained constant since the
5 early 1980s.

6 (4) Organizations that represent the interests of both business and labor
7 recognize that, in order to return the trust fund to an adequate level, employers,
8 employees, and claimants must share the burden as a way to not substantially
9 increase payroll taxes on employers or not substantially reduce benefits to
10 unemployed workers.

11 (5) A shared financial responsibility should be implemented to avoid
12 substantial financial burdens to the approximately 23,800 for-profit employers
13 by increased payroll taxes and to unemployed Vermont workers who find
14 themselves without a job through no fault of their own.

15 (6) In order to implement the shared responsibility found necessary by
16 the general assembly to bring the unemployment trust fund balance to a level
17 recommended by the U.S. Department of Labor, this act proposes to
18 implement the following reforms and changes:

19 (A) Implement a graduated increase in unemployment insurance
20 taxes to be paid by employers, by increasing the taxable wage base, which has
21 not been increased in the past 27 years.

1 ~~(B) Implement a fee on reimbursable employers indexed to the cost~~
2 ~~of borrowing money from the federal government.~~

3 (C) Continue a temporary freeze on the maximum weekly benefit
4 amount at \$425.00 until the trust fund is at an adequate level again.

5 (D) Delay weekly benefit amounts by implementing a one-week
6 waiting period before unemployment benefits are paid. This one-week waiting
7 period will also reduce the incentive of some employers to use one-week
8 furloughs as a cost savings measure at the expense of the unemployment
9 insurance trust fund.

10 (E) Change the method of determining qualifications for claimants
11 who have lost a job due to employee misconduct.

12 (F) Create an incentive for temporary or seasonal workers to return to
13 work by implementing a new method of determining benefit amount by
14 averaging the wages of four rather than two quarters.

15 (G) Implement safeguards that trigger contributions and benefit
16 changes when the unemployment trust fund reaches certain balances.

17 (H) Implement a payroll tax of 0.002 to be paid by the workforce
18 until the balance in the unemployment trust fund reaches the current
19 recommended level of \$325 million.

1 ~~Sec. 2. 21 V.S.A. § 1309 is amended to read:~~

2 § 1309. REPORTS; SOLVENCY OF TRUST FUND

3 ~~Before the first day of July~~ On or before January 31 of each year, the
4 commissioner shall submit to the governor and the chairs of the senate
5 committee on economic development, housing and general affairs and on
6 finance and the house committees on commerce and economic development
7 and on ways and means a report covering the administration and operation of
8 this chapter during the preceding calendar year. The report shall include a
9 balance sheet of the moneys in the fund and data as to probable reserve
10 requirements based upon accepted actuarial principles, with respect to business
11 activity, and other relevant factors for the longest available period. The report
12 shall also include ~~such~~ recommendations for amendments of this chapter as the
13 board considers proper. Whenever the commissioner believes that the
14 solvency of the fund is in danger, ~~he or she~~ the commissioner shall promptly ~~so~~
15 inform the governor and the chairs of the senate committees on economic
16 development, housing and general affairs and on finance, and the house
17 committees on commerce and economic development and on ways and means,
18 and make recommendations ~~with respect thereto~~ for preserving an adequate
19 level in the trust fund.

1 ~~Sec. 3. 21 V.S.A. § 1314 is amended to read:~~

2 § 1314. ~~–REPORTS AND RECORDS; SEPARATION INFORMATION;~~

3 DETERMINATION OF ELIGIBILITY

4 * * *

5 (c) If an employing unit fails to comply with the provisions of subsection
6 (b) of this section, ~~and/or after October 1, 1986, and~~ section 1314a of this title,
7 the commissioner shall determine the benefit rights of a claimant upon such
8 information as is available. Prompt notice in writing of the determination shall
9 be given to the employing unit. The determination shall be final with respect
10 to a noncomplying employer as to any charges against its experience-rating
11 record for benefits paid to the claimant ~~and its experience rating record shall~~
12 ~~not be relieved of those charges unless, within 30 days after notice thereof, the~~
13 ~~employer files an appeal from the determination and the determination is~~
14 ~~ultimately reversed, or~~ before the week following the receipt of the employing
15 unit's reply. The employing unit's experience rating record shall not be
16 relieved of these charges, notwithstanding any other provision of this chapter,
17 unless the amount of benefits is recovered from the claimant, or unless the
18 commissioner determines that failure to comply was due to unavoidable
19 accident or mistake.

1 ~~Sec. 4. 21 V.S.A. § 1321 is amended to read:~~

2 § 1321. CONTRIBUTIONS; TAXABLE WAGE BASE CHANGES;

3 TRIGGERS

4 (a) Payment of Contributions. Contributions shall accrue and become
5 payable by each employer for each calendar year in which ~~he or she~~ the
6 employer is subject to this chapter, with respect to wages paid for employment,
7 as defined in subdivision 1301(6) of this title, occurring during such calendar
8 year, except as otherwise provided in this section. The contributions shall
9 become due and be payable at such time and in such installments as the board
10 prescribes.

11 (b) Base of Contributions. Subsequent to December 31, 1982, the term
12 “wages” shall not include that part of remuneration which, after remuneration
13 equal to \$8,000.00 has been paid in a calendar year to an individual by an
14 employer with respect to employment during a calendar year, unless that part
15 of the remuneration is subject to a tax under a federal law imposing a tax
16 against which credit may be taken for contributions required to be paid into a
17 state unemployment fund. For the period January 1, 2010, through
18 December 31, 2010, the term “wages” shall not include that part of
19 remuneration which, after remuneration equal to \$10,000.00 has been paid in a
20 calendar year to an individual by an employer with respect to employment
21 during a calendar year, unless that part of the remuneration is subject to a tax

1 ~~under a federal law imposing a tax against which credit may be taken for~~
2 ~~contributions required to be paid into a state unemployment fund. The term~~
3 ~~“wages.” does not include that part of remuneration that, after remuneration~~
4 ~~equal to \$12,000.00 on January 1, 2011, \$15,000.00 on January 1, 2012, and~~
5 ~~\$16,000.00 on January 1, 2013, has been paid in a calendar year to an~~
6 ~~individual by an employer with respect to employment during a calendar year,~~
7 ~~unless that part of the remuneration is subject to a federal tax against which~~
8 ~~credit may be taken for contributions required to be paid into a state~~
9 ~~unemployment fund. When the unemployment contribution rate schedule~~
10 ~~established by subsection 1326(e) of this title is reduced to schedule II, the~~
11 ~~base of contribution amount shall be reduced to \$14,000.00 or the federal~~
12 ~~taxable wage base, whichever is higher, effective January 1 of the following~~
13 ~~year. Annually on January 1 of the year following a reduction in the~~
14 ~~unemployment contribution rate schedule in subsection 1326(e) of this title to~~
15 ~~schedule III, and each January 1 thereafter, except in the year following a~~
16 ~~reduction to schedule I, the base dollar amount shall be adjusted by the same~~
17 ~~percentage as any increase in the state average annual wage, as calculated~~
18 ~~pursuant to subsection 1338(g) of this title. For the purposes of this~~
19 ~~subsection:~~

20 (1) Any employer who acquired the entire or a distinct and severable
21 portion of the organization, trade, or business of an employer shall be treated

1 ~~as a single unit with its predecessor for the calendar year in which such~~

2 acquisition occurs; and

3 (2) The term employment shall include service constituting employment
4 under any unemployment compensation law of another state.

5 * * *

6 (g) Reimbursable employers. Any employer who makes payment in lieu of
7 contributions pursuant to subsection (c) of this section shall pay, in addition to
8 the amount due, a fee equal to the federal unemployment trust fund borrowing
9 rate, as established by 42 U.S.C. § 1322(b)(4), which amount shall be
10 deposited in the trust fund. The fee shall be calculated by multiplying the
11 benefits paid by the employment trust fund borrowing rate as set on January 1
12 of the year in which the benefits were paid. Amounts due under this subsection
13 shall be paid in compliance with subdivision (c)(3)(C) of this section, and may
14 not be deducted from remuneration of employees as required by subdivision
15 (c)(3)(D) of this section.

16 (h) Payroll Deduction. An employer shall deduct a tax in the amount of
17 0.2 percent of payroll and submit that amount to the tax department for deposit
18 into the unemployment trust fund. This tax shall be suspended in any year
19 following one in which the unemployment contribution rate schedule
20 established by subsection 1326(e) of this title is reduced to schedule III and
21 shall be reinstated in the year following a return to schedule IV.

1 ~~Sec. 5. 21 V.S.A. § 1338 is amended to read:~~

2 ~~§ 1338. WEEKLY BENEFITS; QUARTERLY BASE PERIOD; GROSS~~

3 ~~MISCONDUCT~~

4 * * *

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

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

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

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

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

3 * * *

4 (3) ~~have~~ earned subsequent to the beginning of his or her most recent
5 benefit year wages in employment with an employer or employers subject to
6 this chapter which equal or exceed four times his or her weekly benefit amount
7 as determined under subsection ~~(e)(c)~~ of this section for that prior benefit year.

8 ~~(e)(c) For benefit years beginning on January 3, 1988~~ January 3, 2011, and
9 subsequent thereto, an individual's weekly benefit amount shall be determined
10 by dividing the individual's ~~two high quarter total subject wages required~~
11 ~~under subdivision (d)(1) of this section by 45; provided that the~~ average
12 quarterly base period wage by 23. The average quarterly base period wage
13 shall be computed by dividing the individual's total base period subject wages
14 by four. The weekly benefit amount so determined shall not exceed the
15 maximum weekly benefit amount computed as provided in this section. The
16 base period wages shall not include any wages paid by an employing unit
17 based on a separation determined to be gross misconduct pursuant to
18 subdivision 1344(a)(2)(B) of this title.

19 ~~(f)(d) The maximum weekly benefit amount shall be \$425.00 for the period~~
20 ~~July 1, 2009, through June 30, 2010. Thereafter, on~~ until the unemployment
21 contribution rate schedule established by subsection 1326(e) of this title is

1 ~~reduced to schedule III. On the first day of the first calendar week of July~~
2 following a return to schedule III, the maximum weekly benefit amount shall
3 be adjusted by a percentage equal to the percentage change during the
4 preceding calendar year in the state average weekly wage as determined by
5 subsection ~~(g)~~(e) of this section, provided the maximum weekly benefit
6 amount shall not increase in any year that advances made to the State
7 Unemployment Compensation Fund pursuant to Title XII of the Social
8 Security Act, as amended, remain unpaid.

9 ~~(g)~~(e) On or before the first day of June of each year the total wages
10 reported on contribution reports for the preceding calendar year shall be
11 divided by the average monthly number of covered workers (determined by
12 dividing the total covered employment reported on contribution reports
13 pursuant to this chapter for the preceding year by 12). The state average
14 annual wage thus obtained shall be divided by 52 and the state average weekly
15 wage thus determined shall be rounded down to the nearest dollar.

16 ~~(h)~~(f) Effective with the first calendar week of July, 1990, and with the first
17 full calendar weeks of each July thereafter, the minimum quarterly wage
18 requirement of subdivision ~~(d)~~(1) ~~(b)~~(1) of this section shall be adjusted by a
19 percentage increase equal to the percentage increase, if any, in the state
20 minimum wage effective during the prior calendar year. This adjusted
21 minimum quarterly wage requirement shall be applicable to new claims for

1 ~~benefits with effective dates during or after the first full calendar week of July~~
2 1990, and the first full calendar weeks of each July thereafter.

3 ~~(+)(g)~~ Income tax withholding.

4 * * *

5 (D) the individual who elects to have federal income tax deducted
6 and withheld shall have state income tax withheld ~~in accordance with the rates~~
7 ~~shown at section 5822 of Title 32~~ at 24 percent of the federal rate; and

8 * * *

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

10 § 1338a. DISREGARDED EARNINGS

11 (a) An individual shall be deemed "partially unemployed" in any week of
12 less than full-time work if the wages earned by the individual with respect to
13 such week are less than the weekly benefit amount the individual would be
14 entitled to receive if totally unemployed and eligible. As used in this section
15 "wages" in any one week includes only that amount of remuneration to the
16 nearest dollar which is in excess of ~~30~~ 15 percent of the individual's weekly
17 ~~benefit wage~~, or \$40.00, whichever amount is greater.

18 * * *

1 ~~Sec. 7. 21 V.S.A. § 1343 is amended to read:~~

2 § 1343. ~~CONDITIONS~~ CLAIMANT RESPONSIBILITIES

3 (a) An unemployed individual shall be eligible to receive benefits with
4 respect to any week only if the commissioner finds that all of the following
5 requirements are met and the individual:

6 (1) Has registered for work at and thereafter has continued to report at
7 an employment office in accordance with ~~such~~ regulations as prescribed by the
8 board ~~may prescribe~~.

9 (2) Has made a claim for benefits in accordance with the provisions of
10 section 1346 of this title.

11 (3) Is able to work, and is available for work; provided, that in
12 determining the availability of any individual during any week, the
13 commissioner may require, in addition to registration at any employment
14 office, that the individual participate in reemployment services, or at any time
15 make such other efforts to secure suitable work as the commissioner may
16 reasonably direct under the circumstances and to supply proper evidence
17 thereof; and shall, if the individual fails without good cause to do so, be
18 ineligible for each week such failure continues; provided further that no
19 claimant shall be considered ineligible in any week of unemployment for
20 failure to comply with the provisions of this subdivision if such failure is due
21 to an illness or disability which occurs after the claimant has registered for

1 ~~work, filed a claim for benefits and during a week for which the individual was~~
2 entitled to waiting period credit or benefit payments, and no work which would
3 have been considered suitable but for the illness or disability has been offered
4 after the beginning of such illness or disability.

5 (4) Prior to any week for which an individual claims benefits, the
6 individual has been totally or partially unemployed for a waiting period of one
7 week during the individual's benefit year and any extended eligibility period.
8 No week shall be counted as a week of total or partial unemployment:

9 (A) If benefits have been paid with respect to that week.

10 (B) Unless the individual is eligible for benefits with respect to that
11 week in all respects except for the requirements of subdivision (2) of this
12 subsection.

13 (C) Unless it occurs after benefits first become payable to any
14 individual under this chapter.

15 * * *

16 Sec. 8. 21 V.S.A. § 1340 is amended to read:

17 § 1340. ~~COMPUTATION~~ DURATION OF BENEFITS

18 Except as provided in ~~subchapter 2~~ subchapters 2 and 4 of this chapter, the
19 maximum total amount of benefits payable to any eligible individual during
20 any benefit year shall not exceed 26 times his or her weekly benefit amount.

1 ~~Sec. 9. 21 V.S.A. § 1344 is amended to read:~~

2 § 1344. DISQUALIFICATIONS

3 (a) An individual shall be disqualified for benefits:

4 (1) ~~For not more than 12 weeks nor less than six weeks immediately~~
5 ~~following the filing of a claim for benefits (in addition to the waiting period) as~~
6 ~~may be determined by the commissioner according to the circumstances in~~
7 ~~each case, if the commissioner finds that any week benefits are claimed, until~~
8 ~~the individual has presented evidence to the satisfaction of the commissioner~~
9 ~~that the individual has performed services in employment for a bona fide~~
10 ~~employer and has had earnings in excess of four times the individual's weekly~~
11 ~~benefit amount if the commissioner finds that the individual is unemployed~~
12 ~~because:~~

13 (A) He or she has been discharged by his or her last employing unit
14 for misconduct connected with his or her work; or

15 (B) He or she was separated from his or her last employing unit
16 because he or she became unable to perform all or an essential part of his or
17 her normal duties in ~~such~~ employment without good cause attributable to ~~such~~
18 the employing unit because of the consequences which flow from his or her
19 conviction of a felony or misdemeanor or from an action or order of a judge or
20 court in any criminal or civil matter. In the event a conviction or the action or
21 order of any judge or court in any criminal or civil matter is rescinded or

1 ~~expunged, the individual may be eligible for benefits from the time the~~
2 individual would have otherwise been eligible for benefits.

3 (2) For any week benefits are claimed, except as provided in subdivision
4 (a)(3) of this section, until he or she has presented evidence to the satisfaction
5 of the commissioner that he or she has performed services in employment for a
6 bona fide employer and has had earnings in excess of six times his or her
7 weekly benefit amount if the commissioner finds that ~~such~~ the individual is
8 unemployed because:

9 (A) He or she has left the employ of his or her last employing unit
10 voluntarily without good cause attributable to ~~such~~ the employing unit. An
11 individual shall not suffer more than one disqualification by reason of such
12 separation.

13 (B) He or she has been discharged by his or her last employing unit
14 for gross misconduct connected with his or her work. An individual shall not
15 suffer more than one disqualification by reason of such separation.

16 (C) He or she has failed, without good cause, either to apply for
17 available, suitable work when so directed by the employment office or the
18 commissioner, or to accept suitable work when offered him or her, or has
19 during the course of a job interview for available employment made verbal
20 statements which are either untrue, show an unreasonable lack of interest, or
21 are calculated to preclude an offer of work or a directive being made, or to

1 ~~return to his or her customary self-employment, if any, when so directed by the~~
2 commissioner. An individual shall not suffer more than one disqualification
3 for these causes.

4 (D) In determining whether or not any work or employment is
5 suitable for an individual for purposes of this subdivision, the commissioner
6 shall consider the degree of risk involved to ~~his or her~~ the individual's health,
7 safety and morals, ~~his or her~~ physical fitness and prior training, ~~his or her~~
8 experience and prior earnings, ~~his or her~~ length of unemployment and
9 prospects for securing local work in ~~his or her~~ the individual's customary
10 occupation, and the distance of the available work from ~~his or her~~ the
11 individual's residence.

12 * * *

13 (5) For any week with respect to which ~~he or she~~ the individual is
14 receiving or has received remuneration in the form of:

15 (A) Wages in lieu of notice; or

16 (B) Vacation pay or holiday pay; ~~or,~~

17 (⊕) Vacation pay due at time of separation in accordance with a
18 work agreement (whether a formal contract or established custom) shall be
19 allocated to the period immediately following separation, or if due subsequent
20 to separation, it shall be allocated to the week in which due or the next
21 following week, and that number of weeks immediately following as required

1 ~~to equal the total of the weeks of pay due. Any mutual agreement between the~~
2 employer and employee(s) (whether or not payment is made), allocating such
3 remuneration to any period during which work is performed, within four weeks
4 prior to the date of separation, shall not be valid for the purpose of determining
5 unemployment compensation entitlement or waiting period credit purposes and
6 such payment shall be allocated to the period immediately following
7 separation.

8 (ii) There shall be no disqualification amount for any holiday.

9 (C) ~~Back pay award or settlement; or~~ Severance pay;

10 (i) ~~Back~~ back pay awards, and back pay settlements. These
11 payments, awards, and settlements shall be allocated to the week(s) and in the
12 manner as specified in the order or agreement, or, in the absence of such
13 specificity, to the week(s) and in the manner which, in the judgment of the
14 commissioner, would be reasonable.

15 * * *

16 (F) ~~A cash severance payment, unless and to the extent the paying~~
17 ~~employer elects to treat it as nondisqualifying or unless it is paid in accordance~~
18 ~~with a work agreement (whether a formal contract or established custom).~~

19 * * *

1 ~~Sec. 10. 21 V.S.A. § 1347 is amended to read:~~

2 ~~§ 1347. NONDISCLOSURE OR REPAYMENT OF BENEFITS AND~~
3 ~~INTENTIONAL MISREPRESENTATION~~

4 (a) ~~Any person who fails, without good cause, to make reasonable effort to~~
5 ~~secure suitable work when directed to do so by the employment office or the~~
6 ~~commissioner and has received any amount as benefits under this chapter with~~
7 ~~respect to weeks for which the person is determined to be ineligible for such~~
8 ~~failure, and any person who by nondisclosure or misrepresentation by him or~~
9 ~~her, or by another, of a material fact (irrespective of whether such~~
10 ~~nondisclosure or misrepresentation was known or fraudulent) has received any~~
11 ~~amount as of benefits under this chapter while any conditions for the receipt of~~
12 ~~benefits imposed by this chapter were not fulfilled in his or her case or while~~
13 ~~he or she was disqualified from receiving benefits, and is later determined to~~
14 ~~be ineligible for those benefits shall be liable for such that amount. Notice of~~
15 ~~determination in such cases shall specify that the person is liable to repay to~~
16 ~~the fund the amount of overpaid benefits, the basis of the overpayment, and the~~
17 ~~week or weeks for which such benefits were paid. The determination shall be~~
18 ~~made within three years from the date of such the overpayment.~~

19 (b) ~~Any person who receives remuneration described in subdivisions (A),~~
20 ~~(B), (C), (D), (E), or (F) of section 1344(a)(5) of this title which is allocable in~~
21 ~~whole or in part to prior weeks during which he or she received any amounts as~~

1 ~~benefits under this chapter shall be liable for all such amounts of benefits or~~
2 ~~these portions of such amounts equal to the portions of such remuneration~~
3 ~~properly allocable to the weeks in question. Notice of determination in such~~
4 ~~eases shall specify that the person is liable to repay to the fund the amount of~~
5 ~~overpaid benefits, the basis of the overpayment, and the week or weeks for~~
6 ~~which such benefits were paid. The determination shall be made within three~~
7 ~~years from the date of such overpayment or within one year from the date of~~
8 ~~receipt of the remuneration, whichever period is longer.~~

9 ~~(e)~~ The person liable under this section shall repay ~~such~~ the amount of
10 overpaid benefits to the commissioner for the fund. ~~Such~~ The amount may be
11 collectible by civil action in a Vermont district or superior court, in the name
12 of the ~~commissioner~~ department. No action shall be commenced for ~~the~~
13 collection of ~~such amount~~ more than five years after the date of ~~such~~ a
14 determination under this section or the final decision confirming the liability of
15 ~~such~~ the person on an appeal from ~~such~~ the determination.

16 ~~(d)~~(c) In any case in which under this section a person is liable to repay any
17 amount to the commissioner for the fund, the commissioner may withhold, in
18 whole or in part, any future benefits payable to ~~such~~ that person, and credit
19 ~~such~~ withheld benefits against the amount due from ~~such~~ the person until it is
20 repaid in full. No benefits shall be withheld after five years from the date of

1 ~~such the determination or the date of the final decision confirming the liability~~
2 of ~~such the~~ person on an appeal from ~~such the~~ determination.

3 ~~(e)(d)~~ Intentional misrepresentation. In addition to the foregoing, when it
4 is found by the commissioner that a person intentionally misrepresented or
5 failed to disclose a material fact with respect to his or her claim for benefits
6 and in the event the person is not prosecuted under section 1368 of this title
7 and penalty provided in section 1373 of this title is not imposed, the person
8 shall be disqualified and shall not be entitled to receive benefits to which he or
9 she would otherwise be entitled after the determination for such number of
10 weeks not exceeding 26 as the commissioner shall deem just; provided,
11 however, that no benefits shall be denied to a claimant because of ~~such that~~
12 determination after three years from the date ~~thereof or the date~~ of final
13 decision on an appeal from ~~such the~~ determination. The notice of
14 determination shall also specify the period of disqualification imposed
15 ~~hereunder.~~

16 ~~(f)(e)~~ Interested parties shall have the right to appeal from any
17 determination under this section and the same procedure shall be followed as
18 provided for in sections 1348(a) and 1349 of this title.

1 ~~Sec. 11. 21 V.S.A. chapter 17, subchapter 4 is added to read:~~

2 Subchapter 4. Benefits for Approved Job Training Program

3 § 1471. TRAINING BENEFIT PROGRAM

4 (a) An individual who is otherwise eligible for benefits under this chapter,
5 but who has exhausted his or her maximum benefit amount under section 1340
6 of this chapter and any other available federally funded extension, is entitled to
7 a maximum of an additional 26 weeks of benefits in the same amount as the
8 weekly benefit amount established in the individual's most recent benefit year
9 if the individual is enrolled in and making satisfactory progress in either a
10 state-approved training program or a job training program authorized under the
11 workforce investment act of 1998.

12 (b) To be eligible for training benefits under this section an individual shall
13 be in compliance with both the following:

14 (1) The individual has been separated from a declining occupation or
15 has been involuntarily and indefinitely separated from employment as a result
16 of a permanent reduction of operations at the individual's place of
17 employment.

18 (2) The individual is enrolled in a program designed to train the
19 individual for entry into a high demand occupation.

1 ~~Sec. 12. 21 V.S.A. § 1101 is amended to read:~~

2 § 1101. APPRENTICESHIP DIVISION AND COUNCIL

3 The apprenticeship division and state apprenticeship council, hereinafter
4 referred to as the “council,” shall be located within the department of labor.
5 The commissioner of labor shall supervise the work of the division. The
6 council shall consist of ~~11~~ 10 members, ~~five~~ four ex officio members and six
7 members who shall be appointed by the governor. Of the ex officio members,
8 one shall be the commissioner of labor, ~~one shall be the director of workforce~~
9 ~~development~~, one shall be the ~~chief of licensing within the department of~~
10 ~~commissioner of public safety~~, or designee, one shall be the ~~director of career~~
11 ~~and lifelong learning within the department~~ commissioner of education or
12 designee, and one shall be the ~~state~~ director of the apprenticeship division who
13 shall act as secretary of the council without vote. Of the appointive members,
14 three shall be individuals who on account of previous vocation, employment,
15 occupation, or affiliation can be classed as employers and three shall be
16 individuals who on account of previous vocation, employment, occupation, or
17 affiliation can be classed as employees. Appointment of the employer and the
18 employee members shall be made for the term of three years except the
19 employer and employee members first appointed shall be appointed for the
20 term of one, two, and three years respectively. The governor shall annually
21 designate one member of the council as chair. Each member of the council

1 ~~who is not a salaried official or employee of the state shall be entitled to~~
2 compensation and expenses as provided in 32 V.S.A. § 1010.

3 Sec. 13. DEPARTMENT OF LABOR; STUDY; MONETARY

4 ELIGIBILITY FOR BENEFITS

5 The department of labor shall study the advisability and impact of the
6 monetary method three, as described in 21 V.S.A. § 1301(17)(C), on fairness
7 to claimants and impact on seasonal businesses and the financial health of the
8 unemployment insurance fund.

9 Sec. 14. STUDY TO CREATE A UNIFORM PROCEDURE FOR

10 DETERMINING INDEPENDENT CONTRACTOR STATUS

11 (a) A committee to simplify determination of independent contractor status
12 is created. The committee shall be composed of the following six members:

13 (1) A member of the senate committee on economic development,
14 housing and general affairs appointed by the chair of the committee.

15 (2) A member of the house committee on commerce appointed by the
16 chair of the committee.

17 (3) The commissioner of labor or designee.

18 (4) The secretary of state or designee.

19 (5) A representative from organized labor appointed by the Vermont
20 building trades council.

1 ~~(6) A representative of management appointed by associated general~~
2 ~~contractors.~~

3 ~~(b) The committee shall meet as needed. Legislative council and joint~~
4 ~~fiscal office shall provide administrative support. The committee's task is to~~
5 ~~consider the adoption of a definition of "independent contractor" that can be~~
6 ~~used by the department of labor to improve and enforce compliance with both~~
7 ~~the unemployment insurance program and the workers' compensation~~
8 ~~program. The committee shall evaluate and recommend an approach to bring~~
9 ~~more certainty to a determination of "independent contractor" status based on a~~
10 ~~common definition of "independent contractor" in combination with a~~
11 ~~contractor registration system and a contractor self-certification process to be~~
12 ~~administered by the secretary of state's office. The committee shall issue~~
13 ~~written recommendations to the senate committee on economic development,~~
14 ~~housing and general affairs and the house committee on commerce and~~
15 ~~economic development on or before January 15, 2011.~~

16 ~~(c) The committee shall use as a starting point the following program~~
17 ~~design. Any person who performs construction work in the state shall register~~
18 ~~annually with the secretary of state's office. A person who performs~~
19 ~~construction work may apply to be certified as an independent contractor,~~
20 ~~provided that the person certifies, in writing and under oath, that the person is~~
21 ~~in compliance with all the following:~~

1 ~~(1) Maintains a separate business with separate office facilities,~~
2 ~~equipment, materials, or other equipment and has ongoing and recurring~~
3 ~~liabilities or obligations.~~

4 ~~(2) Has or has applied for a federal employer identification number with~~
5 ~~the U.S. Internal Revenue Service (IRS) or has filed business or~~
6 ~~self-employment income tax returns with the IRS for business income received~~
7 ~~during the previous year.~~

8 ~~(3) Operates under a written contract that specifies that the independent~~
9 ~~contractor:~~

10 ~~(A) Will perform specific services or work for a specific amount of~~
11 ~~money and the independent contractor will control the means of performing the~~
12 ~~service or work.~~

13 ~~(B) Incurs the main expenses related to providing the service or work~~
14 ~~required by the contract.~~

15 ~~(C) Is responsible for the satisfactory completion of work or services~~
16 ~~to be performed under the contract and is liable for any failure to complete the~~
17 ~~service or work.~~

18 ~~(D) Receives compensation for service or work only on a~~
19 ~~commission or per-job competitive basis.~~

20 ~~(E) May realize a profit or suffer a loss as the result of performing the~~
21 ~~service or work under the contract.~~

1 ~~(F) Voluntarily elected the status of "independent contractor" and~~
2 ~~was not coerced into signing the statement.~~

3 (G) Will maintain workers' compensation insurance and pay
4 unemployment insurance taxes for any workers hired to perform services or
5 work for the person.

6 (4) The person making a certification under subdivision (3) of this
7 subsection shall maintain documentation of compliance with all the conditions
8 listed in subdivision (3) of this subsection and shall provide it to the
9 department of labor on request.

10 (5) Any person who performs services for pay for a construction
11 contractor is presumed to be an employee. This presumption may be rebutted
12 by demonstration to the satisfaction of the commissioner of labor that the
13 person is in compliance with all the conditions listed in subdivision (3) of this
14 subsection.

15 (6) Any person who makes any false statements or certifications
16 regarding the person's status as an independent contractor may be subject to
17 imprisonment of up to one year or a fine of up to \$10,000.00, or both, in
18 addition to any administrative penalties under 21 V.S.A. § 708 or 1369.

19 Sec. 15. REPEAL

20 21 V.S.A. § 1423b, relating to extended benefits; approved training
21 programs, is repealed.

1 ~~Sec. 16. EFFECTIVE DATE~~

2 ~~This section and Secs. 8, 11, and 15 of this act shall take effect on passage.~~

Sec. 1. 21 V.S.A. § 1309 is amended to read:

§ 1309. –REPORTS; SOLVENCY OF TRUST FUND

~~Before the first day of July~~ On or before January 31 of each year, the commissioner shall submit to the governor and the chairs of the senate committee on economic development, housing and general affairs and on finance and the house committees on commerce and economic development and on ways and means a report covering the administration and operation of this chapter during the preceding calendar year. The report shall include a balance sheet of the moneys in the fund and data as to probable reserve requirements based upon accepted actuarial principles, with respect to business activity, and other relevant factors for the longest available period. The report shall also include ~~such~~ recommendations for amendments of this chapter as the board considers proper. Whenever the commissioner believes that the solvency of the fund is in danger, ~~he or she~~ the commissioner shall promptly ~~so~~ inform the governor and the chairs of the senate committees on economic development, housing and general affairs and on finance, and the house committees on commerce and economic development and on ways and means, and make recommendations ~~with respect thereto~~ for preserving an adequate level in the trust fund.

Sec. 2. 21 V.S.A. § 1321 is amended to read:

§ 1321. CONTRIBUTIONS; TAXABLE WAGE BASE CHANGES

** * **

(b) Base of Contributions. Subsequent to December 31, 1982, the term “wages” shall not include that part of remuneration which, after remuneration equal to \$8,000.00 has been paid in a calendar year to an individual by an employer with respect to employment during a calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the period January 1, 2010, through December 31, 2010, the term “wages” shall not include that part of remuneration which, after remuneration equal to \$10,000.00 has been paid in a calendar year to an individual by an employer with respect to employment during a calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. The term “wages” shall not include that part of remuneration which, after remuneration

equal to \$13,000.00 on January 1, 2011, and \$16,000.00 on January 1, 2012, has been paid in a calendar year to an individual by an employer with respect to employment during a calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. After January 1, 2012, whenever the 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 June 1, the base of contribution amount shall be adjusted on January 1 of the following year by the same percentage as any increase in the state annual average wage as calculated by subsection 1338(g) of this title. When the unemployment contribution rate schedule established by subsection 1326(e) of this title is reduced to schedule III, the base of contribution amount shall be reduced by \$2,000.00 on January 1 of the following year and shall be adjusted annually thereafter on January 1 of the following year by the same percentage as any increase in the state annual average wage as calculated by subsection 1338(g) of this title. When the unemployment contribution rate schedule established by subsection 1326(e) of this title is reduced to schedule I, the base of contribution amount shall be reduced by \$2,000.00 on January 1 of the following year and shall be adjusted annually thereafter on January 1 of the following year by the same percentage as any increase in the state annual average wage as calculated by subsection 1338(g) of this title. For the purposes of this subsection:

(1) Any employer who acquired the entire or a distinct and severable portion of the organization, trade, or business of an employer shall be treated as a single unit with its predecessor for the calendar year in which such acquisition occurs; and

(2) The term employment shall include service constituting employment under any unemployment compensation law of another state.

* * *

Sec. 3. 21 V.S.A. § 1338 is amended to read:

§ 1338. WEEKLY BENEFITS

* * *

(e) For benefit years beginning on January 3, 1988 and subsequent thereto, 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 this section. The base period wages shall not include any wages

paid by an employing unit based on a separation for gross misconduct under subdivision 1344(a)(2)(B) of this title.

(f) The maximum weekly benefit amount shall be \$425.00 for the period July 1, 2009, through June 30, 2010. Thereafter, 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, provided 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. 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 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. 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.

* * *

(i) Income tax withholding.

(1) An individual filing a new claim for unemployment compensation shall, at the time of filing of such claim, be advised that:

* * *

(D) the individual who elects to have federal income tax deducted and withheld shall have state income tax withheld in accordance with the rates shown at section 5822 of Title 32 at 24 percent of the federal rate; and

* * *

Sec. 4. 21 V.S.A. § 1338a is amended to read:

§ 1338a. DISREGARDED EARNINGS

(a) An individual shall be deemed “partially unemployed” in any week of less than full-time work if the wages earned by the individual with respect to such week are less than the weekly benefit amount the individual would be entitled to receive if totally unemployed and eligible. As used in this section “wages” in any one week includes only that amount of remuneration to the

nearest dollar which is in excess of 30 percent of the individual's weekly ~~benefit~~ wage, or \$40.00, whichever amount is greater.

(b) Notwithstanding subsection (a) of this section, an individual shall not be deemed to be "partially unemployed" if the individual performed less than full-time work only because there was a holiday in that week for which the individual was entitled to holiday pay.

Sec. 5. 21 V.S.A. § 1340 is amended to read:

§ 1340. COMPUTATION OF BENEFITS

(a) Except as provided in subchapter 2 of this chapter, the maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed the lesser of 26 times his or her weekly benefit amount or 46 percent of the total wages paid to the individual during his or her base period.

(b) An individual who is discharged by his or her last employing unit for misconduct connected with his or her work under section 1344(a)(1)(A) of this title is limited to a maximum amount during the benefit year which is the lesser of the maximum amount determined under subsection (a) of this section or 23 times his or her weekly benefit amount, provided that the individual has not already received more than 23 weeks in his or her benefit year.

Sec. 6. 21 V.S.A. § 1343 is amended to read:

§ 1343. CONDITIONS

(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the commissioner finds that all of the following requirements are met and the individual:

(1) Has registered for work at and thereafter has continued to report at an employment office in accordance with ~~such~~ regulations as prescribed by the board ~~may prescribe~~.

(2) Has made a claim for benefits in accordance with the provisions of section 1346 of this title.

(3) Is able to work, and is available for work; provided, that in determining the availability of any individual during any week, the commissioner may require, in addition to registration at any employment office, that the individual participate in reemployment services, or at any time make such other efforts to secure suitable work as the commissioner may reasonably direct under the circumstances and to supply proper evidence thereof; and shall, if the individual fails without good cause to do so, be ineligible for each week such failure continues; provided further that no claimant shall be considered ineligible in any week of unemployment for failure to comply with the provisions of this subdivision if such failure is due to

an illness or disability which occurs after the claimant has registered for work, filed a claim for benefits and during a week for which the individual was entitled to waiting period credit or benefit payments, and no work which would have been considered suitable but for the illness or disability has been offered after the beginning of such illness or disability.

(4) Prior to any week for which an individual claims benefits, the individual has been totally or partially unemployed for a waiting period of one week during the individual's benefit year and any extended eligibility period. No week shall be counted as a week of total or partial unemployment:

(A) If benefits have been paid with respect to that week.

(B) Unless the individual is eligible for benefits with respect to that week in all respects except for the requirements of subdivision (2) of this subsection or of section 1344(a)(5)(C) of this title.

(C) Unless it occurs after benefits first become payable to any individual under this chapter.

* * *

Sec. 7. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

(1) For not more than ~~12~~ 15 weeks nor less than six weeks immediately following the filing of a claim for benefits (in addition to the waiting period) as may be determined by the commissioner according to the circumstances in each case, if the commissioner finds that:

(A) He or she has been discharged by his or her last employing unit for misconduct connected with his or her work; or

(B) He or she was separated from his or her last employing unit because he or she became unable to perform all or an essential part of his or her normal duties in such employment without good cause attributable to such employing unit because of the consequences which flow from his or her conviction of a felony or misdemeanor or from an action or order of a judge or court in any criminal or civil matter. In the event a conviction or the action or order of any judge or court in any criminal or civil matter is rescinded or expunged, the individual may be eligible for benefits from the time the individual would have otherwise been eligible for benefits.

(2) For any week benefits are claimed, except as provided in subdivision (a)(3) of this section, until he or she has presented evidence to the satisfaction

of the commissioner that he or she has performed services in employment for a bona fide employer and has had earnings in excess of six times his or her weekly benefit amount if the commissioner finds that such individual is unemployed because:

(A) He or she has left the employ of his or her last employing unit voluntarily without good cause attributable to such employing unit. An individual shall not suffer more than one disqualification by reason of such separation.

(B) He or she has been discharged by his or her last employing unit for gross misconduct connected with his or her work. For purposes of this section, "gross misconduct" means conduct directly related to the employee's work performance that demonstrates a flagrant, wanton, and intentional disregard of the employer's business interest, and that has direct and significant impact upon the employer's business interest, including but not limited to theft, fraud, intoxication, intentional serious damage to property, intentional infliction of personal injury, any conduct that constitutes a felony, or repeated incidents after written warning of either unprovoked insubordination or public use of profanity. An individual shall not suffer more than one disqualification by reason of such separation.

** * **

(5) For any week with respect to which ~~he or she~~ the individual is receiving or has received remuneration in the form of:

(A) Wages in lieu of notice; or

(B) Vacation pay or holiday pay; ~~or~~.

(i) Vacation pay due at time of separation in accordance with a work agreement (whether a formal contract or established custom) shall be allocated to the period immediately following separation, or if due subsequent to separation, it shall be allocated to the week in which due or the next following week, and that number of weeks immediately following as required to equal the total of the weeks of pay due. Any mutual agreement between the employer and employee(s) (whether or not payment is made), allocating such remuneration to any period during which work is performed, within four weeks prior to the date of separation, shall not be valid for the purpose of determining unemployment compensation entitlement or waiting period credit purposes and such payment shall be allocated to the period immediately following separation.

(ii) There shall be no disqualification amount for any holiday.

(C) ~~Back pay award or settlement; or~~ Severance pay;

~~(i) Back back pay awards, and back pay settlements. These payments, awards, and settlements shall be allocated to the week(s) and in the manner as specified in the order or agreement, or, in the absence of such specificity, to the week(s) and in the manner which, in the judgment of the commissioner, would be reasonable.~~

* * *

~~(F) A cash severance payment, unless and to the extent the paying employer elects to treat it as nondisqualifying or unless it is paid in accordance with a work agreement (whether a formal contract or established custom).~~

* * *

Sec. 8. 21 V.S.A. § 1314 is amended to read:

§ 1314. –REPORTS AND RECORDS; SEPARATION INFORMATION; DETERMINATION OF ELIGIBILITY

* * *

~~(c) If an employing unit fails to comply with the provisions of subsection (b) of this section, and/or after October 1, 1986, and section 1314a of this title, the commissioner shall determine the benefit rights of a claimant upon such information as is available. Prompt notice in writing of the determination shall be given to the employing unit. The determination shall be final with respect to a noncomplying employer as to any charges against its experience-rating record for benefits paid to the claimant and its experience-rating record shall not be relieved of those charges unless, within 30 days after notice thereof, the employer files an appeal from the determination and the determination is ultimately reversed, or before the week following the receipt of the employing unit's reply. The employing unit's experience rating record shall not be relieved of these charges, notwithstanding any other provision of this chapter, unless the amount of benefits is recovered from the claimant, or unless the commissioner determines that failure to comply was due to unavoidable accident or mistake.~~

* * *

Sec. 9. 21 V.S.A. § 1458 is amended to read:

§ 1458. SHORT-TIME COMPENSATION BENEFITS

* * *

~~(e) Provisions of this subchapter and Vermont employment security board rules applicable to unemployment compensation claimants shall apply to STC claimants to the extent that they are not inconsistent with this subchapter. An~~

individual who files a new initial claim for STC benefits shall be provided, if eligible therefor, a monetary determination of entitlement to STC benefits and shall serve a waiting week as required under § 1343(a)(4) of this title.

* * *

**Sec. 10. DEPARTMENT OF LABOR; JOINT FISCAL OFFICE;
UNEMPLOYMENT INSURANCE FUND MODELING**

The department of labor and the joint fiscal office shall work cooperatively in order to develop the joint fiscal office's ability to model changes to the unemployment insurance fund within the joint fiscal office.

Sec. 11. STUDY

(a) A committee is created to study the feasibility of enacting a self-employment assistance program.

(b) The committee shall be composed of the following members:

(1) the commissioner of the department of labor or designee;

(2) two members appointed by the governor;

(3) two members appointed by the speaker of the house of representatives;

(4) two members appointed by the committee on committees of the senate.

(c) The committee shall meet as needed. The department of labor shall provide administrative support. The committee shall issue written recommendations to the house committees on commerce and economic development and on ways and means, and the senate committees on economic development, housing and general affairs and on finance on or before January 15, 2011. The committee shall be dissolved on January 15, 2011.

Sec. 12. REPORT; ONE-WEEK WAITING PERIOD

The commissioner of the department of labor shall report to the house committees on commerce and economic development and on ways and means and the senate committees on economic development, housing and general affairs and on finance on the implementation of the one-week waiting period. The report shall include an analysis of the relationship between the one-week waiting period and the rate at which claimants return to work. The report shall be made no later than January 15, 2015.

Sec. 13. REEMPLOYMENT SERVICES

The department of labor shall implement reemployment services in its district offices. The department shall implement a policy that prioritizes claimants for services in the regional offices.

Sec. 14. CONTACT OF EMPLOYERS BY CLAIMANTS; COMMISSIONER'S UPDATE OF SYSTEM

The commissioner of labor shall modify all systems by which unemployment insurance recipients update their employment or eligibility status by internet or, where applicable, personal interview so the claimant, when required to show proof that he or she is seeking to re-enter the workforce, must provide the name and phone number of the employers who the unemployment insurance recipient contacted.

Sec. 15. EFFECTIVE DATES

This section shall take effect upon passage. Sec. 3 shall take effect on July 1, 2011, except that subsection (i) (relating to income tax withholding) shall be effective on passage. Sec. 5 shall take effect on July 1, 2011. Sec. 7 shall take effect July 1, 2011, except that subsection (a)(1) (relating to period of disqualification from benefits) and subsection (a)(2)(B) (relating to the definition of "gross misconduct") shall take effect on passage. Sec. 10 of this act shall take effect July 1, 2011. Secs. 4 and 9 of this act shall take effect July 1, 2012. Sec. 6 of this act shall take effect July 1, 2012, except that subsection (a)(3) (relating to participation in reemployment services) shall take effect on passage. The remaining sections shall take effect on July 1, 2010.

Sec. 16. REPEALS

21 V.S.A. § 1343(a)(4) (one-week waiting period to be eligible for unemployment compensation benefits) shall be repealed effective July 1, 2017, or when the balance of the unemployment compensation fund has a positive balance, whichever is later.