

1 H.306

2 Introduced by Representatives Botzow of Pownal, Marcotte of Coventry, and
3 Kitzmiller of Montpelier

4 Referred to Committee on

5 Date:

6 Subject: Labor; employment practices; unemployment compensation; general
7 benefits

8 Statement of purpose of bill as introduced: This bill proposes to clarify the
9 process for investigating complaints of unpaid wages, to permit the
10 Commissioner of Labor to make an assessment of the unemployment
11 compensation contributions due from an employer if the employer fails to file
12 accurate or complete reports with the Department, to clarify the types of
13 income that disqualify an individual from receiving unemployment benefits, to
14 extend the statute of limitations for recovering overpayments of unemployment
15 benefits, and to study whether nonprofit organizations should be required to
16 obtain a bond to fund unemployment benefits in the event that the nonprofit
17 organization ceases to operate while unemployment liability exists.

18 An act relating to unemployment compensation

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

2 ~~Sec. 1. 21 V.S.A. § 342a is amended to read:~~

3 ~~§ 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES~~

4 * * *

5 ~~(c) If after the investigation wages are found to be due, the Commissioner~~
6 ~~shall attempt to settle the matter between the employer and employee. If the~~
7 ~~attempt fails, After investigating the complaint, the Commissioner shall issue a~~
8 ~~written determination and order for collection, stating whether wages are due,~~
9 ~~which shall specify the facts and the conclusions upon which the determination~~
10 ~~is based. The Department shall collect from the employer the amounts due and~~
11 ~~remit them to the employee. Notice of the determination and the order for~~
12 ~~collection to the employer shall be provided to all interested parties by certified~~
13 ~~mail or service, along with an order for collection in the event that the~~
14 ~~Commissioner determines wages are due. If the Commissioner determines that~~
15 ~~wages are due to the employee, the Commissioner shall attempt to settle the~~
16 ~~matter between the employer and the employee before issuing a written~~
17 ~~determination.~~

18 * * *

19 ~~(e) Within 30 days after the date of the collection order determination, the~~
20 ~~employer or employee may file an appeal from the determination to a~~
21 ~~departmental Departmental administrative law judge. The appeal shall, after~~

1 ~~notice to the employer and employee, be heard by the administrative law judge~~
2 within a reasonable time. The administrative law judge shall review the
3 complaint de novo, and after a hearing, the determination ~~and order for~~
4 ~~collection~~ shall be sustained, modified, or reversed by the administrative law
5 judge. Prompt notice in writing of the decision of the administrative law judge
6 and the reasons for it shall be given to all interested parties.

7 * * *

8 Sec. 2. 21 V.S.A. § 1330 is amended to read:

9 § 1330. ASSESSMENT PROVIDED

10 When any employer fails to pay any contributions or payments required
11 under this chapter the ~~commissioner~~ Commissioner shall make an assessment
12 of contributions against ~~such~~ the employer together with interest and penalty
13 thereon. If the employer fails to comply with the reporting requirements of
14 sections 1314a or 1322 of this chapter, or if the employer files an incorrect or
15 insufficient report pursuant to sections 1314a or 1322 of this chapter and fails
16 to file a corrected or sufficient report within 30 days after the Commissioner
17 provides written notice to the employer to correct or supplement the report, the
18 Commissioner shall make an assessment of the amount of the contribution due
19 from the employer and the amount of wages paid by the employer on the basis
20 of the information that is available to the Commissioner. After making the
21 assessment, ~~due notice shall be given thereof, by ordinary or certified mail, to~~

1 ~~the employer the Commissioner shall provide the employer with notice of the~~
2 assessment by ordinary or certified mail and the assessment shall be final
3 unless the employer petitions for a hearing on ~~such~~ the assessment within the
4 time ~~hereinafter~~ specified by section 1331 of this chapter.

5 Sec. 3. 21 V.S.A. § 1344 is amended to read:

6 § 1344. DISQUALIFICATIONS

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

8 * * *

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

11 (A) ~~wages~~ Wages in lieu of notice; ~~or,~~

12 (B) ~~vacation~~ Vacation pay ~~or holiday pay.~~

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

1 ~~benefits imposed by this chapter were not fulfilled in his or her case or while~~
2 he or she was disqualified from receiving benefits, shall be liable for such
3 amount. Notice of determination in such cases shall specify that the person is
4 liable to repay to the Fund the amount of overpaid benefits, the basis of the
5 overpayment, and the week or weeks for which such benefits were paid. The
6 determination shall be made within ~~three~~ six years from the date of such
7 overpayment.

8 (b) Any person who receives remuneration described in subdivision
9 1344(a)(5)(~~A~~), (~~B~~), (~~C~~), (~~D~~), (~~E~~), or (~~F~~) of this title which is allocable in whole
10 or in part to prior weeks during which he or she received any amounts as
11 benefits under this chapter shall be liable for all ~~such~~ amounts of benefits or
12 those portions of ~~such~~ the amounts equal to the portions of ~~such~~ the
13 remuneration properly allocable to the weeks in question. Notice of
14 determination in such cases shall specify that the person is liable to repay to
15 the Fund the amount of overpaid benefits, the basis of the overpayment, and
16 the week or weeks for which ~~such~~ the benefits were paid. The determination
17 shall be made within ~~three~~ six years from the date of such overpayment or
18 within one year from the date of receipt of the remuneration, whichever period
19 is longer.

20 * * *

1 ~~Sec. 5. STUDY; REPORT~~

2 ~~The Commissioner of Labor shall study whether reimbursable employers~~
3 ~~pursuant to 21 V.S.A. § 1321(c) should be required to procure and maintain a~~
4 ~~bond to fund unemployment compensation benefit liability in the event the~~
5 ~~employer dissolves or ceases to operate while liability still exists. The~~
6 ~~Commissioner shall report to the House Committee on Commerce and~~
7 ~~Economic Development and the Senate Committee on Economic~~
8 ~~Development, Housing, and General Affairs regarding the findings of the~~
9 ~~study and any recommendations for statutory changes on or before~~
10 ~~November 15, 2015.~~

11 Sec. 6. EFFECTIVE DATE

12 This act shall take effect on July 1, 2015.

Sec. 1. 21 V.S.A. § 342a is amended to read:

§ 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

(a) An employee or the Department on its own motion may file a complaint that wages have not been paid to an employee, not later than two years from the date the wages were due. The Commissioner shall provide notice and a copy of the complaint to the employer by service, or by certified mail sent to the employer's last known address, together with an order to file a response to the specific allegation in the complaint filed by the employee or the Department with the Department within 10 calendar days of receipt.

(b) The Commissioner shall investigate the complaint, and may examine the employer's records, enter and inspect the employer's business premises, question such employees, subpoena witnesses, and compel the production of books, papers, correspondence, memoranda, and other records necessary and material to investigate the complaint. If a person fails to comply with any lawfully issued subpoena, or a witness refuses to testify to any matter on which he or she may be lawfully interrogated, the Commissioner may seek an order from the Civil Division of the Superior Court compelling testimony or compliance with the subpoena.

~~*(c)(1) If after the investigation wages are found to be due, the Commissioner shall attempt to settle the matter between the employer and employee. If the attempt fails, Following the investigation of the complaint:*~~

~~*(A) If the Commissioner determines that wages are due the employee, the Commissioner shall attempt to settle the matter between the employer and the employee before issuing a written determination. If the Commissioner is unable to settle the matter, the Commissioner shall issue a written determination and order for collection, stating that wages are due, which shall specify the facts and the conclusions upon which the determination is based. The Department shall collect from the employer the amounts due and remit them to the employee.*~~

(B) If the Commissioner determines that wages are not due the employee, the Commissioner shall issue a written determination stating that wages are not due, which shall specify the facts and conclusions upon which the determination is based.

(2) Notice of the ~~a~~ determination ~~and the order for collection to the employer~~ shall be provided to all interested parties by certified mail or service. If the Commissioner has determined that wages are due the employee, the Commissioner shall issue an order for collection following the resolution of any appeal from the determination filed pursuant to subsection (e) of this section or the expiration of the appeal period set forth in that subsection.

(d) If the Commissioner determines that the unpaid wages were willfully withheld by the employer, the order for collection may provide that the employer is liable to pay an additional amount not to exceed twice the amount of unpaid wages, one-half of which will be remitted to the employee and one-half of which shall be retained by the Commissioner to offset administrative and collection costs.

(e) Within 30 days after the date of the ~~collection order~~ determination, the employer or employee may file an appeal from the determination to a departmental administrative law judge. The appeal shall, after notice to the employer and employee, be heard by the administrative law judge within a reasonable time. The administrative law judge shall review the complaint de

*nov*o, and after a hearing, the determination ~~and order for collection~~ shall be sustained, modified, or reversed by the administrative law judge. Prompt notice in writing of the decision of the administrative law judge and the reasons for it shall be given to all interested parties.

* * *

Sec. 2. 21 V.S.A. § 1330 is amended to read:

§ 1330. ASSESSMENT PROVIDED

(a) When any employer fails to pay any contributions or payments required under this chapter, the ~~commissioner~~ Commissioner shall make an assessment of contributions against ~~such~~ the employer together with interest and penalty thereon. After making the assessment, ~~due notice shall be given thereof, by ordinary or certified mail, to the employer~~ the Commissioner shall provide the employer with notice of the assessment by ordinary or certified mail and the assessment shall be final unless the employer petitions for a hearing on ~~such~~ the assessment within the time ~~hereinafter~~ specified by section 1331 of this chapter.

(b) If the employer fails to comply with the reporting requirements of section 1314a or 1322 of this chapter, or if the employer files an incorrect or insufficient report pursuant to section 1314a or 1322 of this chapter and fails to file a corrected or sufficient report within 30 days after the Commissioner provides written notice to the employer to correct or supplement the report, the

Commissioner shall, on the basis of the information that is available to the
Commissioner, make an assessment of the amount of the contribution due from
the employer together with interest and penalty.

Sec. 3. 21 V.S.A. § 1344 is amended to read:

§ 1344. DISQUALIFICATIONS

(a) An individual shall be disqualified for benefits:

* * *

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

(A) ~~wages~~ Wages in lieu of notice; ~~or,~~

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

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.

There shall be no disqualification amount for any holiday. As used in this section, "holiday" means a legal holiday pursuant to 1 V.S.A. § 317.

* * *

(F) ~~Repealed.~~ Sick pay.

(G) Bereavement pay.

(H) Wages or remuneration for jury duty that are paid by the individual's employer.

* * *

Sec. 4. 21 V.S.A. § 1347 is amended to read:

§ 1347. NONDISCLOSURE OR MISREPRESENTATION

(a) Any person who fails, without good cause, to make reasonable effort to secure suitable work when directed to do so by the employment office or the Commissioner and has received any amount as benefits under this chapter with respect to weeks for which the person is determined to be ineligible for such failure, and any person who by nondisclosure or misrepresentation by him or her, or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any amount as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his or her case or while

he or she was disqualified from receiving benefits, shall be liable for such amount. Notice of determination in such cases shall specify that the person is liable to repay to the Fund the amount of overpaid benefits, the basis of the overpayment, and the week or weeks for which such benefits were paid. The determination shall be made within ~~three~~ six years from the date of such overpayment.

(b) Any person who receives remuneration described in subdivision 1344(a)(5)(~~A~~), (~~B~~), (~~C~~), (~~D~~), (~~E~~), ~~or~~ (~~F~~) of this title which is allocable in whole or in part to prior weeks during which he or she received any amounts as benefits under this chapter shall be liable for all ~~such~~ amounts of benefits or those portions of ~~such~~ the amounts equal to the portions of ~~such~~ the remuneration properly allocable to the weeks in question. Notice of determination in such cases shall specify that the person is liable to repay to the Fund the amount of overpaid benefits, the basis of the overpayment, and the week or weeks for which ~~such~~ the benefits were paid. The determination shall be made within ~~three~~ six years from the date of such overpayment or within one year from the date of receipt of the remuneration, whichever period is longer.

* * *

Sec. 5. 21 V.S.A. § 1321 is amended to read:

§ 1321. CONTRIBUTIONS; TAXABLE WAGE BASE CHANGES

* * *

(c)(1) Financing benefits paid to employees of nonprofit organizations. Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subsection. ~~For the purposes of~~ As used in this subsection, a nonprofit organization is an organization (or group of organizations) described in Section 501(c)(3) of the Internal Revenue Code of the United States which is exempt from income tax under Section 501(a) of such code.

(2) Liability for contributions and election of reimbursement. Any nonprofit organization which, pursuant to subdivision 1301(5)(B)(i) of this title, is, or becomes, subject to this chapter on or after January 1, 1972 shall pay contributions under the provisions of this section, unless it elects, in accordance with this subsection, to pay to the Commissioner, for the Unemployment Fund, an amount equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

* * *

(C) Any nonprofit organization which makes an election in accordance with subdivisions (c)(2)(A) and (B) of this section will continue to be liable for payments in lieu of contributions until ~~it files~~ its election is

terminated by the Commissioner. An employer shall file with the Commissioner a written notice ~~terminating its election~~ requesting that its election be terminated not later than 30 days prior to the beginning of the calendar year for which such termination ~~shall~~ would first be effective. The Commissioner, in accordance with rules adopted by the Board, shall determine whether the employer is eligible to terminate its election based on the employer's anticipated contributions to the Unemployment Trust Fund and any additional liability expected to be incurred by the Fund as a result of the proposed termination. The Commissioner's determinations shall be subject to reconsideration and to appeal and review in accordance with the provisions of section 1337a of this title.

* * *

(e) Any municipality, any State institution of higher education, and any political or governmental subdivisions or instrumentalities of the State shall pay contributions unless it elects to pay to the Commissioner for the Unemployment ~~Compensation~~ Trust Fund, an amount equal to the amount of benefits paid, including the full amount of extended benefits paid, attributable to service by individuals in the employ of these entities. Subsections (a) and (b) and subdivisions (3)(C) through (3)(F), inclusive, and subdivisions (4) through (6), inclusive, of subsection (c) of this section as they apply to nonprofit organizations shall also apply to the entities designated in this

subsection, except that these entities shall be liable for all benefits paid, including the full amount of extended benefits paid, attributable to service in the employ of these entities.

* * *

(3) Any entity designated in this subsection which makes an election in accordance with subdivisions (1) and (2) of this subsection will continue to be liable for payments in lieu of contributions until ~~it files with~~ its election is terminated by the Commissioner. The entity shall file with the Commissioner a written notice ~~terminating its election~~ requesting that its election be terminated not later than 30 days prior to the beginning of the calendar year for which the termination ~~shall~~ would first be effective. The Commissioner, in accordance with rules adopted by the Board, shall determine whether the entity is eligible to terminate its election based on the entity's anticipated contributions to the Unemployment Trust Fund and any additional liability expected to be incurred by the Fund as a result of the proposed termination. The Commissioner's determinations shall be subject to reconsideration and to appeal and review in accordance with the provisions of section 1337a of this title.

* * *

Sec. 6. STUDY; REPORT

The Commissioner of Labor shall study whether reimbursable employers pursuant to 21 V.S.A. § 1321(c) should be required to procure and maintain a

bond, escrow account, or other surety to fund unemployment compensation benefit liability in the event the employer dissolves or ceases to operate while liability still exists. The Commissioner shall report to the House Committee on Commerce and Economic Development and the Senate Committee on Finance regarding the findings of the study and any recommendations for statutory changes on or before November 15, 2015.

Sec. 7. 21 V.S.A. § 1358 is amended to read:

§ 1358. ~~UNEMPLOYMENT COMPENSATION TRUST FUND;~~
ESTABLISHMENT AND CONTROL

There is hereby established as a special fund, to be kept separate and apart from all other public moneys or funds of this ~~state~~ State, an ~~unemployment compensation fund~~ Unemployment Trust Fund, which shall be administered by the ~~commissioner~~ Commissioner exclusively for the purposes of this chapter. This ~~fund~~ Fund shall consist of (1) all contributions collected under this chapter; (2) interest earned upon any ~~moneys~~ monies in the ~~fund~~ Fund; (3) any property or securities acquired through the use of ~~moneys~~ monies belonging to the ~~fund~~ Fund; (4) all earnings of such property or securities; (5) all money credited to this ~~state's~~ State's account in the ~~unemployment trust fund~~ federal Unemployment Trust Fund pursuant to ~~section 903~~ of the Social Security Act, 42 U.S.C. § 1103 as amended; and (6) all other ~~moneys~~ monies received for

the ~~fund~~ Fund from any other source. All ~~moneys~~ monies in the ~~fund~~ Fund shall be mingled and undivided.

Sec. 8. STATUTORY REVISION

The Legislative Council, in its statutory revision capacity pursuant to 2 V.S.A. § 424, is authorized to correct the name of the Unemployment Trust Fund in the Vermont Statutes Annotated as necessary to reflect the provisions of Sec. 7 of this act (amending 21 V.S.A. § 1358). Such changes may also be made when new legislation is proposed or when there is a republication of a volume of the Vermont Statutes Annotated.

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2015.