

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing and General Affairs to  
3 which was referred House Bill No. 187 entitled “An act relating to ~~relating to~~  
4 absence from work for health care and safety” respectfully reports that it has  
5 considered the same and recommends that the Senate propose to the House  
6 ~~that~~that the bill be amended by striking out all after the enacting clause and  
7 inserting in lieu thereof the following:

8 Sec. 1. FINDINGS

9 The General Assembly finds:

10 (1) According to the Vermont Department of Labor’s 2013 Fringe  
11 Benefits Study, roughly one-half of all private sector employers provide some  
12 form of paid leave to their employees.

13 (2) Based on information provided by the 2013 Fringe Benefits Study, it  
14 is estimated that slightly less than 50 percent of private sector workers  
15 employed by companies with fewer than 20 workers have access to paid leave,  
16 while approximately 78 percent of workers employed by larger companies  
17 have access to paid leave time.

18 (3) Based on information provided by the 2013 Fringe Benefits Study, it  
19 is estimated that more than 60,000 working Vermonters lack access to paid  
20 leave.

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1 Sec. 2. PURPOSE

2 (a) The purpose of this act is to promote a healthier environment at work,  
3 school, and in public by ensuring that employees are provided with paid leave  
4 time for purposes of health care and safety.

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5 (b) It is the intent of the General Assembly that all employers doing  
6 business in or operating in the State of Vermont shall be required to provide  
7 earned sick time to their employees as provided by this act.

8 Sec. 3. 21 V.S.A. §-384 is amended to read:

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9 § 384. EMPLOYMENT; WAGES

10 \* \* \*

11 (d) For the purposes of earned sick time, an employer shall comply with the  
12 provisions required under subchapter 4B of this chapter.

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13 Sec. 4. 21 V.S.A. chapter 5, subchapter 4B is added to read:

14 Subchapter 4B. Earned Sick Time

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15 § 481. DEFINITIONS

16 As used in this subchapter:

17 (1) "Employer" means any individual, organization, or governmental  
18 body, partnership, association, corporation, legal representative, trustee,  
19 receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,  
20 air, or express company doing business in or operating within this State that  
21 employs 10 or more individuals who are employed for an average of at least

1 30 hours per week during a year. Notwithstanding any other provision of this  
2 subchapter to the contrary, an employer that has an unemployment insurance  
3 experience rating record of less than one year pursuant to 21 V.S.A. § 1325  
4 shall not be subject to the requirements of this subchapter.

5 (2) “Combined time off” means a policy wherein the employer provides  
6 time off from work for vacation, sickness, or personal reasons, and the  
7 employee has the option to use all of the leave for whatever purpose he or she  
8 chooses.

9 (23) “Commissioner” means the Commissioner of Labor.

10 ~~(3) “Differential” means compensation paid in addition to the usual~~  
11 ~~compensation paid to an employee of a health care facility as defined in 18~~  
12 ~~V.S.A. § 9432(8) who does not work on a regular schedule and who works~~  
13 ~~only when he or she indicates that he or she is available to work and has no~~  
14 ~~obligation to work when he or she does not indicate availability.~~

15 (4) “Earned sick time” means discretionary time earned and accrued  
16 under the provisions of this subchapter and used by an employee to take time  
17 off from work for the purposes listed in subdivisions 483(a)(1)–(5) of this  
18 subchapter.

19 (5) “Employee” has the same meaning as set forth in section 341 of this  
20 title. *[ALTERNATIVE: means a person who, in consideration of direct or*  
21 *indirect gain or profit, has been continuously employed by the same employer*

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1 for the waiting period set forth in subsection 482(b) of this subchapter for an  
2 average of at least 30 hours per week.]. However, the term “employee” shall  
3 not include:

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4 (A) An individual who is employed by the federal government.

5 (B) An individual who is employed by an employer:

6 (i) for 20 weeks or fewer in a calendar year;

7 (ii) in a job scheduled to last 20 weeks or fewer; and

8 (iii) for the purpose of supporting or supplementing the employer’s  
9 workforce in certain situations, including employee absences, temporary skill  
10 shortages, seasonal workloads, and special assignments and projects.

11 (C) An individual who is employed by the State and is exempt or excluded  
12 from the State classified service pursuant to 3 V.S.A. § 311.

13 (D) An employee of a health care facility as defined in 18 V.S.A.  
14 § 9432(8) or a facility as defined in 33 V.S.A. § 7102(2) if the employee:

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15 (i) is under no obligation to work a regular schedule;

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16 (ii) works only when he or she indicates that he or she is available to work  
17 and has no obligation to work when he or she does not indicate availability;

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18 and

19 (iii) receives higher pay in the form of a differential as defined in  
20 subdivision (3) of this section, or some other increased compensation than that

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1 ~~paid to an employee of a health care facility performing the same job only~~  
2 ~~works on a regular schedule per diem or as needed basis.~~

3 (E) An employee of a school district, supervisory district, or  
4 supervisory union as defined in 16 V.S.A. § 11 that:

5 (i) is employed pursuant to a school district or supervisory union  
6 policy on substitute educators as required by the Vermont Standards Board for  
7 Professional Educators Rule 5381;

8 (ii) is under no obligation to work a regular schedule; and

9 (iii) is not under contract or written agreement to provide at least  
10 one period of long-term substitute coverage which is defined as 30 or more  
11 consecutive calendar days in the same assignment.

12 ~~(F) An individual who is a guest worker employed pursuant to a federal~~  
13 ~~work visa program, including guest workers who are exempt from the visa~~  
14 ~~issuance process pursuant to 8 C.F.R. § 212.1(b).~~

15 (D) A middle or secondary school student that is working during any  
16 part of the school year or regular vacation periods.

17 (F) An individual enrolled as a full-time student at a college or  
18 university that is working during any part of the school year or regular vacation  
19 periods.

20 (G) ~~an~~An individual that is either:

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1                    (i) a sole proprietor or partner owner of an unincorporated  
2 business who is excluded from the provisions of chapter 9 of this title pursuant  
3 to subdivision- 601(14)(F) of this title; or

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4                    (ii) an executive officer, manager, or member of a corporation or a  
5 limited liability company for whom the Commissioner has approved an  
6 exclusion from the provisions of chapter 9 of this title pursuant to  
7 subdivision- 601(14)(H) of this title.

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8                    ~~(6) “Employer” means an individual, organization, or governmental body,~~  
9 ~~partnership, association, corporation, legal representative, trustee, receiver,~~  
10 ~~trustee in bankruptcy, and any common carrier by rail, motor, water, air, or~~  
11 ~~express company doing business in or operating within this State.~~

12                    ~~(7)(H) An employee that:~~

13                    ~~(i) is under no obligation to work a set schedule;~~

14                    ~~(ii) works only when he or she indicates that he or she is available~~  
15 ~~to work and has no obligation to work when he or she does not indicate~~  
16 ~~availability; and~~

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17                    ~~(iii) receives higher pay or some other increased compensation~~  
18 ~~than that paid to an employee performing the same job on a regular schedule.~~

19                    ~~(I) An employee that is covered by a valid collective bargaining~~  
20 ~~agreement that:~~

1                    (i) expressly provides for the wages, hours, and working  
2 conditions of employees;

3                    (ii) provides for a regular hourly wage rate of not less than  
4 130 percent of the minimum wage pursuant to section 384 of this title; and

5                    (iii) expressly waives the requirements of this subchapter in clear  
6 and unambiguous terms.

7                    (6) “Paid time off policy” means any policy under which the employer  
8 provides paid time off from work to the employee that includes a combination  
9 of one or more of the following:

10                    (A) annual leave;

11                    (B) combined time off;

12                    (C) vacation leave;

13                    (D) personal leave;

14                    (E) sick leave; or

15                    (F) any similar type of leave.

16                    §- 482. EARNED SICK TIME

17                    (a) An employee shall accrue not less than one hour of earned sick time for  
18 every 4052 hours worked.

19                    (b) An employer may require a waiting period for new hires: of up to one  
20 year or 2,080 work-hours, whichever occurs first. During this waiting period,  
21 an employee shall not be entitled to accrue or use earned sick time pursuant to

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1 this section but cannot use the earned sick time until after he or she has worked  
2 for the employer for one year or 1,400 hours, whichever occurs first chapter.

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3 (c) An employer may:

4 (1) limit the amount of earned sick time accrued pursuant to this  
5 section to:

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6 (A) from January 1, 2016, 2017, until December 31, 2017, 2018, a  
7 maximum of 24 hours in a 12-month period; and

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8 (B) after December 31, 2017, 2018, a maximum of 40 hours in a 12-  
9 month period; or

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10 [ALTERNATIVE 1: (1) limit the amount of earned sick time accrued  
11 pursuant to this section to a maximum of 24 hours in a 12-month period.]

12 [ALTERNATIVE 2: (1) limit the amount of earned sick time accrued  
13 pursuant to this section to a maximum of 40 hours in a 12-month period.]

14 (2) limit to 40 hours the number of hours in each workweek for which  
15 full-time employees not subject to the overtime provisions of the Federal Fair  
16 Labor Standards Act, 29 U.S.C. § 213(a)(1), may accrue earned sick time  
17 pursuant to this section.

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18 (d)(1) Earned sick time shall be compensated at a rate that is equal to the  
19 greater of either:

20 (A) the normal hourly wage rate of the employee; or

1           (B) the minimum wage rate for an employee pursuant to section 384  
2 of this title.

3           (2) ~~Employment~~Group insurance benefits shall continue during an  
4 employee's use of earned sick time at the same level and conditions that  
5 coverage would be provided as for normal work hours. The employer may  
6 require that the employee contribute to the cost of the benefits during the use  
7 of earned sick time at the existing rate of employee contribution.

8           (e) Except as otherwise provided by subsection 484(a) of this subchapter,  
9 an employer shall calculate the amount of earned sick time that an employee  
10 has accrued pursuant to this section:

11           (1) as it accrues during each pay period; or

12           (2) on a quarterly basis, provided that an employee may use earned sick  
13 time as he or she accrues it during each quarter.

14 §- 483. USE OF EARNED SICK TIME

15           (a) An employee may use earned sick time accrued pursuant to section 482  
16 of this subchapter for any of the following reasons:

17           (1) The employee is ill or injured.

18           (2) The employee obtains professional diagnostic, preventive, routine, or  
19 therapeutic health care.

20           (3) The employee cares for a sick or injured parent, grandparent, spouse,  
21 child, brother, sister, parent-in-law, grandchild, ~~foster child, or a person for~~

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1 ~~whom the employee is primarily responsible to arrange or provide care for who~~  
2 ~~is either a family member of the employee or resides with the employee or~~  
3 ~~foster child,~~ including helping that individual obtain diagnostic, preventive,  
4 routine, or therapeutic health treatment.

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5 (4) The employee is arranging for social or legal services or obtaining  
6 medical care or counseling for the employee or for the employee’s parent,  
7 grandparent, spouse, child, brother, sister, parent-in-law, grandchild, ~~foster~~  
8 ~~child, or a person for whom the employee is primarily responsible to arrange or~~  
9 ~~provide care for who is either a family member of the employee or resides with~~  
10 ~~the employee or foster child,~~ who is a victim of domestic violence, sexual  
11 assault, or stalking or who is relocating as the result of domestic violence,  
12 sexual assault, or stalking. As used in this section, “domestic violence,”  
13 “sexual assault,” and “stalking” shall have the same ~~meaning~~ meanings, as in 15  
14 V.S.A. §- 1151.

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15 (5) The employee cares for a parent, grandparent, spouse, child, brother,  
16 sister, parent-in-law, grandchild, ~~foster child, or a person for whom the~~  
17 ~~employee is primarily responsible to arrange or provide care for who is either a~~  
18 ~~family member of the employee or resides with the employee or foster child,~~  
19 because the school or business where that individual is normally located during  
20 the employee’s workday is closed for public health or safety reasons.

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1       **(b) If an employee’s absence is shorter than a normal workday, the**  
2       **employee shall use earned sick time accrued pursuant to section 482 of this**  
3       **subchapter in the smallest time increments that the employer’s payroll system**  
4       **uses to account for other absences [or that the employer’s paid time off policy](#)**  
5       **permits. Nothing in this subsection shall be construed to require an employer**  
6       **to permit an employee to use earned sick time in increments that are shorter**  
7       **than one hour.**

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8       **(c) An employer may limit the amount of earned sick time accrued**  
9       **pursuant to section 482 of this subchapter that an employee may use to:**

10           **(1) from January 1, ~~2016,2017~~, until December 31, ~~2017~~2018, no more**  
11       **than 24 hours of earned sick time accrued pursuant to section 482 of this**  
12       **subchapter in a 12-month period;- and**

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13           **(2) after December 31, ~~2017~~2018, no more than 40 hours of earned sick**  
14       **time accrued pursuant to section 482 of this subchapter in a 12-month period.**

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15       **[ALTERNATIVE 1: (c) An employer may limit the amount of earned sick**  
16       **time accrued pursuant to section 482 of this subchapter that an employee may**  
17       **use to no more than 24 hours in a 12-month period.]**

18       **[ALTERNATIVE 2: (c) An employer may limit the amount of earned sick**  
19       **time accrued pursuant to section 482 of this subchapter that an employee may**  
20       **use to no more than 40 hours in a 12-month period.]**

1 (d)(1) Except as otherwise provided in subsection 484(a) of this  
2 subchapter, earned sick time that remains unused at the end of an annual period  
3 shall be carried over to the next annual period, and the employee has the right  
4 to ~~earn~~ accrue additional earned sick time; however, the balance  
5 ~~between~~ employee shall not be entitled to use more earned sick time during the  
6 ~~unused portion and~~ annual period than any limit set by the maximum  
7 ~~allowed~~ employer pursuant to subsection (c) of this section.

8 (2) If, at an employer's discretion, an employer pays an employee for  
9 unused earned sick time accrued pursuant to section 482 of this subchapter at  
10 the end of an annual period, then the amount for which the employee was  
11 compensated does not carry over to the next annual period.

12 (e) Upon separation from employment, an employee shall not be entitled to  
13 payment for unused earned sick time accrued pursuant to section 482 of this  
14 subchapter unless agreed upon by the employer.

15 (f) An employee who ~~has completed the waiting period pursuant to~~  
16 subsection 482(b) of this subchapter and is rehired by the same employer  
17 within 12 months after separation from employment shall begin to accrue and  
18 may use earned sick time without any waiting period, but shall not be entitled  
19 to retain any unused earned sick time that had accrued pursuant to section 482  
20 of this subchapter before the time of separation unless agreed upon by the  
21 employer.

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1 [ALTERNATIVE: (f) [Deleted.]]

2 (g) An employer shall not require an employee to find a replacement for  
3 absences, including absences for professional diagnostic, preventive, routine,  
4 or therapeutic health care.

5 (h) An employer may require an employee planning to take earned sick  
6 time accrued pursuant to section 482 of this subchapter to:

7 (1) make reasonable efforts to avoid scheduling routine or preventive  
8 health care during regular work hours; or

9 (2) notify the employer as soon as practicable of the intent to take  
10 earned sick time accrued pursuant to section 482 of this subchapter and the  
11 expected duration of the employee's absence.

12 (i)(1) If an employee is absent from work for one of the reasons listed in  
13 subsection (a) of this section, the employee shall not be required to use earned  
14 sick time accrued pursuant to section 482 of this subchapter and the employer  
15 will not be required to pay for the time that the employee was absent if the  
16 employer and the employee mutually agree that either:

17 (1A) the employee will work an equivalent number of hours as the  
18 number of hours for which the employee is absent during the same pay  
19 period; or

20 (2B) the employee will trade hours with a second employee so that  
21 the second employee works during the hours for which the employee is absent

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1 and the employee works an equivalent number of hours in place of the second  
2 employee during the same pay period.

3 (2) Nothing in this subsection shall be construed to prevent an employer  
4 from adopting a policy that requires an employee to use earned sick time  
5 accrued pursuant to subsection 482(a) of this subchapter for an absence from  
6 work for one of the reasons set forth in subsection (a) of this section.

7 (j) An employer shall post notice of the provisions of this section in a form  
8 provided by the Commissioner in a place conspicuous to employees at the  
9 employer's place of business. An employer shall also notify an employee of  
10 the provisions of this section at the time of the employee's hiring.

11 (k) An employee who uses earned sick time accrued pursuant to section  
12 482 of this subchapter shall not diminish his or her rights under sections 472  
13 and 472a of this title.

14 (l) The provisions against retaliation set forth in section 397 of this title  
15 shall apply to this subchapter.

16 (m) An employer who violates this section shall be subject to the penalty  
17 provisions of section 345 of this title.

18 (n) The Commissioner shall enforce this section in accordance with the  
19 procedures established in section 342a of this title.

20 § 484. COMPLIANCE WITH EARNED SICK TIME REQUIREMENT

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1        (a) An employer shall be in compliance with this subchapter if either of the  
2        following occurs:

3                (1) The employer offers a paid time off policy or is a party to a  
4        collective bargaining agreement that provides the employee with paid time off  
5        from work that:

6                        (A) he or she may use for all of the reasons set forth in subsection  
7        483(a) of this subchapter; and

8                        (B) accrues and may be used at a rate that is equal to or greater than  
9        the rate set forth in sections 482 and 483 of this subchapter.

10                (2) The employer offers a paid time off policy or is a party to a  
11        collective bargaining agreement that provides the employee with at least the  
12        full amount of paid time off from work required pursuant to sections 482 and  
13        483 of this subchapter at the beginning of each annual period and the employee  
14        may use it at any time during the annual period for the reasons set forth in  
15        subsection 483(a) of this subchapter. If the employer provides an employee  
16        with the full amount of paid time off at the beginning of each annual period,  
17        the paid time off shall not carry over from one annual period to the next as  
18        provided in subdivision 483(d)(1) of this subchapter.

19                ~~(b)~~ Nothing in this subchapter shall be construed to require an employer  
20        that satisfies the requirements of subsection (a) of this section to provide  
21        additional earned sick time to an employee that chooses to use paid time off

1 that could be used for the reasons set forth in subdivisions 483(a)(1)–(5) of this  
2 subchapter for a different purpose.

3 (c) Nothing in this subchapter shall be construed to prevent an employer  
4 from providing a paid time off policy or agreeing to a collective bargaining  
5 agreement that provides a paid time off policy that is more generous than the  
6 earned sick time provided by this subchapter.

7 (ed)(1) Nothing in this subchapter shall be construed to diminish an  
8 employer’s obligation to comply with any collective bargaining agreement or  
9 paid time off policy that provides greater earned sick time rights than the rights  
10 provided by this subchapter.

11 (d) A2) Nothing in this subchapter shall be construed to preempt or  
12 override the terms of a collective bargaining agreement or that:

13 (A) is in effect before January 1, 2017; or

14 (B)(i) takes effect on or after January 1, 2017; and

15 (ii) complies with the requirements set forth in subdivision  
16 481(5)(I) of this subchapter.

17 (e) A paid time off policy may not diminish the rights provided by this  
18 subchapter.

19 §. 485. SEVERABILITY OF PROVISIONS

20 If any provision of this subchapter or the application of such provision to  
21 any person or circumstances shall be held invalid, the remainder of the

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1 subchapter and the application of such provisions to persons or circumstances  
2 other than those as to which it is held invalid shall not be affected thereby.

3 Sec. 5. 21 V.S.A. § ~~345~~ is amended to read:

4 § 345. NONPAYMENT OF WAGES AND BENEFITS

5 (a) Each employer who violates sections ~~342 and 343~~ 342, 343, 482, and  
6 483 of this title shall be fined not more than \$5,000.00. Where the employer is  
7 a corporation, the president or other officers who have control of the payment  
8 operations of the corporation shall be considered employers and liable to the  
9 employee for actual wages due when the officer has willfully and without good  
10 cause participated in knowing violations of this chapter.

11 \* \* \*

12 Sec. 6. DEPARTMENT OF LABOR REPORT

13 The Department of Labor shall, on or before January 15, 2017, report to the  
14 House Committee on General, Housing and Military Affairs and the Senate  
15 Committee on Economic Development, Housing and General Affairs regarding  
16 the number of inquiries and complaints submitted to the Department in relation  
17 to this act and the number of investigations and enforcement actions  
18 undertaken by the Department in relation to this act during the first year after  
19 its effective date.

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1     Sec. 7. APPROPRIATIONS FOR DEPARTMENT OF LABOR

2     ~~STAFF~~EFFECTIVE DATE

3         In addition to any other funds appropriated to the Department of Labor in  
4         fiscal year 2017, there is appropriated from the General Fund to the  
5         Department of Labor \$116,373.00 in fiscal year 2017 for the purpose of hiring  
6         one employee for implementation and administration of 21 V.S.A. chapter 5,  
7         subchapter 4B.

8     Sec. 8. EFFECTIVE DATE

9         This act shall take effect on January 1, 20162017.

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15     (Committee vote: \_\_\_\_\_)

\_\_\_\_\_

Senator \_\_\_\_\_

FOR THE COMMITTEE