



Senate

General Assembly

File No. 183

January Session, 2021

Senate Bill No. 711

Senate, March 29, 2021

The Committee on Commerce reported through SEN. HARTLEY of the 15th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING COVID-19 RELIEF FOR SMALL BUSINESSES AND REQUIRING FEDERAL REGULATORY ANALYSIS FOR PROPOSED STATE REGULATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (c) of section 31-225a of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July 1,*
3 *2021*):

4 (c) (1) (A) Any week for which the employer has compensated the
5 claimant in the form of wages in lieu of notice, dismissal payments or
6 any similar payment for loss of wages shall be considered a week of
7 employment for the purpose of determining employer chargeability. (B)
8 No benefits shall be charged to any employer who paid wages of five
9 hundred dollars or less to the claimant in his or her base period. (C) No
10 dependency allowance paid to a claimant shall be charged to any
11 employer. (D) In the event of a natural disaster declared by the President
12 of the United States, no benefits paid on the basis of total or partial
13 unemployment which is the result of physical damage to a place of

14 employment caused by severe weather conditions including, but not
15 limited to, hurricanes, snow storms, ice storms or flooding, or fire except
16 where caused by the employer, shall be charged to any employer. (E) If
17 the administrator finds that (i) an individual's most recent separation
18 from a base period employer occurred under conditions which would
19 result in disqualification by reason of subdivision (2), (6) or (9) of
20 subsection (a) of section 31-236, or (ii) an individual was discharged for
21 violating an employer's drug testing policy, provided the policy has
22 been adopted and applied consistent with sections 31-51t to 31-51aa,
23 inclusive, section 14-261b and any applicable federal law, no benefits
24 paid thereafter to such individual with respect to any week of
25 unemployment which is based upon wages paid by such employer with
26 respect to employment prior to such separation shall be charged to such
27 employer's account, provided such employer shall have filed a notice
28 with the administrator within the time allowed for appeal in section 31-
29 241. (F) No base period employer's account shall be charged with respect
30 to benefits paid to a claimant if such employer continues to employ such
31 claimant at the time the employer's account would otherwise have been
32 charged to the same extent that he or she employed him or her during
33 the individual's base period, provided the employer shall notify the
34 administrator within the time allowed for appeal in section 31-241. (G)
35 If a claimant has failed to accept suitable employment under the
36 provisions of subdivision (1) of subsection (a) of section 31-236 and the
37 disqualification has been imposed, the account of the employer who
38 makes an offer of employment to a claimant who was a former
39 employee shall not be charged with any benefit payments made to such
40 claimant after such initial offer of reemployment until such time as such
41 claimant resumes employment with such employer, provided such
42 employer shall make application therefor in a form acceptable to the
43 administrator. The administrator shall notify such employer whether or
44 not his or her application is granted. Any decision of the administrator
45 denying suspension of charges as herein provided may be appealed
46 within the time allowed for appeal in section 31-241. (H) Fifty per cent
47 of benefits paid to a claimant under the federal-state extended duration
48 unemployment benefits program established by the federal

49 Employment Security Act shall be charged to the experience accounts of
50 the claimant's base period employers in the same manner as the regular
51 benefits paid for such benefit year. (I) No base period employer's
52 account shall be charged with respect to benefits paid to a claimant who
53 voluntarily left suitable work with such employer (i) to care for a
54 seriously ill spouse, parent or child or (ii) due to the discontinuance of
55 the transportation used by the claimant to get to and from work, as
56 provided in subparagraphs (A)(ii) and (A)(iii) of subdivision (2) of
57 subsection (a) of section 31-236. (J) No base period employer's account
58 shall be charged with respect to benefits paid to a claimant who has been
59 discharged or suspended because the claimant has been disqualified
60 from performing the work for which he or she was hired due to the loss
61 of such claimant's operator license as a result of a drug or alcohol test or
62 testing program conducted in accordance with section 14-44k, 14-227a
63 or 14-227b while the claimant was off duty. (K) No base period
64 employer's account shall be charged with respect to benefits paid to a
65 claimant due to partial or total unemployment that the Labor
66 Commissioner, or his or her designee, determines are attributable to
67 COVID-19, including, but not limited to, benefits paid to a claimant
68 who, through no fault of his or her own, becomes either partially or fully
69 unemployed during the public health and civil preparedness emergency
70 declared on March 10, 2020, and any period of extension or renewal. As
71 used in this subparagraph, "COVID-19" means the respiratory disease
72 designated by the World Health Organization on February 11, 2020, as
73 coronavirus 2019, and any related mutation thereof recognized by the
74 World Health Organization as a communicable respiratory disease.

75 (2) All benefits paid which are not charged to any employer shall be
76 pooled.

77 (3) The noncharging provisions of this chapter, except subdivisions
78 (1)(D) and (1)(F) of this subsection, shall not apply to reimbursing
79 employers.

80 Sec. 2. Subsection (c) of section 31-225a of the general statutes, as
81 amended by section 26 of public act 19-25 and section 235 of public act

82 19-117, is repealed and the following is substituted in lieu thereof
83 (*Effective January 1, 2022*):

84 (c) (1) (A) Any week for which the employer has compensated the
85 claimant in the form of wages in lieu of notice, dismissal payments or
86 any similar payment for loss of wages shall be considered a week of
87 employment for the purpose of determining employer chargeability. (B)
88 No benefits shall be charged to any employer who paid wages of five
89 hundred dollars or less to the claimant in his or her base period. (C) No
90 dependency allowance paid to a claimant shall be charged to any
91 employer. (D) In the event of a natural disaster declared by the President
92 of the United States, no benefits paid on the basis of total or partial
93 unemployment which is the result of physical damage to a place of
94 employment caused by severe weather conditions including, but not
95 limited to, hurricanes, snow storms, ice storms or flooding, or fire except
96 where caused by the employer, shall be charged to any employer. (E) If
97 the administrator finds that (i) an individual's most recent separation
98 from a base period employer occurred under conditions which would
99 result in disqualification by reason of subdivision (2), (6) or (9) of
100 subsection (a) of section 31-236, or (ii) an individual was discharged for
101 violating an employer's drug testing policy, provided the policy has
102 been adopted and applied consistent with sections 31-51t to 31-51aa,
103 inclusive, section 14-261b and any applicable federal law, no benefits
104 paid thereafter to such individual with respect to any week of
105 unemployment which is based upon wages paid by such employer with
106 respect to employment prior to such separation shall be charged to such
107 employer's account, provided such employer shall have filed a notice
108 with the administrator within the time allowed for appeal in section 31-
109 241. (F) No base period employer's account shall be charged with respect
110 to benefits paid to a claimant if such employer continues to employ such
111 claimant at the time the employer's account would otherwise have been
112 charged to the same extent that he or she employed him or her during
113 the individual's base period, provided the employer shall notify the
114 administrator within the time allowed for appeal in section 31-241. (G)
115 If a claimant has failed to accept suitable employment under the
116 provisions of subdivision (1) of subsection (a) of section 31-236 and the

117 disqualification has been imposed, the account of the employer who
118 makes an offer of employment to a claimant who was a former
119 employee shall not be charged with any benefit payments made to such
120 claimant after such initial offer of reemployment until such time as such
121 claimant resumes employment with such employer, provided such
122 employer shall make application therefor in a form acceptable to the
123 administrator. The administrator shall notify such employer whether or
124 not his or her application is granted. Any decision of the administrator
125 denying suspension of charges as herein provided may be appealed
126 within the time allowed for appeal in section 31-241. (H) Fifty per cent
127 of benefits paid to a claimant under the federal-state extended duration
128 unemployment benefits program established by the federal
129 Employment Security Act shall be charged to the experience accounts of
130 the claimant's base period employers in the same manner as the regular
131 benefits paid for such benefit year. (I) No base period employer's
132 account shall be charged with respect to benefits paid to a claimant who
133 voluntarily left suitable work with such employer (i) to care for a
134 seriously ill spouse, parent or child, or (ii) due to the discontinuance of
135 the transportation used by the claimant to get to and from work, as
136 provided in subparagraphs (A)(ii) and (A)(iii) of subdivision (2) of
137 subsection (a) of section 31-236. (J) No base period employer's account
138 shall be charged with respect to benefits paid to a claimant who has been
139 discharged or suspended because the claimant has been disqualified
140 from performing the work for which he or she was hired due to the loss
141 of such claimant's operator license as a result of a drug or alcohol test or
142 testing program conducted in accordance with section 14-44k, 14-227a
143 or 14-227b while the claimant was off duty. (K) No base period
144 employer's account shall be charged with respect to benefits paid to a
145 claimant whose separation from employment is attributable to the
146 return of an individual who was absent from work due to a bona fide
147 leave taken pursuant to sections 31-49f to 31-49t, inclusive, or 31-51kk to
148 31-51qq, inclusive. (L) No base period employer's account shall be
149 charged with respect to benefits paid to a claimant due to partial or total
150 unemployment that the Labor Commissioner, or his or her designee,
151 determines are attributable to COVID-19, including, but not limited to,

152 benefits paid to a claimant who, through no fault of his or her own,
153 becomes either partially or fully unemployed during the public health
154 and civil preparedness emergency declared on March 10, 2020, and any
155 period of extension or renewal. As used in this subparagraph, "COVID-
156 19" means the respiratory disease designated by the World Health
157 Organization on February 11, 2020, as coronavirus 2019, and any related
158 mutation thereof recognized by the World Health Organization as a
159 communicable respiratory disease.

160 (2) All benefits paid which are not charged to any employer shall be
161 pooled.

162 (3) The noncharging provisions of this chapter, except subparagraphs
163 (D), (F) and (K) of subdivision (1) of this subsection, shall not apply to
164 reimbursing employers.

165 Sec. 3. Section 12-412 of the general statutes is amended by adding
166 subdivision (125) as follows (*Effective July 1, 2021, and applicable to sales*
167 *occurring on or after July 1, 2021*):

168 (NEW) (125) Sales of and the storage, use or other consumption of
169 personal protective equipment used or worn to prevent infection by or
170 transmission of COVID-19 to any small business. For the purposes of
171 this subdivision, (A) "COVID-19" means the respiratory disease
172 designated by the World Health Organization on February 11, 2020, as
173 coronavirus 2019, and any related mutation thereof recognized by the
174 World Health Organization as a communicable respiratory disease, and
175 (B) "small business" means a corporation, limited liability company
176 partnership, sole proprietorship or individual, operating a business for
177 profit, which employs one hundred or fewer full-time employees,
178 including employees employed in any subsidiary or affiliated
179 corporation.

180 Sec. 4. Section 4-168a of the general statutes is repealed and the
181 following is substituted in lieu thereof (*Effective October 1, 2021*):

182 (a) As used in this section:

183 (1) "Agency", "proposed regulation" and "regulation" have the same
184 meanings as provided in section 4-166; and

185 (2) "Small business" means a business entity, including its affiliates,
186 that (A) is independently owned and operated and (B) employs fewer
187 than two hundred fifty full-time employees or has gross annual sales of
188 less than five million dollars, except that an agency, in adopting
189 regulations in accordance with the provisions of this chapter, may
190 define "small business" to include a greater number of full-time
191 employees, not to exceed applicable federal standards or five hundred,
192 whichever is less, if necessary to meet the needs and address specific
193 problems of small businesses.

194 (b) Prior to or concomitant with the posting of a notice pursuant to
195 section 4-168, each agency shall prepare a regulatory flexibility analysis
196 in which the agency shall identify:

197 (1) The scope and objectives of the proposed regulation;

198 (2) The types of businesses potentially affected by the proposed
199 regulation;

200 (3) The total number of small businesses potentially subject to the
201 proposed regulation;

202 (4) Whether small businesses, in order to comply with the proposed
203 regulation, may be required to: (A) Create, file or issue additional
204 reports; (B) implement additional recordkeeping procedures; (C)
205 provide additional administrative oversight; (D) hire additional
206 employees; (E) hire or contract with additional professionals, including,
207 but not limited to, lawyers, accountants, engineers, auditors or
208 inspectors; (F) purchase any product or make any capital investment;
209 (G) conduct additional training, audits or inspections; or (H) pay
210 additional taxes or fees;

211 (5) Whether and to what extent the agency communicated with small
212 businesses or small business organizations in developing the proposed
213 regulation and the regulatory flexibility analysis, if applicable;

214 (6) Whether and to what extent the proposed regulation provides
215 alternative compliance methods for small businesses that will
216 accomplish the objectives of applicable statutes while minimizing
217 adverse impact on small businesses. Such methods shall be consistent
218 with public health, safety and welfare and may include, but not be
219 limited to:

220 (A) The establishment of less stringent compliance or reporting
221 requirements for small businesses;

222 (B) The establishment of less stringent schedules or deadlines for
223 compliance or reporting requirements for small businesses;

224 (C) The consolidation or simplification of compliance or reporting
225 requirements for small businesses;

226 (D) The establishment of performance standards for small businesses
227 to replace design or operational standards required in the proposed
228 regulation; and

229 (E) The exemption of small businesses from all or any part of the
230 requirements contained in the proposed regulation.

231 (c) Prior to or concomitant with the posting of a notice pursuant to
232 section 4-168, each agency shall prepare a federal regulatory analysis in
233 which the agency shall identify:

234 (1) The scope and objectives of the proposed regulation;

235 (2) Each federal regulation that the agency determines has a
236 comparable scope or objective to the proposed regulation;

237 (3) The differences between such federal regulation and the proposed
238 regulation;

239 (4) Any adverse impact of such federal regulation on small
240 businesses; and

241 (5) Whether and to what extent the agency took steps to avoid such

242 adverse impact on small businesses in developing the proposed
243 regulation.

244 [(c)] (d) Prior to the adoption of any proposed regulation that may
245 have an adverse impact on small businesses, each agency shall notify
246 the Department of Economic and Community Development and the
247 joint standing committee of the General Assembly having cognizance of
248 matters relating to commerce of its intent to adopt the proposed
249 regulation. Said department and committee shall advise and assist
250 agencies in complying with the provisions of this section.

251 [(d)] (e) The requirements contained in this section shall not apply to
252 emergency regulations issued pursuant to subsection (g) of section 4-
253 168; regulations that do not affect small businesses directly, including,
254 but not limited to, regulations concerning the administration of federal
255 programs; regulations concerning costs and standards for service
256 businesses such as nursing homes, long-term care facilities, medical care
257 providers, child care centers, as described in section 19a-77, group child
258 care homes, as described in section 19a-77, family child care homes, as
259 described in section 19a-77, water companies, nonprofit 501(c)(3)
260 agencies, group homes and residential care facilities; and regulations
261 adopted to implement the provisions of sections 4a-60g to 4a-60i,
262 inclusive.

263 Sec. 5. Subdivision (1) of subsection (b) of section 4-170 of the general
264 statutes is repealed and the following is substituted in lieu thereof
265 (*Effective October 1, 2021*):

266 (b) (1) No adoption, amendment or repeal of any regulation, except a
267 regulation issued pursuant to subsection (g) of section 4-168, shall be
268 effective until (A) an electronic copy of the proposed regulation
269 approved by the Attorney General, as provided in section 4-169, [and]
270 an electronic copy of the regulatory flexibility analysis, as provided in
271 section 4-168a, as amended by this act, and an electronic copy of the
272 federal regulatory analysis, as provided in section 4-168a, as amended
273 by this act, are submitted to the standing legislative regulation review
274 committee in a manner designated by the committee, by the agency

275 proposing the regulation, (B) the regulation is approved by the
276 committee, at a regular meeting or a special meeting called for the
277 purpose, and (C) a certified electronic copy of the regulation is
278 submitted to the office of the Secretary of the State by the agency, as
279 provided in section 4-172, and the regulation is posted on the
280 eRegulations System by the Secretary. (2) The date of submission for
281 purposes of subsection (c) of this section shall be the first Tuesday of
282 each month. Any regulation received by the committee on or before the
283 first Tuesday of a month shall be deemed to have been submitted on the
284 first Tuesday of that month. Any regulation submitted after the first
285 Tuesday of a month shall be deemed to be submitted on the first
286 Tuesday of the next succeeding month. (3) The form of proposed
287 regulations which are submitted to the committee shall be as follows:
288 New language added to an existing regulation shall be underlined;
289 language to be deleted shall be enclosed in brackets and a new
290 regulation or new section of a regulation shall be preceded by the word
291 "(NEW)" in capital letters. Each proposed regulation shall have a
292 statement of its purpose following the final section of the regulation. (4)
293 The committee may permit any proposed regulation, including, but not
294 limited to, a proposed regulation which by reference incorporates in
295 whole or in part, any other code, rule, regulation, standard or
296 specification, to be submitted in summary form together with a
297 statement of purpose for the proposed regulation. On and after October
298 1, 1994, if the committee finds that a federal statute requires, as a
299 condition of the state exercising regulatory authority, that a Connecticut
300 regulation at all times must be identical to a federal statute or regulation,
301 then the committee may approve a Connecticut regulation that by
302 reference specifically incorporates future amendments to such federal
303 statute or regulation provided the agency that proposed the Connecticut
304 regulation shall submit for approval amendments to such Connecticut
305 regulations to the committee not later than thirty days after the effective
306 date of such amendment, and provided further the committee may hold
307 a public hearing on such Connecticut amendments. (5) The agency shall
308 also provide the committee with a copy of the fiscal note prepared
309 pursuant to subsection (a) of section 4-168. At the time of submission to

310 the committee, the agency shall submit an electronic copy of the
 311 proposed regulation and the fiscal note to (A) the Office of Fiscal
 312 Analysis which, not later than seven days after receipt, shall submit an
 313 analysis of the fiscal note to the committee; and (B) each joint standing
 314 committee of the General Assembly having cognizance of the subject
 315 matter of the proposed regulation. No regulation shall be found invalid
 316 due to the failure of an agency to submit an electronic copy of the
 317 proposed regulation and the fiscal note to each committee of
 318 cognizance, provided such regulation and fiscal note have been
 319 electronically submitted to one such committee.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2021</i>	31-225a(c)
Sec. 2	<i>January 1, 2022</i>	31-225a(c)
Sec. 3	<i>July 1, 2021, and applicable to sales occurring on or after July 1, 2021</i>	12-412
Sec. 4	<i>October 1, 2021</i>	4-168a
Sec. 5	<i>October 1, 2021</i>	4-170(b)(1)

CE *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 22 \$	FY 23 \$
Department of Revenue Services	GF - Revenue Loss	up to \$250,000	up to \$250,000
Various State Agencies	Various - Potential Cost	See Below	See Below

Note: GF=General Fund; Various=Various

Municipal Impact: None

Explanation

The bill enacts state policy put into place by the Governor's Executive Order 7W that prohibits charging contributing employer's unemployment insurance accounts to reflect benefits paid to a claimant due to partial or total unemployment attributable to the COVID-19 pandemic declared on March 10, 2020. The bill conforms statute to current practice, which shifts the additional costs attributable to the COVID-19 pandemic to all contributing employers.

The bill exempts certain employers from the sales and use tax on purchases of Personal Protective Equipment (PPE). In total, the sales tax exemption on safety apparel is estimated to be \$250,000 annually.

Lastly, the bill expands the scope of regulatory analyses state agencies must conduct. Specifically, for each proposed regulation state agencies must prepare an analysis that identifies (1) each comparable federal regulation, (2) how it differs from the proposed regulation, (3) any adverse impact of the federal regulation on small businesses, and (4) the extent to which the agency attempted to mitigate the adverse

impact. The bill could result in a cost to various agencies associated with requiring small business impact analyses for proposed regulations. Any additional staff costs for each agency is dependent upon the number of regulations filed and time required to complete such analyses.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**SB 711*****AN ACT CONCERNING COVID-19 RELIEF FOR SMALL BUSINESSES AND REQUIRING FEDERAL REGULATORY ANALYSIS FOR PROPOSED STATE REGULATIONS.*****SUMMARY**

This bill creates a “non-charge” against an employer’s experience rate for the unemployment benefits paid to former employees whom the Labor commissioner (or his designee) determines became partially or totally unemployed because of COVID-19. (This provision codifies Executive Order 7W (§ 2), which the governor issued on April 9, 2020.)

The bill also establishes a sales and use tax exemption for small businesses for personal protective equipment used or worn to prevent COVID-19 infection or transmission. Lastly, it requires state agencies to prepare a federal regulatory analysis when adopting regulations. Generally, the analysis must compare the proposed regulation with any similar federal regulations.

EFFECTIVE DATE: (1) July 1, 2021, for the unemployment provision and sales and use tax provision, with the latter applicable to sales occurring on or after that date; (2) October 1, 2021, for the regulatory analysis; and (3) January 1, 2022, for a conforming change.

§§ 1 & 2 — UNEMPLOYMENT NON-CHARGE

The bill creates a “non-charge” against an employer’s experience rate for the unemployment benefits paid to former employees whom the Labor commissioner (or his designee) determines became partially or totally unemployed because of COVID-19. This includes former employees who, through no fault of their own, became partially or fully unemployed during the public health and civil preparedness emergency declared by the governor on March 10, 2020, and any period of extension

or renewal. In effect, this allows employers to lay off these employees without increasing the employer's unemployment taxes (see BACKGROUND).

As with most other unemployment non-charges, the bill's non-charge provision does not apply to "reimbursing employers" (e.g., the state and municipalities) who do not pay unemployment taxes but instead directly reimburse the unemployment trust fund for the benefits collected by their former employees.

§ 3 — SALES AND USE TAX EXEMPTION

The bill establishes a sales and use tax exemption for small businesses for personal protective equipment used or worn to prevent COVID-19 infection or transmission. Under the bill, a small business (1) is a corporation, limited liability company, partnership, sole proprietorship, or individual, operating a business for a profit and (2) has up to 100 full-time employees, including subsidiaries or affiliated corporations. The bill does not establish a mechanism for sellers to verify which businesses are eligible for the exemption.

§§ 4 & 5 — FEDERAL REGULATORY ANALYSIS

The bill requires state agencies to prepare a federal regulatory analysis when adopting regulations. They must do so before, or concurrently with, posting a notice of intent to adopt regulations on the eRegulations System. The analysis must identify (1) the proposed regulation's scope and objectives, (2) each comparable federal regulation and how it differs from the proposed regulation, (3) any adverse impact of the federal regulation on small businesses, and (4) the extent to which the agency attempted to avoid the adverse impact when developing the regulation. The agency must also submit the analysis to the Regulation Review Committee.

For purposes of this analysis, a "small business" is a business entity that, including its affiliates, (1) is independently owned and operated and (2) employs fewer than 250 full-time employees or has gross annual sales of less than \$5 million. The agency may define "small business" to

include a greater number of full-time employees, up to the applicable federal standard or 500, whichever is less.

BACKGROUND

Related Bill

HB 5377, reported favorably by the Labor and Public Employees Committee, disregards an employer's benefit charges and taxable wages between July 1, 2019, and June 30, 2021, when calculating the employer's unemployment tax experience rate for taxable years starting on or after January 1, 2022.

Unemployment Non-Charge

In general, a portion of a private-sector employer's unemployment insurance tax is based on the employer's "experience rate," which reflects the amount of unemployment benefits paid to former employees. Typically, laying off employees leads to a higher experience rate and higher unemployment tax for the employer. The law, however, allows several non-charging separations in which an employee can collect benefits that are not charged against a former employer's experience rate (e.g., voluntarily leaving work to care for a seriously ill spouse, parent, or child), and thus do not increase the employer's unemployment taxes. In these instances, the cost of the benefits paid to the former employee is shared by all employers who pay unemployment taxes.

COMMITTEE ACTION

Commerce Committee

Joint Favorable

Yea 23 Nay 0 (03/11/2021)