



**ANALYSIS OF VERMONT SENATE BILL 101**  
*As Introduced on February 24, 2023*

**NCCI evaluated the impact of proposed Vermont Senate Bill 101 (S. 101) as introduced on February 24, 2023. This document includes a description of the notable provisions of S. 101 and indications of their potential impact on Vermont workers compensation (WC) system costs. These changes are proposed to become effective on July 1, 2023<sup>1</sup>.**

NCCI’s analysis of S. 101 is prospective only (i.e., for accidents occurring on or after July 1, 2023). If the proposed changes extend to accidents occurring prior to the proposed effective date, there may be retroactive cost impacts arising from provisions of the bill. In addition, the rules necessary to implement the provisions of S. 101, if enacted, shall be adopted on or before July 1, 2024; this could create up to a one-year gap between enactment and publication of rules related to the administration of certain provisions. It is unclear to what extent claims occurring after July 1, 2023, but prior to the publication of such adopted rules, may be affected by the adoption of any such rules.

A summary of the estimated cost impacts—for those provisions explicitly analyzed in this document—is displayed below.

Section(s)	Description of Proposed Provision	Estimated Overall System Cost Impact	
		(in %)	(in \$) <sup>2</sup>
642 & 646	Increase the weekly dependency benefit paid under Temporary Disability benefits	+0.2%	+\$0.3M
646	Amends the formula for the determination of the amount of compensation due to an employee with a Temporary Partial Disability (TPD)	Indeterminate impact	
643d.	Adds guidelines for work search while receiving Temporary Disability benefits	Indeterminate impact	

<sup>1</sup> Most provisions in S. 101 are proposed to become effective on July 1, 2023. However, the sections regarding the Workers Compensation Administration fund rate of contribution and discontinuance of benefits provisions are proposed to become effective upon passage of S. 101.

<sup>2</sup> The estimated dollar impact is displayed for illustrative purposes only and calculated as the percentage impact(s) multiplied by 2021 written premium of \$166M from NAIC Annual Statement data for Vermont. This figure does not include self-insurance, the policyholder retained portion of deductible policies, or adjustments for subsequent changes in premium levels. The use of premium as the basis for the dollar impact assumes that expenses and other premium adjustments will be affected proportionally to the change in benefit costs. The dollar impact on overall system costs inclusive of self-insurance is estimated to be \$0.4M, where data on self-insurance is approximated using the National Academy of Social Insurance’s November 2022 publication “Workers’ Compensation: Benefits, Costs, and Coverages, 2020.”



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**Note that NCCI’s analysis of the proposed changes to TPD benefits in section 646 resulted in inconsistent benefit determinations in certain situations, which does not allow for a reasonable estimate of its potential impact on WC system costs as detailed later in this document. Thus, the potential impact of this proposed change, as currently drafted, is indeterminate.**

Some provisions of proposed S. 101 which cannot be reasonably quantified, and which are not addressed in this analysis, may nevertheless have an impact on WC system costs. Note that each element of S. 101 was evaluated in isolation. If S. 101 were ultimately enacted, any interaction effects between the various provisions of the bill would have to be considered.

### **Summary and Actuarial Analysis of Select Provisions of S. 101**

#### **Weekly Dependency Benefit Paid under Temporary Disability (Sections 642 and 646)**

Currently in Vermont, an injured worker receiving Temporary Total Disability (TTD) benefits is entitled to receive \$10 per week for each dependent child who is unmarried and under the age of 21 years, in addition to weekly wage-replacement benefits. S. 101 proposes to increase this amount from \$10 to \$20 per week for each dependent child, and to also apply it to workers receiving TPD benefits. This change would impact WC system costs by increasing indemnity benefits to injured workers with dependent children. Amending the weekly dependent benefit impacts both temporary disability claims and the healing period<sup>3</sup> of permanent partial disability (PPD) claims.

To analyze the direct cost impacts of the proposed changes to these benefit limitations, NCCI used a countrywide distribution of workers, their dependents, and their wages indexed to Vermont’s average injured worker’s weekly wage level. The average weekly total disability benefit under the proposed changes was calculated and compared to current estimated average weekly benefit to determine the impact on temporary disability benefits.

The estimated impact of this proposed provision on indemnity benefits would be +0.7% for temporary disability claims and +0.3% on PPD claims. Temporary disability claims represent approximately 36.1%<sup>4</sup> of total indemnity benefits and PPD claims represent approximately

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<sup>3</sup> In Vermont, indemnity costs for PPD claims are divided into “healing period” benefits and permanent disability awards. The healing period represents temporary disability benefits paid on PPD claims prior to the award for permanent disability. NCCI estimates that 48.6% of indemnity benefits for PPD injuries are paid during the healing period, and thus would be affected by this provision if enacted.

<sup>4</sup> Based on NCCI Workers Compensation Statistical Plan data for Vermont policies becoming effective during the 60-month period ending 6/30/2020 brought to the current benefit level and developed to ultimate.



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56.3%<sup>4</sup> of total indemnity benefits. Indemnity benefit costs are projected to represent 53%<sup>5</sup> of total WC benefit costs in Vermont. Therefore, **NCCI estimates that if S. 101 is enacted, overall WC system costs in Vermont would be impacted by +0.2% (= [+0.3% x 56.3% x 53%] + [+0.7% x 36.1% x 53%]).**

### Temporary Partial Disability (TPD) Benefits (Section 646)

Currently in Vermont, weekly TPD benefits are equal to 66 2/3% of the difference between the injured worker's pre-injury and post-injury average weekly wage<sup>6</sup> (AWW). S. 101 would amend the TPD benefit calculation to equal:

- A. The difference between the injured worker's AWW during the period of disability and the calculated temporary total disability (TTD)<sup>7</sup> benefit amount pursuant to (Section 642), including any cost-of-living adjustment (COLA) or dependency benefits due; or
- B. For injured employees who would be eligible to receive the maximum weekly benefit under section 642, 66 2/3% of the difference between the injured worker's pre-injury AWW and the amount the employee earns during the period of disability.

Based on the proposed language above, any injured worker eligible for TPD benefits that is also eligible for the maximum TTD benefit, would receive benefits based on subsection (B), and would see no change to their benefits compared to current statutes. All other injured workers eligible for TPD benefits would have their benefits calculated based on subsection (A). NCCI reviewed the proposed language for subsection (A) and has determined that the TPD benefits under certain situations would result in inconsistent benefit determinations.

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<sup>5</sup> Based on NCCI Financial Call data for Policy Years 2018, 2019, and 2020, projected to 7/1/2023.

<sup>6</sup> Currently, the injured worker's post-injury average weekly wage is specified to be the amount the injured worker is *able to earn*. S. 101 proposed to change the language to the amount the injured worker *earns* post-injury. It is unclear whether this would be a material change from current practice.

<sup>7</sup> In Vermont, TTD indemnity benefits are equal to 66 2/3% of the injured worker's pre-injury AWW, subject to a maximum of 150% of the SAWW and a minimum of 50% of the SAWW (if the AWW is less than the minimum, then 90% of the AWW will be paid), plus a \$10 weekly benefit per dependent child, and any applicable COLA. S. 101 also proposes to amend Section 646, and also section 642, to increase the weekly benefit per dependent child from \$10 to \$20.



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Several scenarios illustrating the potentially inconsistent benefit payment calculations can be found below<sup>8</sup>.

**Example #1.**

An injured worker with a pre-injury AWW of \$1,000 is making \$500 per week post-injury. Under current statutes, the injured worker is eligible for a weekly TPD benefit of \$333.33 (= [1000 – 500] x 66 2/3%). The TPD benefit as proposed under S.101 would appear to result in a negative benefit as follows:

Worker's pre-injury AWW <b>(A)</b>	Worker's AWW during the period of disability <b>(B)</b>	TTD benefit under section 642 <b>(C) = 66 2/3% x (A)</b>	TPD benefit under proposed S. 101 <b>(D) = (B) – (C)</b>	Current TPD benefit <b>(E)</b>
\$1,000	\$500	\$666.67	\$(166.67)	\$333.33

The proposed benefit payment structure behaves differently based on the level of wage loss. Examples 2 and 3 illustrate the proposed benefit payments compared to current TPD reimbursement for workers with lower percentages of wage loss.

**Example #2.**

An injured worker with a pre-injury AWW of \$1,500 is now making \$1,350 per week post-injury (10% wage loss). Under current statutes, the injured worker is eligible for a weekly TPD benefit of \$100 (= [1500-1350] x 66 2/3%). The TPD benefit as proposed under S.101 would appear to be as follows:

Worker's pre-injury AWW <b>(A)</b>	Worker's AWW during the period of disability <b>(B)</b>	TTD benefit under section 642 <b>(C) = 66 2/3% x (A)</b>	TPD benefit under proposed S. 101 <b>(D) = (B) – (C)</b>	Current TPD benefit <b>(E)</b>
\$1,500	\$1,350	\$1,000	\$350	\$100

<sup>8</sup> These examples do not take any cost-of-living adjustments or dependency benefits into account.



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In this example, the injured worker would receive a larger TPD benefit (\$350) than their wage loss (\$150 = \$1,500 x 10%), which would result in the injured worker receiving higher earnings post-injury (\$1,700)<sup>9</sup> than pre-injury (\$1,500).

**Example #3.**

An injured worker with a pre-injury AWW of \$1,500 is now making \$1,050 per week post-injury (30% wage loss). Under current statutes, the injured worker is eligible for a weekly TPD benefit of \$300 (= [1500-1050] x 66 2/3%). The TPD benefit as proposed under S.101 would appear to be as follows:

Worker's pre-injury AWW <b>(A)</b>	Worker's AWW during the period of disability <b>(B)</b>	TTD benefit under section 642 <b>(C) = 66 2/3% x (A)</b>	TPD benefit under proposed S. 101 <b>(D) = (B) – (C)</b>	Current TPD benefit <b>(E)</b>
\$1,500	\$1,050	\$1,000	\$50	\$300

In Examples 2 and 3, the injured worker has a pre-injury AWW of \$1,500. In Example 3 the worker has sustained 30% wage loss with a proposed TPD benefit of \$50. This is a lower benefit payment than the worker in Example 2 despite the worker in Example 3 experiencing a greater loss of earnings.

Since the proposed TPD benefit determination would depend on the relationship between wage loss and TTD benefits, which may result in inconsistent benefit determinations under certain circumstances, NCCI is unable to estimate the impact of this proposed change.

Guidelines for Work Search While Receiving Temporary Disability Benefits (Section 643d.)

S. 101 proposes to add a new section to the Vermont Statute titled “Section 643d. Work Search; Requirements; Exceptions” which specifies the conditions under which an employer may require an injured worker currently receiving temporary disability benefits to engage in a good faith search for suitable work. These guidelines appear to clarify that the worker needs to engage in a good faith work search when: (i) medically released to return to work, (ii) written notification of such is provided by the employer, and (iii) the employer cannot accommodate a worker’s medical limitations. The bill also includes numerous exceptions to this requirement,

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<sup>9</sup> The WC portion of the injured worker’s earnings is tax-free.



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including if the worker has been referred to undergo one or more surgical procedures. NCCI is unable to explicitly quantify the impact of the proposed work search requirement on WC system costs because the number of claimants who would be affected, and the extent to which they would be affected, is unknown. However, considering the extent of the exceptions to the proposed work search requirements, the number of affected claimants may be limited.

### **Additional Provisions**

In addition to the provisions already discussed, S. 101 includes other proposed changes that are either administrative in nature or are clarifications of current statutory language. If enacted, any potential cost impacts resulting from these provisions would be realized in future claims experience and reflected in subsequent NCCI loss cost filings in Vermont, as appropriate.

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