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H.645

Introduced by Representatives Botzow of Pownal and Marcotte of Coventry

Referred to Committee on

Date:

Subject: Labor; workers' compensation

Statement of purpose of bill as introduced: This bill proposes to make various changes to the workers' compensation statutes.

An act relating to workers' compensation

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

~~Sec. 1. 21 V.S.A. § 643a is amended to read:~~

~~§ 643a. DISCONTINUANCE OF BENEFITS~~

~~Unless an injured worker has successfully returned to work, an employer shall notify both the Commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the Commissioner and shall include the date of the proposed discontinuance, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed,~~

1 ~~shall be filed with the notice. The liability for the payments shall continue for~~
2 seven days after the notice is received by the Commissioner and the employee.
3 If the claimant disputes the discontinuance, the claimant may file with the
4 Commissioner an objection to the discontinuance and seek an extension of the
5 seven-day limit. The Commissioner may grant an extension up to seven days.
6 The request for an extension shall be specific as to the number of days needed
7 and the reason for the extension and must be received by the Commissioner
8 prior to the end of the seven-day limit. A copy of the request for an extension
9 shall be provided to the employer at the time the request is made to the
10 Commissioner. Those payments shall be made without prejudice to the
11 employer and may be deducted from any amounts due pursuant to section 648
12 of this title if the Commissioner determines that the discontinuance is
13 warranted or if otherwise ordered by the Commissioner. Every notice shall be
14 reviewed by the Commissioner to determine the sufficiency of the basis for the
15 proposed discontinuance. If, after review of all the evidence in the file, the
16 Commissioner finds that a preponderance of all the evidence in the file does
17 not reasonably support the proposed discontinuance, the Commissioner shall
18 order that payments continue until a hearing is held and a decision is rendered.
19 Prior to a formal hearing, an injured worker may request reinstatement of
20 benefits by providing additional new evidence to the Department that
21 establishes that a preponderance of all evidence now supports the claim. If the

1 ~~Commissioner's decision, after a hearing, is that the employee was not entitled~~
2 ~~to any or all benefits paid between the discontinuance and the final decision,~~
3 ~~upon request of the employer, the Commissioner may order that the employee~~
4 ~~repay all benefits to which the employee was not entitled. The employer may~~
5 ~~enforce a repayment order in any court of law having jurisdiction.~~

6 Sec. 2. 21 V.S.A. § 696 is amended to read:

7 § 696. CANCELLATION OF INSURANCE CONTRACTS

8 A policy or contract shall not be cancelled within the time ~~limited~~ specified
9 in the policy or contract for its expiration, until at least 45 days after a notice of
10 intention to cancel the policy or contract, on a date specified in the notice, has
11 been filed in the office of the ~~commissioner~~ Commissioner and provided to the
12 employer. The notice shall be filed with the Commissioner in accordance with
13 rules adopted by the Commissioner and provided to the employer by certified
14 mail or certificate of mailing. The cancellation shall not affect the liability of
15 an insurance carrier on account of an injury occurring prior to cancellation.

16 Sec. 3. 21 V.S.A. § 697 is amended to read:

17 § 697. NOTICE OF INTENT NOT TO RENEW POLICY

18 An insurance carrier who does not intend to renew a workers' compensation
19 insurance policy of workers' compensation insurance or guarantee contract
20 covering the liability of an employer under the provisions of this chapter, ~~45~~
21 ~~days prior to the expiration of the policy or contract,~~ shall give notice of the its

1 ~~intention to the commissioner of labor Commissioner and to the covered~~
2 ~~employer at least 45 days prior to the expiration date stated in the policy or~~
3 ~~contract. The notice shall be given to the employer by certified mail ~~or~~~~
4 ~~certificate of mailing. An insurance carrier who fails to give notice shall~~
5 ~~continue the policy or contract in force beyond its expiration date for 45 days~~
6 ~~from the day the notice is received by the ~~commissioner~~ Commissioner and the~~
7 ~~employer. However, ~~this latter provision shall not apply if, prior to such~~~~
8 ~~expiration date, on or before the expiration of the existing insurance or~~
9 ~~guarantee contract the insurance carrier has, by delivery of a renewal contract~~
10 ~~or otherwise, offered to continue the insurance ~~beyond the date by delivery of a~~~~
11 ~~renewal contract or otherwise, or if the employer notifies the insurance carrier~~
12 ~~in writing that the employer does not wish the insurance continued beyond the~~
13 ~~expiration date, or if the employer complies with the provisions of section 687~~
14 ~~of this title, ~~on or before the expiration of the existing insurance or guarantee~~~~
15 ~~contract then the policy will expire upon notice to the Commissioner.~~

16 Sec. 4. EFFECTIVE DATE

17 ~~This act shall take effect on July 1, 2014.~~

~~*Sec. 1. 21 V.S.A. § 632 is amended to read:*~~

~~*§ 632. COMPENSATION TO DEPENDENTS; ~~DEATH BENEFITS~~*~~
~~*BURIAL AND FUNERAL EXPENSES*~~

~~If death results from the injury, the employer shall pay to the persons entitled to compensation or, if there is none, then to the personal representative of the deceased employee, the actual burial and funeral expenses ~~in the amount of \$5,500.00~~ not to exceed \$10,000.00 and the actual expenses for out-of-state transportation of the decedent to the place of burial ~~not to exceed \$1,000.00~~ \$5,000.00. The employer shall also pay to or for the benefit of the following persons, for the periods prescribed in section 635 of this title, a weekly compensation equal to the following percentages of the deceased employee's average weekly wages. The weekly compensation payment herein allowed shall not exceed the maximum weekly compensation or be lower than the minimum weekly compensation:~~

~~Sec. 1. 21 V.S.A. § 632 is amended to read:~~

~~§ 632. COMPENSATION TO DEPENDENTS; ~~DEATH BENEFITS~~
BURIAL AND FUNERAL EXPENSES~~

~~If death results from the injury, the employer shall pay to the persons entitled to compensation or, if there is none, then to the personal representative of the deceased employee, the actual burial and funeral expenses ~~in the amount of \$5,500.00~~ not to exceed \$10,000.00 and the actual expenses for out-of-state transportation of the decedent to the place of burial ~~not to exceed \$1,000.00~~ \$5,000.00. Every two years, the Commissioner of Labor shall evaluate the average burial and funeral expenses in the State and~~

make a recommendation to the House Committee on Commerce and Economic Development and the Senate Committee on Finance as to whether an adjustment in compensation is warranted. The employer shall also pay to or for the benefit of the following persons, for the periods prescribed in section 635 of this title, a weekly compensation equal to the following percentages of the deceased employee's average weekly wages. The weekly compensation payment herein allowed shall not exceed the maximum weekly compensation or be lower than the minimum weekly compensation:

* * *

~~Sec. 2. 21 V.S.A. § 639 is amended to read:~~

~~§ 639. DEATH, PAYMENT TO DEPENDENTS~~

~~In cases of the death of a person from any cause other than the accident during the period of payments for disability or for the permanent injury, the remaining payments for disability then due or for the permanent injury shall be made to the person's dependents according to the provisions of sections 635 and 636 of this title, or if there are none, the remaining amount due, but ~~not~~ exceeding \$5,500.00 for burial and funeral expenses no more than the actual burial and funeral expenses not to exceed \$10,000.00 and the actual expenses for out-of-state transportation of the decedent to the place of burial not to exceed \$1,000.00 \$5,000.00, shall be paid in a lump sum to the proper person.~~

~~Sec. 2. 21 V.S.A. § 639 is amended to read:~~

§ 639. DEATH, PAYMENT TO DEPENDENTS

In cases of the death of a person from any cause other than the accident during the period of payments for disability or for the permanent injury, the remaining payments for disability then due or for the permanent injury shall be made to the person's dependents according to the provisions of sections 635 and 636 of this title, or if there are none, the remaining amount due, but ~~not~~ exceeding \$5,500.00 for burial and funeral expenses no more than the actual burial and funeral expenses not to exceed \$10,000.00 and the actual expenses for out-of-state transportation of the decedent to the place of burial not to exceed \$1,000.00 \$5,000.00, shall be paid in a lump sum to the proper person. Every two years, the Commissioner of Labor shall evaluate the average burial and funeral expenses in the State and make a recommendation to the House Committee on Commerce and Economic Development and the Senate Committee on Finance as to whether an adjustment in compensation is warranted.

Sec. 3. 21 V.S.A. § 640c is added to read:

§ 640c. OPIOID USAGE DETERRENCE

(a) In support of the State's fundamental interest in ensuring the well-being of employees and employers, it is the intent of the General Assembly to protect employees from the dangers of prescription drug abuse while maintaining a

balance between the employee's health and the employee's expedient return to work.

(b) As it pertains to workers' compensation claims, the Commissioner of Labor, in consultation with the Department of Health, the State Pharmacologist, the Vermont Board of Medical Practice, and the Vermont Medical Society, shall adopt rules, consistent with the best practices, governing the prescription of opioids, including patient screening and drug screening for patients prescribed opioids for chronic pain. In adopting rules, the Commissioner shall consider guidelines and standards published by the American College of Occupational and Environmental Medicine and other medical authorities with expertise in the treatment of chronic pain. The rules shall be consistent with the standards and guidelines provided under 18 V.S.A. § 4289 and any rules adopted by the Department of Health pursuant to 18 V.S.A. § 4289.

Sec. 4. 21 V.S.A. § 641 is amended to read:

§ 641. VOCATIONAL REHABILITATION

* * *

(e)(1) In support of the State's fundamental interest in ensuring the well-being of employees and employers, it is the intent of the General Assembly that, following a workplace accident, an employee returns to work as soon as

possible but remains cognizant of the limitations imposed by his or her medical condition.

(2) The Commissioner shall adopt rules promoting development and implementation of cost-effective, early return-to-work programs.

Sec. 5. 21 V.S.A. § 643a is amended to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the Commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the Commissioner and shall include the date of the proposed discontinuance, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer ~~not already filed,~~ shall be filed with the notice shall be provided to the injured worker. With the notice of discontinuance, the employer shall file only evidence relevant to the discontinuance, including evidence that does not support the discontinuance, with the Commissioner. The liability for the payments shall continue for seven days after the notice is received by the Commissioner and the employee. If the claimant disputes the discontinuance, the claimant may file with the

Commissioner an objection to the discontinuance and seek an extension of the seven-day limit. The Commissioner may grant an extension up to seven days. The request for an extension shall be specific as to the reason for the extension and must be received by the Commissioner prior to the end of the seven-day limit. A copy of the request for an extension shall be provided to the employer at the time the request is made to the Commissioner. Those payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the Commissioner determines that the discontinuance is warranted or if otherwise ordered by the Commissioner. Every notice shall be reviewed by the Commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, after review of all the evidence in the file, the Commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the Commissioner shall order that payments continue until a hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the Department that establishes that a preponderance of all evidence now supports the claim. If the Commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the Commissioner may order that the employee repay all

benefits to which the employee was not entitled. The employer may enforce a repayment order in any court of law having jurisdiction.

Sec. 6. 21 V.S.A. § 691a is added to read:

§ 691a. POSTING OF SAFETY RECORDS

(a) In support of the State's fundamental interest in ensuring the well-being of employees and employers, it is the intent of the General Assembly to improve the safety experience in the workplace.

(b) An employer subject to the provisions of this chapter shall post a notice in the employer's place of business to advise employees of where they may review the employer's record of workplace safety, including workplace injury and illness data, in accordance with rules adopted by the Commissioner. The employer's record of workplace safety, including workplace injury and illness data, shall be available for review by employees at the employer's place of business and the Commissioner, but shall not otherwise be public information. The posting shall be in a format approved by the Commissioner. The posting may be in a format provided by the Commissioner.

Sec. 7. 21 V.S.A. § 696 is amended to read:

§ 696. CANCELLATION OF INSURANCE CONTRACTS

A policy or contract shall not be cancelled within the time ~~limited~~ specified in the policy or contract for its expiration, until at least 45 days after a notice of intention to cancel the policy or contract, on a date specified in the notice,

has been filed in the office of the ~~commissioner~~ Commissioner and provided to the employer. The notice shall be filed with the Commissioner in accordance with rules adopted by the Commissioner and provided to the employer by certified mail ~~or certificate of mailing~~. The cancellation shall not affect the liability of an insurance carrier on account of an injury occurring prior to cancellation.

Sec. 8. 21 V.S.A. § 697 is amended to read:

§ 697. NOTICE OF INTENT NOT TO RENEW POLICY

An insurance carrier who does not intend to renew a workers' compensation insurance policy ~~of workers' compensation insurance~~ or guarantee contract covering the liability of an employer under the provisions of this chapter, ~~45 days prior to the expiration of the policy or contract~~, shall give notice of ~~the~~ its intention to the ~~commissioner of labor~~ Commissioner and ~~to~~ the covered employer at least 45 days prior to the expiration date stated in the policy or contract. The notice shall be given to the employer by certified mail ~~or certificate of mailing~~. An insurance carrier who fails to give notice shall continue the policy or contract in force beyond its expiration date for 45 days from the day the notice is received by the ~~commissioner~~ Commissioner and the employer. However, ~~this latter provision shall not apply if, prior to such expiration date, on or before the expiration of the existing insurance or guarantee contract the insurance carrier has, by delivery of a renewal contract~~

~~or otherwise, offered to continue the insurance beyond the date by delivery of a renewal contract or otherwise, or if the employer notifies the insurance carrier in writing that the employer does not wish the insurance continued beyond the expiration date, or if the employer complies with the provisions of section 687 of this title, on or before the expiration of the existing insurance or guarantee contract then the policy will expire upon notice to the Commissioner.~~

~~Sec. 9. STATE POLICE ACADEMY STUDY~~

~~The Department of Labor and the Office of Risk Management, in consultation with the Vermont League of Cities and Towns and any other interested parties, shall conduct a study, to be submitted to the House Committee on Commerce and Economic Development and the Senate Committee on Finance on or before January 15, 2015, to:~~

~~(1) analyze existing and frequently reoccurring injuries suffered by police officers while attending the State Police Academy;~~

~~(2) analyze preventative measures to avoid injuries;~~

~~(3) recommend who should bear the financial burden of the workers' compensation premiums; and~~

~~(4) recommend preventative measures necessary to reduce injuries.~~

~~Sec. 9. ROBERT H. WOOD CRIMINAL JUSTICE AND FIRE SERVICE~~

~~TRAINING CENTER STUDY~~

The Department of Labor and the Office of Risk Management, in consultation with the Vermont League of Cities and Towns and any other interested parties, shall conduct a study, to be submitted to the House Committee on Commerce and Economic Development and the Senate Committee on Finance on or before January 15, 2015, to:

(1) analyze existing and frequently occurring injuries suffered by individuals while attending the Robert H. Wood Criminal Justice and Fire Service Training Center;

(2) analyze preventive measures to avoid injuries;

(3) recommend who should bear the financial burden of the workers' compensation premiums; and

(4) recommend preventive measures necessary to reduce injuries.

~~Sec. 10. WORKPLACE SAFETY RANKING STUDY~~

~~The Department of Labor, the National Council on Compensation Insurance, and the Department of Financial Regulation shall study whether information may be made available to employers to allow an employer to compare its workplace safety and workers' compensation experience with that of employers in similar industries or North American Industry Classification System codes.~~

Sec. 10. WORKPLACE SAFETY RANKING STUDY

The Department of Labor and the Department of Financial Regulation, in consultation with the National Council on Compensation Insurance, shall study whether information may be made available to employers to allow an employer to compare its workplace safety and workers' compensation experience with that of employers in similar industries or North American Industry Classification System codes.

Sec. 11. 2013 Acts and Resolves No. 75, Sec. 14 is amended as follows:

*Sec. 14. UNIFIED PAIN MANAGEMENT SYSTEM ADVISORY
COUNCIL*

* * *

(b) The Unified Pain Management System Advisory Council shall consist of the following members:

* * *

(4) the Commissioner of Labor or designee;

(5) the Director of the Blueprint for Health or designee;

~~(5)~~(6) the Chair of the Board of Medical Practice or designee, who shall be a clinician;

~~(6)~~(7) a representative of the Vermont State Dental Society, who shall be a dentist;

~~(7)~~(8) a representative of the Vermont Board of Pharmacy, who shall be a pharmacist;

~~(8)~~(9) a faculty member of the academic detailing program at the University of Vermont's College of Medicine;

~~(9)~~(10) a faculty member of the University of Vermont's College of Medicine with expertise in the treatment of addiction or chronic pain management;

~~(10)~~(11) a representative of the Vermont Medical Society, who shall be a primary care clinician;

~~(11)~~(12) a representative of the American Academy of Family Physicians, Vermont chapter, who shall be a primary care clinician;

~~(12)~~(13) a representative from the Vermont Board of Osteopathic Physicians, who shall be an osteopath;

~~(13)~~(14) a representative of the Federally Qualified Health Centers, who shall be a primary care clinician selected by the Bi-State Primary Care Association;

~~(14)~~(15) a representative of the Vermont Ethics Network;

~~(15)~~(16) a representative of the Hospice and Palliative Care Council of Vermont;

~~(16)~~(17) a representative of the Office of the Health Care Ombudsman;

~~(17)~~(18) *the Medical Director for the Department of Vermont Health Access;*

~~(18)~~(19) *a clinician who works in the emergency department of a hospital, to be selected by the Vermont Association of Hospitals and Health Systems in consultation with any nonmember hospitals;*

~~(19)~~(20) *a member of the Vermont Board of Nursing Subcommittee on APRN Practice, who shall be an advanced practice registered nurse;*

~~(20)~~(21) *a representative from the Vermont Assembly of Home Health and Hospice Agencies;*

~~(21)~~(22) *a psychologist licensed pursuant to 26 V.S.A. chapter 55 who has experience in treating chronic pain, to be selected by the Board of Psychological Examiners;*

~~(22)~~(23) *a drug and alcohol abuse counselor licensed pursuant to 33 V.S.A. chapter 8, to be selected by the Deputy Commissioner of Health for Alcohol and Drug Abuse Programs;*

~~(23)~~(24) *a retail pharmacist, to be selected by the Vermont Pharmacists Association;*

~~(24)~~(25) *an advanced practice registered nurse full-time faculty member from the University of Vermont's Department of Nursing; and*

~~(25)~~(26) a consumer representative who is either a consumer in recovery from prescription drug abuse or a consumer receiving medical treatment for chronic noncancer-related pain;

(27) a clinician who specializes in occupational medicine or physical medicine and rehabilitation; and

(28) a consumer representative who is or has been an injured worker and has been prescribed opioids.

* * *

Sec. 12. EFFECTIVE DATES

(a) This section and Secs. 3, 4, 9, 10, and 11 shall take effect on passage.

(b) Secs. 1, 2, and 5–8 shall take effect on July 1, 2014.