

S.129

An act relating to workers' compensation liens

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

Sec. 1. STUDY

(a) The Department of Labor in consultation with interested parties shall evaluate:

(1) how workers' compensation cases are resolved under 21 V.S.A. § 624(e), including whether the operation of workers' compensation liens may or may not result in an equitable distribution of third party payments to the employer and employee, and the equities and appropriateness of using third party payments as an advance on any future workers' compensation benefits; and

(2) whether there should be any limitations placed on how independent medical examinations are conducted, including their timing and location.

(b) The Department shall report its findings and any recommendations to the House Committee on Commerce and Economic Development and the Senate Committee on Finance on or before December 15, 2013.

Sec. 2. 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~~ 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~~ 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. The liability for the payments shall continue for ~~seven~~ 14 days after the notice is received by the ~~commissioner~~ 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 14-day limit. The Commissioner may grant an extension up to 21 days. The request for an extension shall be specific as to the number of days needed and the reason for the extension and must be received by the Commissioner prior to the end of the 14-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~~ Commissioner determines that the discontinuance is warranted or if otherwise ordered by the ~~commissioner~~ Commissioner. Every notice shall

be reviewed by the ~~commissioner~~ Commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, after review of all the evidence in the file, the ~~commissioner~~ Commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the ~~commissioner~~ 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~~ Department that establishes that a preponderance of all evidence now supports the claim. If the ~~commissioner's~~ 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~~ 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. 3. 21 V.S.A. § 678 is amended to read:

§ 678. COSTS; ATTORNEY FEES

(a) Necessary costs of proceedings under this chapter, including deposition expenses, subpoena fees, and expert witness fees, shall be assessed by the ~~commissioner~~ Commissioner against the employer or its workers' compensation carrier when the claimant prevails. The ~~commissioner~~

Commissioner may allow the claimant to recover reasonable ~~attorney~~  
attorney's fees when the claimant prevails. Costs shall not be taxed or allowed  
either party except as provided in this section.

(b) In appeals to the ~~superior or supreme courts~~ Superior or Supreme Court,  
if the claimant prevails, he or she shall be entitled to reasonable ~~attorney~~  
attorney's fees as approved by the ~~court~~ Court, necessary costs, including  
deposition expenses, subpoena fees, and expert witness fees, and interest at the  
rate of 12 percent per annum on that portion of any award the payment of  
which is contested. Interest shall be computed from the date of the award of  
the ~~commissioner~~ Commissioner.

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#### Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2013.