

1 S.129

2 Introduced by Senators Sears, Baruth, Doyle, Galbraith, MacDonald, and

3 White

4 Referred to Committee on Finance

5 Date: February 22, 2013

6 Subject: Labor; workers' compensation; third party liens

7 Statement of purpose of bill as introduced: This bill proposes to require that an
8 insurer's lien arising out of the payment of medical expenses under the
9 workers' compensation statutes be reduced in the same proportion as an
10 injured employee's recovery, if the recovery is reduced due to limited liability
11 insurance or other cause.

12 An act relating to workers' compensation liens

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

14 ~~Sec. 1. 21 V.S.A. § 624 is amended to read:~~

15 § 624. DUAL LIABILITY; CLAIMS, SETTLEMENT PROCEDURE

16 * * *

17 (e)(1) In an action to enforce the liability of a third party, the injured
18 employee may recover any amount which the employee or the employee's
19 personal representative would be entitled to recover in a civil action. Any
20 ~~recovery against the third party for damages resulting from personal injuries or~~

1 ~~death only, after deducting expenses of recovery, shall first reimburse the~~
2 ~~employer or its workers' compensation insurance carrier for any amounts paid~~
3 ~~or payable under this chapter to date of recovery, and the balance shall~~
4 ~~forthwith be paid to the employee or the employee's dependents or personal~~
5 ~~representative and shall be treated as an advance payment by the employer on~~
6 ~~account of any future payment of compensation benefits. Reimbursement~~
7 ~~required under this subsection, except to prevent double recovery, shall not~~
8 ~~reduce the employee's recovery of any benefit or payment provided by a plan~~
9 ~~or policy that was privately purchased by the injured employee, including~~
10 ~~uninsured-under insured motorist coverage, or any other first party insurance~~
11 ~~payments or benefits.~~

(2) If a lien or subrogation claim that arose out of the payment of
medical expenses or benefits under this chapter exists in respect to a claim of
personal injury or death and the injured employee's recovery is diminished by
the inability to collect the full value of the claim due to limited liability
insurance or other cause the lien or subrogation claim shall be diminished in
the same proportion as the injured employee's recovery is diminished.
Disputes arising under this subchapter shall be arbitrated by either the order of
the Commissioner or by mutual agreement of the parties.

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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~~ 21 days after the notice is received by~~

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

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

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.

1 Sec. 3. 21 V.S.A. § 678 is amended to read:

2 § 678. COSTS; ATTORNEY FEES

3 (a) Necessary costs of proceedings under this chapter, including deposition
4 expenses, subpoena fees, and expert witness fees, shall be assessed by the
5 ~~commissioner~~ Commissioner against the employer or its workers'
6 compensation carrier when the claimant prevails. The ~~commissioner~~
7 Commissioner may allow the claimant to recover reasonable ~~attorney~~
8 attorney's fees when the claimant prevails. Costs shall not be taxed or allowed
9 either party except as provided in this section.

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

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2 Sec. 4. EFFECTIVE DATE

3 This act shall take effect on July 1, 2013.