

1 S.101

2 Introduced by Senators Ram Hinsdale and Clarkson

3 Referred to Committee on

4 Date:

5 Subject: Labor; workers' compensation; unemployment insurance; temporary

6 partial disability benefits; cost of living adjustment; appeals;

7 Workers' Compensation Administration Fund; rate of contribution;

8 discontinuance of benefits; eligibility

9 Statement of purpose of bill as introduced: This bill proposes to permit an
10 injured worker to request preauthorization of benefits in addition to medical
11 treatment, specify when an employer may require an employee who has been
12 medically cleared to return to work to engage in a work search, to amend the
13 formula for determining the amount of compensation that is due to an
14 employee with a temporary partial disability, to clarify the requirements for
15 providing dependency benefits and cost of living adjustments to compensation
16 paid to an employee with a temporary partial disability, and to permit the
17 Commissioner to award the necessary costs of a proceeding to a claimant if the
18 claimant prevails. This bill also proposes to set the annual rate of contribution
19 for the Workers' Compensation Administration Fund, to establish a default rate
20 of contribution in the event that the General Assembly does not set the rate of
21 contribution for a fiscal year, and to make permanent a provision permitting a

1 worker to file an appeal of a proposed discontinuance of workers'
2 compensation benefits and to obtain a 14-day extension to the time for filing an
3 appeal. In addition, this bill proposes to establish additional instances in which
4 an employee who voluntarily separates from employment may be eligible for
5 unemployment insurance benefits.

6 An act relating to miscellaneous workers' compensation amendments

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

8 * * * Workers' Compensation * * *

9 Sec. 1. 21 V.S.A. § 640b is amended to read:

10 § 640b. REQUEST FOR PREAUTHORIZATION TO DETERMINE IF

11 ~~PROPOSED TREATMENT IS~~ BENEFITS ARE NECESSARY

12 (a) As used in this section, "benefits" means medical treatment and
13 surgical, medical, and nursing services and supplies, including prescription
14 drugs and durable medical equipment.

15 (b) Within 14 days ~~of~~ after receiving a written request for preauthorization
16 for a proposed ~~medical treatment~~ benefits and medical evidence supporting the
17 requested ~~treatment~~ benefits, a workers' compensation insurer shall do one of
18 the following, in writing:

19 (1) ~~authorize~~ Authorize the ~~treatment~~ benefits and notify the health care
20 provider, the injured worker, and the Department; ~~or,~~

1 (2)(A) ~~deny~~ Deny the ~~treatment~~ benefits because the entire claim is
2 disputed and the Commissioner has not issued an interim order to pay benefits;
3 ~~or~~. The insurer shall notify the health care provider, the injured worker, and
4 the Department of the decision to deny benefits.

5 ~~(B)(3)~~ (3) ~~deny~~ Deny the ~~treatment~~ benefits if, based on a preponderance
6 of credible medical evidence specifically addressing the proposed ~~treatment~~
7 benefits, it is the benefits are unreasonable or, unnecessary, or unrelated to the
8 work injury. The insurer shall notify the health care provider, the injured
9 worker, and the Department of the decision to deny ~~treatment;~~ or benefits.

10 ~~(3)(4)~~ (4) ~~notify~~ Notify the health care provider, the injured worker, and
11 the Department that the insurer has scheduled an examination of the employee
12 pursuant to section 655 of this title or ordered a medical record review
13 pursuant to section ~~655~~ 655a of this title. Based on the examination or review,
14 the insurer shall authorize or deny the ~~treatment~~ benefits and notify the
15 Department and the injured worker of the decision within 45 days ~~of~~ after a
16 request for preauthorization. The Commissioner may, ~~in his or her~~ the
17 Commissioner's sole discretion, grant a 10-day extension to the insurer to
18 authorize or deny ~~treatment~~ benefits, and such an extension shall not be subject
19 to appeal.

20 ~~(b)(c)~~ (c) If the insurer fails to authorize or deny the ~~treatment~~ benefits
21 pursuant to subsection (a) of this section within 14 days ~~of~~ after receiving a

1 request, the claimant or health care provider may request that the Department
2 issue an order authorizing ~~treatment~~ benefits. After receipt of the request, the
3 Department shall issue an interim order within five days after notice to the
4 insurer, and five days in which to respond, absent evidence that the entire
5 claim is disputed. Upon request of a party, the Commissioner shall notify the
6 parties that the ~~treatment has~~ benefits have been authorized by operation of
7 law.

8 ~~(e)~~(d) If the insurer denies the preauthorization of the ~~treatment~~ benefits
9 pursuant to subdivision (a)(2) ~~or~~, (3), or (4) of this section, the Commissioner
10 may, ~~on his or her~~ the Commissioner's own initiative or upon a request by the
11 claimant, issue an order authorizing the ~~treatment~~ benefits if ~~he or she~~ the
12 Commissioner finds that the evidence shows that the ~~treatment is~~ benefits are
13 reasonable, necessary, and related to the work injury.

14 Sec. 2. 21 V.S.A. § 643d is added to read:

15 § 643d. WORK SEARCH; REQUIREMENTS; EXCEPTIONS

16 (a) An employer may require an employee who is receiving temporary
17 disability benefits pursuant to section 646 of this chapter to engage in a good
18 faith search for suitable work if:

19 (1) the injured employee is medically released to return to work, either
20 with or without limitations;

1 (2) the employer has provided the injured employee with written
2 notification that the employee is medically released to return to work and the
3 notification describes any applicable limitations; and

4 (3) the employer cannot offer the injured employee work that the
5 employee is medically released to do.

6 (b) An injured employee shall not be required to engage in a good faith
7 search for suitable work if the employee:

8 (1) is already employed; or

9 (2) has been referred for or is scheduled to undergo one or more surgical
10 procedures.

11 (c) An employer shall not require an injured employee to contact more than
12 three employers per week as part of a good faith work search performed
13 pursuant to this section.

14 Sec. 3. 21 V.S.A. § 646 is amended to read:

15 § 646. TEMPORARY PARTIAL DISABILITY BENEFITS

16 (a)(1) Where the disability for work resulting from an injury is partial,
17 ~~during the disability and~~ beginning on the eighth day thereof of the period of
18 disability, the employer shall pay the injured employee a weekly compensation
19 equal to:

20 (A) the difference between the wage the injured employee earns
21 during the period of disability and the amount the injured employee would be

1 eligible to receive pursuant to section 642 of this chapter, including any
2 applicable cost of living adjustment or dependency benefits that would be due;
3 or

4 (B) for an injured employee who would be eligible to receive the
5 maximum weekly compensation pursuant to section 642 of this chapter, two-
6 thirds of the difference between ~~his or her~~ the injured employee's average
7 weekly wage before the injury and the ~~average weekly wage which he or she is~~
8 able to earn thereafter amount the employee earns during the period of
9 disability.

10 (2) Compensation paid pursuant to this subsection shall be adjusted
11 following the receipt of 26 weeks of benefits and annually on each subsequent
12 July 1, so that the compensation continues to bear the same percentage
13 relationship to the average weekly wage in the State as it did at the time of
14 injury.

15 (b)(1) In addition to the amount paid pursuant to subsection (a) of this
16 section, the employer shall pay the injured employee during the disability
17 \$20.00 per week for each dependent child under 21 years of age, provided that
18 no other injured worker is receiving the same benefits on behalf of the
19 dependent child or children.

20 (2) The amount allowed for dependent children shall be adjusted weekly
21 to reflect the number of dependent children during each week of payment.

1 (c)(1)(A) For an injured employee who continues to work for the employer
2 from whom the employee is claiming workers' compensation, payment of
3 compensation pursuant to this section shall be mailed or deposited into the
4 injured employee's bank account within not more than seven days after the
5 injured employee's wages are paid.

6 (B) The employer shall be responsible for providing the injured
7 employee's wage information to the insurance carrier.

8 (2) For an injured employee who is working for a different employer
9 from the employer from whom the employee is claiming workers'
10 compensation, payment of compensation pursuant to this section shall be
11 mailed or deposited into the injured employee's bank account within not more
12 than three days after the injured employee submits the wage information to the
13 insurance carrier.

14 Sec. 4. 21 V.S.A. § 642 is amended to read:

15 § 642. TEMPORARY TOTAL DISABILITY BENEFITS

16 (a)(1) Where the injury causes total disability for work, during such the
17 disability, but not including the first three days; with the day of the accident to
18 be counted as the first day; unless the employee received full wages for that
19 day, the employer shall pay the injured employee a weekly compensation equal
20 to two-thirds of the employee's average weekly wages, but,

1 (2) The weekly compensation shall be in an amount that is not more
2 than the maximum nor less than the minimum weekly compensation.

3 (3) Compensation paid pursuant to this subsection shall be adjusted on
4 the first July 1 following the receipt of 26 weeks of benefits and annually on
5 each subsequent July 1, so that the compensation continues to bear the same
6 percentage relationship to the average weekly wage in the State as it did at the
7 time of injury.

8 (b)(1) In addition, the injured employee, during the disability period shall
9 receive \$10.00 a to the amount paid pursuant to subsection (a) of this section,
10 the employer shall pay the injured employee during the disability \$20.00 per
11 week for each dependent child who is ~~unmarried and~~ under the age of 21 years
12 of age, provided that no other injured worker is receiving the same benefits on
13 behalf of the dependent child or children. ~~However, in no event shall an~~

14 (2) The amount allowed for the dependent children shall be adjusted
15 weekly to reflect the number of dependent children during each week of
16 payment.

17 (c) Notwithstanding any provision of subsection (a) or (b) of this section to
18 the contrary:

19 (1) An employee's total weekly wage replacement benefits, including
20 any payments for a dependent child, shall not exceed 90 percent of the
21 employee's average weekly wage prior to applying any applicable cost of

1 living adjustment. ~~The amount allowed for dependent children shall be~~
2 ~~increased or decreased weekly to reflect the number of dependent children~~
3 ~~extant during the week of payment.~~

4 (2) If the total disability continues after the third day for a period of
5 seven consecutive calendar days or more, compensation shall be paid for the
6 whole period of the total disability.

7 Sec. 5. 21 V.S.A. § 650 is amended to read:

8 § 650. PAYMENT; AVERAGE WAGE; COMPUTATION

9 * * *

10 (d)(1) Compensation computed pursuant to this section shall be adjusted
11 annually on July 1, so that ~~such~~ the compensation continues to bear the same
12 percentage relationship to the average weekly wage in the State ~~as computed~~
13 ~~under this chapter~~ as it did at the time of injury.

14 (2) Temporary total or temporary partial compensation shall first be
15 adjusted on the first July 1 following the receipt of 26 weeks of benefits.

16 (3) Permanent total and permanent partial compensation shall be
17 adjusted for each July 1 following the date of injury regardless of whether
18 indemnity benefits were paid on each intervening July 1.

19 (e)(1) If weekly compensation benefits or weekly accrued benefits are not
20 paid within 21 days after becoming due and payable pursuant to an order of the
21 Commissioner, or in cases in which the overdue benefit is not in dispute, ~~40~~ 25

1 percent of the overdue amount shall be added and paid to the employee, in
2 addition to any amounts due pursuant to subsection (f) of this section and
3 interest and any other penalties.

4 (2) In the case of an initial claim, benefits are due and payable upon
5 entering into an agreement pursuant to subsection 662(a) of this title, upon
6 issuance of an order of the Commissioner pursuant to subsection 662(b) of this
7 title, or if the employer has not denied the claim within 21 days after the claim
8 is filed.

9 (3) Benefits are in dispute if the claimant has been provided actual
10 written notice of the dispute within 21 days ~~of~~ after the benefit being due and
11 payable and the evidence reasonably supports the denial.

12 (4) Interest shall accrue and be paid on benefits that are found to be
13 compensable during the period of nonpayment.

14 (5) The Commissioner shall promptly review requests for payment
15 under this section and, consistent with subsection 678(d) of this title, shall
16 allow for the recovery of reasonable attorney's fees associated with an
17 employee's successful request for payment under this subsection.

18 (f)(1)(A) When benefits have been awarded or are not in dispute as
19 provided in subsection (e) of this section, the employer shall establish a
20 weekday on which payment shall be mailed or deposited and notify the

1 claimant and the Department of that day. The employer shall ensure that each
2 weekly payment is mailed or deposited on or before the day established.

3 (B) Payment shall be made by direct deposit to a claimant who elects
4 that payment method. The employer shall notify the claimant of ~~his or her~~ the
5 claimant's right to payment by direct deposit.

6 (2) If the benefit payment is not mailed or deposited on the day
7 established, the employer shall pay to the claimant a late fee equal to the
8 greater of \$10.00 or:

9 (A) five percent of the benefit amount, ~~whichever is greater~~, for each
10 ~~weekly~~ the first payment that is made after the established day;

11 (B) 10 percent of the benefit amount for the second payment that is
12 made after the established day;

13 (C) 15 percent of the benefit amount for the third payment that is
14 made after the established day; and

15 (D) 20 percent of the benefit amount for the fourth and any
16 subsequent payments that are made after the established day.

17 (3) As used in this subsection, "paid" means the payment is mailed to
18 the claimant's mailing address or, in the case of direct deposit, transferred into
19 the designated account. In the event of a dispute, proof of payment shall be
20 established by affidavit.

1 Sec. 6. 21 V.S.A. § 678 is amended to read:

2 § 678. COSTS; ATTORNEY'S 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 against the employer or its workers' compensation carrier when~~
6 ~~the claimant prevails. The Commissioner may allow the claimant to recover~~
7 ~~reasonable attorney's fees when the claimant prevails.~~ Costs shall not be taxed
8 or allowed either party except as provided in this section.

9 (b)(1) When a claimant prevails in either a formal or informal proceeding
10 under this chapter, the Commissioner shall award the claimant necessary costs
11 incurred in relation to the proceeding, including deposition expenses, subpoena
12 fees, and expert witness fees.

13 (2) The Commissioner may allow a claimant to recover reasonable
14 attorney's fees when the claimant prevails.

15 (3) In cases for which a formal hearing is requested and the case is
16 resolved prior to a formal hearing:

17 (A) the Commissioner may award reasonable attorney's fees if the
18 claimant retained an attorney in response to an actual or effective denial of a
19 claim and payments were made to the claimant as a result of the attorney's
20 efforts; and

1 (B) the Commissioner may award necessary costs if the claimant
2 incurred the costs in response to an actual or effective denial of a claim and
3 payments were made to the claimant as a result of the costs incurred.

4 (c)(1) In appeals to the Superior or Supreme Court, if the claimant prevails,
5 ~~he or she~~ the claimant shall be entitled to reasonable attorney's fees as
6 approved by the court; necessary costs, including deposition expenses,
7 subpoena fees, and expert witness fees; and interest at the rate of 12 percent
8 per annum on that portion of any award the payment of which is contested.

9 (2) Interest shall be computed from the date of the award of the
10 Commissioner.

11 ~~(e)(d)~~ By January 1, 1999, and at least every five years thereafter, the
12 Commissioner shall amend existing rules regarding reasonable attorney's fees
13 awarded under subsection (a) of this section. In amending these rules, the
14 Commissioner shall consider accessibility to legal services, appropriate
15 inflation factors, and any other related factors consistent with the purposes of
16 this chapter. In the event the Commissioner proposes no change in the rules in
17 any five-year period, the Commissioner shall provide a written report to the
18 Legislative Committee on Administrative Rules of the General Assembly
19 explaining the reasons for not changing the rules.

20 ~~(d) In cases for which a formal hearing is requested and the case is resolved~~
21 ~~prior to formal hearing, the Commissioner may award reasonable attorney's~~

1 ~~fees if the claimant retained an attorney in response to an actual or effective~~
2 ~~denial of a claim and thereafter payments were made to the claimant as a result~~
3 ~~of the attorney's efforts.~~

4 * * *

5 Sec. 7. ADOPTION OF RULES

6 The Commissioner of Labor shall, on or before July 1, 2024, adopt rules as
7 necessary to implement the provisions Secs. 1 through 6 of this act.

8 Sec. 8. WORKERS' COMPENSATION RATE OF CONTRIBUTION

9 For fiscal year 2024, after consideration of the formula in 21 V.S.A.
10 § 711(b) and historical rate trends, the General Assembly determines that the
11 rate of contribution for the direct calendar year premium for workers'
12 compensation insurance shall be 1.5 percent. The contribution rate for self-
13 insured workers' compensation losses and workers' compensation losses of
14 corporations approved under 21 V.S.A. chapter 9 shall remain at one percent.

15 Sec. 9. 21 V.S.A. § 711 is amended to read:

16 § 711. WORKERS' COMPENSATION ADMINISTRATION FUND

17 * * *

18 (b)(1) Annually, the General Assembly shall establish the rate of
19 contribution for the direct calendar year premium for workers' compensation
20 insurance. The rate shall equal the amount approved in the appropriations
21 process for the program and the Department's projection of salary and benefit

1 increases for that fiscal year, less the amount collected in the prior calendar
2 year under subsection (a) of this section from self-insured workers'
3 compensation losses and from corporations approved under this chapter,
4 adjusted by any balance in the fund from the prior fiscal year, divided by the
5 total direct calendar year premium for workers' compensation insurance for the
6 prior year.

7 (2) In the event that the General Assembly does not establish the rate of
8 contribution for the direct calendar year premium for workers' compensation
9 insurance for a given fiscal year, the rate shall remain unchanged from the
10 prior fiscal year.

11 Sec. 10. 2014 Acts and Resolves No. 199, Sec. 54b is amended to read:

12 Sec. 54b. 21 V.S.A. § 643a is added to read:

13 § 643a. DISCONTINUANCE OF BENEFITS

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

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

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

5 * * * Unemployment Insurance * * *

6 Sec. 11. 21 V.S.A. § 1344 is amended to read:

7 § 1344. DISQUALIFICATIONS

8 (a) An individual shall be disqualified for benefits:

9 * * *

10 (2) For any week benefits are claimed, except as provided in subdivision
11 (3) of this subsection, until the individual has presented evidence to the
12 satisfaction of the Commissioner that the individual has performed services in
13 employment for a bona fide employer and has had earnings in excess of six
14 times the individual's weekly benefit amount if the Commissioner finds that
15 the individual is unemployed because:

16 (A)(i) The individual left the employ of the individual's last
17 employing unit voluntarily without good cause attributable to the employing
18 unit. An individual shall not suffer more than one disqualification by reason of
19 such separation.

20 (ii) However, an individual shall not be disqualified for benefits if
21 the individual left ~~such~~ employment for one of the following reasons:

1 (I) ~~to~~ To accompany a spouse who:
2 (i)(aa) is on active duty with the U.S. Armed Forces and is
3 required to relocate due to permanent change of station orders, activation
4 orders, or unit deployment orders, and when ~~such~~ the relocation would make it
5 impractical or impossible, as determined by the Commissioner, for the
6 individual to continue working for ~~such~~ the employing unit; or

7 (i)(bb) holds a commission in the U.S. Foreign Service and is
8 assigned overseas, and ~~when such~~ the relocation would make it impractical or
9 impossible, as determined by the Commissioner, for the individual to continue
10 working for ~~such~~ the employing unit.

11 (II) Due to urgent, compelling, or necessitous circumstances, as
12 determined by the Commissioner, including the individual’s injury or illness,
13 to obtain or recover from medical treatment, to escape domestic or sexual
14 violence, to care for a child following an unexpected loss of child care, or to
15 care for an ill or injured family member.

16 * * *

17 (3) ~~For not more than six weeks nor less than one week immediately~~
18 ~~following the filing of a claim for benefits (in addition to any applicable~~
19 ~~waiting period), as may be determined by the Commissioner according to the~~
20 ~~circumstances in each case, if the Commissioner finds that the individual has~~
21 ~~left the employ of the individual’s last employing unit without good cause~~

1 ~~attributable to the employing unit because of a health condition, as certified by~~
2 ~~a health care provider, as defined in 18 V.S.A. § 9432(9), that precludes the~~
3 ~~discharge of duties inherent in such employment. [Repealed.]~~

4 * * *

5 Sec. 12. 21 V.S.A. § 1301 is amended to read:

6 § 1301. DEFINITIONS

7 ~~The following words and phrases, as As used in this chapter, shall have the~~
8 ~~following meanings unless the context clearly requires otherwise:~~

9 * * *

10 (25) “Domestic and sexual violence” means domestic violence, sexual
11 assault, or stalking as defined in 15 V.S.A. § 1151.

12 (26) “Family member” means an individual’s parent, grandparent,
13 spouse, domestic partner, civil union partner, child, sibling, parent-in-law, or
14 grandchild. As used in this subdivision (26), child includes an individual’s
15 biological child, foster child, adoptive child, or stepchild.

16 Sec. 13. 21 V.S.A. § 1325 is amended to read:

17 § 1325. EMPLOYERS’ EXPERIENCE-RATING RECORDS;

18 DISCLOSURE TO SUCCESSOR ENTITY

19 (a)(1) The Commissioner shall maintain an experience-rating record for
20 each employer. Benefits paid shall be charged against the experience-rating
21 record of each subject employer who provided base-period wages to the

1 eligible individual. Each subject employer's experience-rating charge shall
2 bear the same ratio to total benefits paid as the total base-period wages paid by
3 that employer bear to the total base-period wages paid to the individual by all
4 base-period employers. The experience-rating record of an individual subject
5 base-period employer shall not be charged for benefits paid to an individual
6 under any of the following conditions:

7 * * *

8 (F) The individual voluntarily separated from that employer to
9 accompany a spouse who is on active duty with the U.S. Armed Forces or who
10 holds a commission in the U.S. Foreign Service and is assigned overseas as
11 provided by subdivision ~~1344(a)(2)(A)~~ 1344(a)(2)(A)(ii)(I) of this chapter.

12 * * *

13 (I) The individual voluntarily separated from that employer due to
14 urgent, compelling, or necessitous circumstances pursuant to the provisions of
15 subdivision 1344(a)(2)(A)(ii)(II) of this chapter.

16 * * *

17 * * * Effective Dates * * *

18 Sec. 14. EFFECTIVE DATES

19 (a) This section and Secs. 1 (preauthorization of workers' compensation
20 benefits), 2 (work search), 3 (temporary partial disability benefits),
21 4 (temporary total disability benefits), 5 (compensation calculation),

1 6 (attorney's fees and costs), 7 (adoption of rules), 9 (Workers' Compensation
2 Administrative Fund), 11 (unemployment disqualifications),
3 12 (unemployment definitions), and 13 (unemployment experience rating)
4 shall take effect on July 1, 2023.

5 (b) Secs. 8 (Workers' Compensation Administrative Fund rate for 2023)
6 and 10 (discontinuance of workers' compensation benefits) shall take effect on
7 passage.