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H.645

Senator Bray moves that the Senate propose to the House that the bill be amended as follows:

First: In Sec. 5, in 21 V.S.A. § 643a, by striking the section in its entirety and inserting in lieu thereof the following:

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 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~~ 14 days after the notice is received by the ~~commissioner~~ Commissioner and the

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

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

4 Second: In Sec. 12, by striking out the section in its entirety and inserting
5 in lieu thereof the following:

6 Sec. 12. 21 V.S.A. § 678 is amended to read:

7 § 678. COSTS; ATTORNEY FEES

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

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

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Sec. 13. 21 V.S.A. § 655 is amended to read:

§ 655. PROCEDURE IN OBTAINING COMPENSATION; MEDICAL
EXAMINATION; VIDEO AND AUDIO RECORDING

After an injury and during the period of disability, if so requested by his or her employer, or ordered by the Commissioner, the employee shall submit to examination, at reasonable times and ~~places~~ within a 50-mile radius of the residence of the injured employee, by a duly licensed physician or surgeon designated and paid by the employer. The Commissioner may in his or her discretion permit an examination outside the 50-mile radius if it is necessary to obtain the services of a provider who specializes in the evaluation and treatment specific to the nature and extent of the employee's injury. The employee may make a video or audio recording of any examination performed by the insurer's physician or surgeon or have a licensed health care provider designated and paid by the employee present at the examination. The employer may make an audio recording of the examination. The right of the employee to record the examination shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability. If an employee refuses to submit to or in any way obstructs the examination, the employee's right to prosecute any proceeding under the provisions of this

1 chapter shall be suspended until the refusal or obstruction ceases, and
2 compensation shall not be payable for the period which the refusal or
3 obstruction continues.

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

5 § 624. DUAL LIABILITY; CLAIMS, SETTLEMENT PROCEDURE

6 * * *

7 (e)(1) In an action to enforce the liability of a third party, the injured
8 employee may recover any amount which the employee or the employee's
9 personal representative would be entitled to recover in a civil action. Any
10 recovery against the third party for damages resulting from personal injuries or
11 death only, after deducting expenses of recovery, shall first reimburse the
12 employer or its workers' compensation insurance carrier for any amounts paid
13 or payable under this chapter to date of recovery, and the balance shall
14 forthwith be paid to the employee or the employee's dependents or personal
15 representative and shall be treated as an advance payment by the employer on
16 account of any future payment of compensation benefits. Reimbursement
17 required under this subsection, except to prevent double recovery, shall not
18 reduce the employee's recovery of any benefit or payment provided by a plan
19 or policy that was privately purchased by the injured employee, including
20 uninsured-under insured motorist coverage, or any other first party insurance
21 payments or benefits.

1 (2) In an instance where the recovery amount is less than the full value
2 of the claim for personal injuries or death, the employer or its workers’
3 compensation insurance carrier shall be reimbursed less than the amount paid
4 or payable under this chapter. Reimbursement shall be limited to the
5 proportion which the recovery allowed in the previous subsection bears to the
6 total recovery for all damages. In determining the full value of the claim for
7 personal injuries or death, the Commissioner shall make that administrative
8 determination by considering the same evidence that a Superior Court would
9 consider in determining damages in a personal injury or wrongful death action,
10 or the Commissioner may order that the valuation of the claim be determined
11 by a single arbitrator, which shall be adopted as a decision of the
12 Commissioner. An appeal from the Commissioner’s decision shall be made
13 pursuant to section 670 of this title, except that the action shall be tried to the
14 presiding judge of the Superior Court.

15 * * *

16 Sec. 15. EFFECTIVE DATES

- 17 (a) This section and Secs. 3, 4, 9, 10, and 11 shall take effect on passage.
18 (b) Secs. 1, 2, 5–8, and 12–14 shall take effect on July 1, 2014.