

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred Senate Bill No. 23 entitled “An act relating to required disclosures for
4 workers’ compensation settlements” respectfully reports that it has considered
5 the same and recommends that the House propose to the Senate that the bill be
6 amended by striking out all after the enacting clause and inserting in lieu
7 thereof the following:

8 Sec. 1. 21 V.S.A. § 662a is added to read:

9 § 662a. FINAL SETTLEMENT OF CLAIMS; REQUIRED DISCLOSURE

10 If an employer and an injured employee enter into an agreement that
11 constitutes a full and final settlement of all or a part of the employee’s claim,
12 the Commissioner shall not approve the agreement pursuant to section 662 of
13 this chapter unless:

14 (1) The employer provides the employee with a written disclosure
15 statement explaining the consequences of the proposed agreement with respect
16 to the employee’s rights under the provisions of this chapter to obtain
17 compensation, vocational rehabilitation, and medical benefits, including
18 ongoing and future surgical, medical, and nursing services and supplies. At a
19 minimum, the disclosure statement shall:

20 (A) clearly state the amount for which the employer and employee
21 have agreed to settle the claim;

1 (B) describe the employee's injury, including any rating assigned to
2 that injury;

3 (C) specifically identify all current or ongoing medical benefits that
4 will terminate as a result of the agreement; and
5 (D) specifically identify any rights to obtain compensation,
6 vocational rehabilitation, and medical benefits under the provisions of this
7 chapter that the employee will relinquish by agreeing to the settlement.

8 (2) The employee signs the disclosure statement provided pursuant to
9 subdivision (1) of this section acknowledging that he or she has been fully
10 informed of and understands the terms and conditions of the proposed
11 agreement and its consequences with respect to his or her rights under the
12 provisions of this chapter to obtain compensation, vocational rehabilitation,
13 and medical benefits, including ongoing and future surgical, medical, and
14 nursing services and supplies.

15 Sec. 2. 21 V.S.A. § 640 is amended to read:

16 § 640. MEDICAL BENEFITS; ASSISTIVE DEVICES; HOME AND

17 AUTOMOBILE MODIFICATIONS

18 * * *

19 (c) An employer shall not withhold any wages from an employee for the
20 employee's absence If an employee is absent from work for treatment of a
21 work injury or to attend a medical examination related to a work injury, the

insurance carrier liable to provide compensation for the employee's injury or,
if the employer is self-insured, the employer liable to provide compensation for
the employee's injury shall pay the employee his or her current wages for the
time missed from work to attend the appointment. If the employee selects a
new health care provider in accordance with subsection (b) of this section, the
employer shall have the right to require other medical examinations as
provided in this chapter.

* * *

9 Sec. 3. 21 V.S.A. § 641 is amended to read:

10 § 641. VOCATIONAL REHABILITATION

17 * * *

1 screened for benefits under this section receives an entitlement assessment.

2 The rules shall provide that:

3 (A) Provide that all vocational rehabilitation work, except for initial
4 screenings, be performed by a Vermont certified vocational rehabilitation
5 counselor including counselors currently certified pursuant to the rules of the
6 Department. Initial screenings shall be performed by an individual with
7 sufficient knowledge or experience to perform adequately the vocational
8 rehabilitation screening functions. If an injured worker receives temporary
9 total disability benefits for a period of 60 consecutive days, the employer shall,
10 within 15 days of the 60th day, submit a memorandum to the Department and
11 shall refer the injured worker to a Vermont-certified vocational rehabilitation
12 counselor for a preliminary entitlement assessment.

13 (B) Provide for an initial screening to determine whether a full
14 assessment is appropriate. An injured worker who is determined to be eligible
15 for a full assessment shall be timely assessed and offered appropriate
16 vocational rehabilitation services. Within 15 days of referral, the certified
17 vocational rehabilitation counselor shall complete a preliminary entitlement
18 assessment based on communications with the injured worker, the treating
19 physician, and the employer. If the preliminary assessment determines that,
20 more likely than not, the injured worker is unable to perform work for which
21 he or she has previous training or experience without vocational services, then

1 the vocational rehabilitation counselor shall perform a full entitlement
2 assessment within 30 days, unless additional time is granted by the
3 Commissioner. The vocational rehabilitation counselor shall document all
4 communications with the injured worker, the treating physician, and the
5 employer, and any evidence relied on in making his or her preliminary or full
6 assessment.

7 (C) ~~Provide a mechanism for a periodic and timely screening of~~
8 ~~injured workers who are initially found not to be ready or eligible for a full~~
9 ~~assessment to determine whether a full assessment has become appropriate. If~~
10 the preliminary assessment does not sufficiently establish the injured worker's
11 ability to perform work to enable the certified vocational rehabilitation
12 counselor to determine whether the worker is entitled to vocational
13 rehabilitation services, the counselor shall reevaluate the injured worker every
14 30 days, or at a longer interval if the Commissioner determines that the
15 circumstances justify it, until a preliminary determination can be made.

16 (D)(i) ~~Protect against potential conflicts of interest in the assignment~~
17 ~~and performance of initial screenings. An employer that fails to either submit~~
18 the memorandum or make a referral for a preliminary entitlement assessment
19 as required pursuant to subdivision (A) of this subdivision (3) shall be subject
20 to an administrative penalty of \$100.00 per occurrence.

7 (E) All vocational rehabilitation work shall be performed by a
8 Vermont-certified **vocational** rehabilitation counselor, including counselors
9 currently certified pursuant to the Department's rules.

10 (F) Ensure the The injured worker has a choice of a may select the
11 certified vocational rehabilitation counselor.

14 § 660a. ELECTRONIC FILING OF REPORTS OF INJURY

15 * * *

16 (f) An insurance carrier and its representatives or agents, a self-insured
17 employer, and, to the extent practicable, an injured worker and his or her
18 representative shall file all evidence electronically in a format specified by the
19 Commissioner.

1 **Sec. 5. DEPARTMENT OF LABOR STUDY ON WORKERS'**

2 **COMPENSATION AND OPIATES**

3 (a) The Department of Labor shall study the best way to address the impact

4 of opiate abuse upon the workers' compensation system and Vermont's labor

5 market and workforce, including the following issues:

6 (1) whether to establish a pharmacy benefit manager program for

7 prescription drugs under the workers' compensation system;

8 (2) whether there are more effective ways to manage and control the

9 prescription of opiates for injured workers who are covered by the workers'

10 compensation system;

11 (3) whether there are alternative treatment approaches that may produce

12 better outcomes with respect to the ability of individuals to recover and return

13 to work;

14 (4) the number of injured workers who are covered by the workers'

15 compensation system that abuse opiates, and how to obtain and track data to be

16 able to measure whether this number increases or decreases in the future;

17 (5) how other states have addressed the impact of opiate abuse upon the

18 workers' compensation system, labor market, and workforce; and

19 (6) evidence-based best practices relevant to these issues, including:

20 (A) managing and controlling the prescription of opiates;

21 (B) the use of alternative treatments; and

(C) facilitating the ability of individuals to recover and return to work

2 or continue to work.

3 (b) The Department of Labor shall consult with stakeholders, including

4 health care and insurance providers, treatment and recovery providers, and

5 appropriate State agencies and departments. The Secretary of Administration

shall ensure that State agencies and departments cooperate with the

7 Department of Labor.

8 (c) On or before December 1, 2016, the Department shall submit a written

9 report to the House Committees on Commerce and Economic Development, on

¹⁰ Health Care, and on Human Services, and the Senate Committees on Economic

Development, Housing and General Affairs, on Finance, and on Health and

Welfare with its findings and recommendations.

12 Welfare with its findings and recommendations.

13 * * * Unemployment Insurance

14 Sec. 6. 21 V.S.A. § 1346 is amended to read:

15 § 1346. CLAIMS FOR BENEFITS; REGUL.

16 (a) Claims for benefits shall be made in accordance

as the board Board may prescribe. Each employer shall post and maintain

printed statements of such regulations in places readily accessible to

19 individuals in his or her service and shall make available to each suc-

20 individual at the time he or she becomes unemployed, a printed statement

such regulations. Such printed statements shall be supplied by the
commissioner Commissioner to each employer without cost to him or her.

3 (b) Each employing unit that is not an employer pursuant to subdivision
4 1301(5) of this chapter, or that employs individuals whose services are not
5 covered employment pursuant to subdivision 1301(6) of this chapter, shall do
6 the following:

7 (1) inform each affected employee in writing that wages earned by the
8 individual in the employ of the employing unit cannot be used for the purpose
9 of establishing monetary eligibility for benefits under this chapter; and

10 (2) inform each affected prospective employee in writing, at the time
11 that an offer of employment is made, that wages earned by the individual in the
12 employ of the employing unit cannot be used for the purpose of establishing
13 monetary eligibility for benefits under this chapter.

14 (c) Every person making a claim shall certify that he or she has not, during
15 the week with respect to which waiting period credit or benefits are claimed,
16 earned or received wages or other remuneration for any employment, whether
17 subject to this chapter or not, otherwise than as specified in his or her claim.

18 All benefits shall be paid in accordance with such regulations as the board
19 Board may prescribe.

20 * * * Domestic and Sexual Violence Survivors' * * *

21 Transitional Employment Program

1 Sec. 7. 21 V.S.A. § 1251 is amended to read:

2 § 1251. PURPOSE

3 The purpose of the ~~domestic and sexual violence survivors' transitional~~
4 ~~employment program~~ Domestic and Sexual Violence Survivors' Transitional
5 Employment Program is to provide temporary, partial wage replacement to
6 individuals who are discharged from employment or must leave employment,
7 without good cause attributable to the employer, because of circumstances
8 directly resulting from domestic violence, sexual assault, or stalking.

9 Sec. 8. 21 V.S.A. § 1252 is amended to read:

10 § 1252. DEFINITIONS

11 For the purposes of As used in this chapter:

12 * * *

13 (4) “Immediate family” means a spouse, parent, or child of an individual
14 that resides in the same household as the individual.

15 (5) “Weekly payment” means an amount determined in accordance with
16 section 1338 of this title.

17 Sec. 9. 21 V.S.A. § 1253 is amended to read:

18 § 1253. ELIGIBILITY

19 (a) The Commissioner shall make all determinations for eligibility under
20 this chapter.

1 (b) An individual shall be eligible for up to 26 weekly payments when the

2 Commissioner determines that the individual:

3 (1) Separated from his or her last employing unit for one of the
4 following reasons:

5 (A) voluntarily The individual voluntarily left work his or her last
6 employing unit due to circumstances directly resulting from domestic and
7 sexual violence, provided the individual left employment for one of the
8 following reasons:

9 (1) Leaves employment for one of the following reasons:

10 (A)(i) The individual reasonably fears feared that the domestic and
11 sexual violence will would continue at or en route to or from the place of
12 employment.

13 (B)(ii) The individual intends intended to relocate in order to avoid
14 future domestic and sexual violence or against the individual or a member of
15 the individual's family.

16 (C)(iii) The individual reasonably believes believed that leaving the
17 employment is was necessary for the safety of the individual or a member of
18 the individual's family.

19 (D)(iv) The individual is was physically or emotionally unable to
20 work as a result of experiencing domestic or sexual violence as certified by a
21 medical professional. The certification shall be reviewed by the Commissioner

1 every six weeks and may be renewed until the individual is able to work or the
2 benefits are exhausted.

3 (B) The individual was discharged from his or her last employing
4 unit due to circumstances resulting from domestic or sexual violence against
5 the individual or any member of the individual's immediate family, unless the
6 individual was the perpetrator of the domestic or sexual violence.

7 (2) Complies with all the following:

8 (A) Prior If the individual has voluntarily left work due to
9 circumstances directly resulting from domestic and sexual violence, prior to
10 leaving employment the individual has pursued reasonable alternatives to
11 leaving the employment, which may include seeking a protection order,
12 relocating to a secure place, or seeking reasonable accommodation from the
13 employer, such as a transfer or different assignment. Failure to pursue
14 reasonable alternatives may be excused if the individual establishes that pursuit
15 of alternatives is was likely to:

16 (i) Be be futile;

17 (ii) Increase increase the risk of future incidents of domestic and
18 sexual violence; or

19 (iii) Not not adequately address the specific circumstances that led
20 to the individual's decision to separate from employment.

1 (B)(i) Provides The individual provides the Department
2 Commissioner with satisfactory documentation of the domestic and sexual
3 violence. The documentation may include:

- 4 (I) a sworn statement from the individual attesting to the
5 abuse;
6 (II) law enforcement or court records; or
7 (III) other documentation from:
8 (aa) an attorney or legal advisor;
9 (bb) a member of the clergy;
10 (cc) a shelter official;
11 (dd) a counselor or therapist; or
12 (ee) a health care provider, as defined in 18 V.S.A.
13 § 9432(9).

14 (ii) Information relating to the domestic and sexual violence,
15 including the claimant's statement and corroborating evidence, provided to the
16 Department Commissioner shall not be disclosed by the Department
17 Commissioner unless the claimant has signed a consent to disclose form. In
18 the event the Department Commissioner is legally required to release this
19 information without consent by the claimant, the Department Commissioner
20 shall notify the claimant at the time the notice or request for release of

1 information is received by the Department Commissioner and prior to
2 releasing the requested information.

3 (C) Has The individual has been found ineligible for unemployment
4 solely on the basis of the separation or discharge from employment.

5 * * * Employment Practices * * *

6 Sec. 10. 21 V.S.A. § 342a is amended to read:

7 § 342a. INVESTIGATION OF COMPLAINTS OF UNPAID WAGES

8 * * *

9 (e) If, after the Commissioner has issued a written determination and an
10 order for collection, the Commissioner determines that the employer has
11 willfully failed to pay the wages due and that the willful failure is continuous
12 and ongoing, the Commissioner may issue an emergency order to that
13 employer to stop work until the employer has paid the amount due pursuant to
14 the order for collection. If the Commissioner determines that issuing a
15 stop-work order would immediately threaten the safety or health of the public,
16 the Commissioner may permit work to continue until the immediate threat to
17 public safety or health is removed. The Commissioner shall document the
18 reasons for permitting work to continue, and the document shall be available to
19 the public. In addition, the employer shall be assessed an administrative
20 penalty of not more than \$250.00 for every day that the employer fails to pay
21 the amount due pursuant to the order for collection after the Commissioner

1 issues the stop-work order. When a stop-work order is issued, the
2 Commissioner shall post a notice at a conspicuous place on the work site of the
3 employer informing the employees that their employer failed to comply with
4 this subchapter and that work at the work site has been ordered to cease until
5 the amount due pursuant to the collection order has been paid. The stop-work
6 order shall be rescinded as soon as the Commissioner determines that the
7 employer has paid the amount due pursuant to the collection order.

8 (f) Within 30 days after the date of the collection order, the employer or
9 employee may file an appeal from the determination to a departmental
10 administrative law judge. The appeal shall, after notice to the employer and
11 employee, be heard by the administrative law judge within a reasonable time.
12 The administrative law judge shall review the complaint de novo, and after a
13 hearing, the determination and order for collection shall be sustained,
14 modified, or reversed by the administrative law judge. Prompt notice in
15 writing of the decision of the administrative law judge and the reasons for it
16 shall be given to all interested parties.

17 (f)(g) Notwithstanding any other provision of law, the employer or
18 employee may appeal the decision of the administrative law judge within
19 30 days by filing a written request with the Employment Security Board. The
20 appeal shall be heard by the Board after notice to the employee and employer.
21 The Board may affirm, modify, or reverse the decision of the administrative

1 law judge solely on the basis of evidence in the record or any additional
2 evidence it may direct to be taken. Prompt notice of the decision of the Board
3 shall be given to the employer and employee in the manner provided by section
4 1357 of this title. The Board's decision shall be final unless an appeal to the
5 Supreme Court is taken. Testimony given at any hearing upon a complaint of
6 unpaid wages shall be recorded, but the record need not be transcribed unless
7 ordered. The costs of transcription shall be paid by the requesting party.

8 ~~(g)~~(h) The Commissioner may enforce a final order for collection under
9 this section within two years of the date of the final order in the Civil Division
10 of the Superior Court.

11 ~~(h)~~(i) Information obtained from any employer, employee, or witness in the
12 course of investigating a complaint of unpaid wages shall be confidential and
13 shall not be disclosed or open to public inspection in any manner that reveals
14 the employee's or employer's identity or be admissible in evidence in any
15 action or proceeding other than one arising under this subchapter. However,
16 such information may be released to any public official for the purposes
17 provided in subdivision 1314(e)(1) of this title.

18 Sec. 11. STUDY OF CONTINGENT WORK IN VERMONT

19 (a) The Commissioner of Labor shall examine and evaluate:

20 (1) the prevalence and types of contingent work in Vermont;

1 (2) the number, types, and geographic distribution of contingent workers
2 in Vermont, including temporary employees, leased employees, and home
3 workers;

4 (3) the current practices, policies, and procedures of employers in
5 relation to contingent workers; and

6 (4) the applicability and efficacy of Vermont's employment laws with
7 respect to contingent workers.

8 (b)(1) Any employer surveyed by the Commissioner in relation to this
9 section shall provide the requested information to the Commissioner within
10 30 days.

11 (2) An employer that fails to provide the requested information to the
12 Commissioner within 30 days of being surveyed shall be subject to a fine of
13 \$100.00 for each day after 30 days that the employer fails to provide the
14 requested information to the Commissioner.

15 (c) The Commissioner of Labor shall submit a report to the House
16 Committee on Commerce and Economic Development and the Senate
17 Committee on Economic Development, Housing and General Affairs on or
18 before January 15, 2018. The Commissioner's report shall include the study's
19 findings and the Commissioner's recommendation for legislation to improve
20 the protections afforded to contingent workers by Vermont's employment
21 statutes.

1 (d) As used in this section, “home worker” means an individual employed
2 to work from his or her home by an employer for whom he or she provides
3 services or manufactures goods according to specifications furnished by the
4 employer that are required to be delivered upon completion to the employer or
5 a person designated by the employer.

6 **Sec. 12. PORTABLE EMPLOYEE BENEFITS STUDY COMMITTEE**

7 (a) Creation. There is created the Portable Employee Benefits Study
8 Committee.

9 (b) Membership. The Committee shall be composed of the following
10 nine members:

11 (1) one member of the House of Representatives who shall be appointed
12 by the Speaker of the House;

13 (2) one member of the Senate who shall be appointed by the Committee
14 on Committees;

15 (3) the Commissioner of Labor or designee;

16 (4) the Commissioner of Financial Regulation or designee;

17 (5) the State Treasurer or designee;

18 (6) the Secretary of Commerce and Community Development or
19 designee; and

1 (7) three members appointed by the Governor to represent the interests
2 of freelance workers in e-commerce, self-employed workers, and workers in
3 the “on-demand” or “app” economy.

4 (c) Powers and duties. The Committee shall study mechanisms for creating
5 insurance, retirement, and other types of employment benefits that are portable
6 and easily accessible to freelance workers in e-commerce, self-employed
7 workers, and workers in the on-demand or app economy, including the
8 following issues:

9 (1) the potential advantages and challenges to making group insurance,
10 retirement, and other types of employment benefits available to freelance
11 workers in e-commerce, self-employed workers, and workers in the on-demand
12 or app economy;

13 (2) the potential benefits and challenges of implementing a public,
14 private, or public-private model for the administration and provision of group
15 insurance, retirement, and other types of employment benefits to freelance
16 workers, workers in e-commerce, and workers in the on-demand or app
17 economy, including a per-transaction fee model, an hour bank, private or
18 public pretax accounts, and other mechanisms;

19 (3) the availability of traditional social safety nets such as
20 unemployment compensation, group health insurance, employer-sponsored life
21 insurance, and workers’ compensation to freelance workers, workers in

1 e-commerce, and workers in the on-demand or app economy who are not
2 connected to a traditional, full-time employer;

3 (4) the necessity for new mechanisms to replace or augment traditional
4 social safety nets such as unemployment compensation, group health
5 insurance, employer-sponsored life insurance, and workers' compensation for
6 workers who are not connected to a traditional, full-time employer;

7 (5) potential banking and insurance legislation that can allow freelance
8 workers, workers in e-commerce, and workers in the on-demand or app
9 economy to invest pretax dollars in accounts or insurance policies that would
10 replace or augment the traditional social safety nets;

11 (6) potential mechanisms to replace or augment traditional social safety
12 nets such as unemployment compensation, group health insurance,
13 employer-sponsored life insurance, and workers' compensation for workers
14 who are not connected to a traditional, full-time employer, including public or
15 private pretax accounts or insurance programs;

16 (7) potential funding models for mechanisms that would replace or
17 augment the traditional social safety nets, including both worker- and
18 consumer-driven funding models; and

19 (8) possible implementation plans with timelines for mechanisms that
20 would replace or augment the traditional social safety nets, including
21 mechanisms utilizing worker- or consumer-driven funding models.

1 (d) Assistance. The Committee shall have the administrative, technical,
2 and legal assistance of the Legislative Council, the Department of Labor, and
3 the Department of Financial Regulation.

4 (e) Report. On or before January 15, 2017, the Committee shall submit a
5 written report to the General Assembly with its findings and any
6 recommendations for legislative action.

7 (f) Meetings.

8 (1) The Commissioner of Labor shall call the first meeting of the
9 Committee to occur on or before September 15, 2016.

10 (2) The Committee shall select a chair from among its members at the
11 first meeting.

12 (3) A majority of the membership shall constitute a quorum.

13 (4) The Committee shall cease to exist on January 15, 2017.

14 (g) Reimbursement.

15 (1) For attendance at meetings during adjournment of the General
16 Assembly, legislative members of the Committee shall be entitled to per diem
17 compensation and reimbursement of expenses pursuant to 2 V.S.A. § 406 for
18 no more than four meetings.

19 (2) Other members of the Committee who are not employees of the
20 State of Vermont and who are not otherwise compensated or reimbursed for

their attendance shall be entitled to reimbursement of expenses pursuant to
32 V.S.A. § 1010 for no more than four meetings.

3 * * * Effective Date * * *

4 Sec. 13. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

6

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8

8 (Committee vote: _____)

9

10 Representative _____
11 FOR THE COMMITTEE