

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

8 \* \* \*

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

10 § 641. VOCATIONAL REHABILITATION

11 (a) When, as a result of an injury covered by this chapter, an employee is  
12 unable to perform work for which the employee has previous training or  
13 experience, the employee shall be entitled to vocational rehabilitation services,  
14 including retraining and job placement, as may be reasonably necessary to  
15 restore the employee to suitable employment. Vocational rehabilitation  
16 services shall be provided as follows:

17 \* \* \*

18 (3) The Commissioner shall adopt rules to ensure that a worker who  
19 requests services or who has been out of work received temporary total  
20 disability benefits for more than ~~90~~ 60 days ~~is timely and cost-effectively~~

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~~ 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.



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





1 such regulations. Such printed statements shall be supplied by the  
2 ~~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 ~~of~~ 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

1 their attendance shall be entitled to reimbursement of expenses pursuant to  
2 32 V.S.A. § 1010 for no more than four meetings.

3 \* \* \* Effective Date \* \* \*

4 **Sec. 13.** EFFECTIVE DATE

5 This act shall take effect on July 1, 2016.

6

7

8 (Committee vote: \_\_\_\_\_)

9

10

\_\_\_\_\_  
Representative \_\_\_\_\_

11

FOR THE COMMITTEE