

1 S.342

2 Introduced by Committee on Economic Development, Housing and General
3 Affairs

4 Date: April 24, 2020

5 Subject: Labor; employers' liability and workers' compensation; COVID-19

6 Statement of purpose of bill as introduced: This bill proposes to grant the
7 Commissioner of Labor temporary authority during a declared state of
8 emergency related to COVID-19 to amend or waive certain requirements and
9 deadlines under the workers' compensation laws and to provide a presumption
10 that certain workers who are diagnosed with COVID-19 are entitled to
11 workers' compensation for the disease.

12 An act relating to temporary workers' compensation amendments related to
13 COVID-19

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

15 ~~S. 1. WORKERS' COMPENSATION, ADMINISTRATIVE~~
16 ~~FLEXIBILITY; TEMPORARY AUTHORITY~~

17 ~~(a) In order to effectuate the remedial purpose of Vermont's Workers'~~
18 ~~Compensation law and to ensure that injured workers are able to obtain the~~
19 ~~workers' compensation benefits they are entitled to, the Commissioner shall,~~
20 ~~during a declared state of emergency related to COVID-19, have authority to~~
21 ~~issue guidance and adopt procedures to extend deadlines or temporarily amend~~

1 ~~or waive specific requirements of 21 V.S.A. chapter 9 and the rules adopted~~
2 ~~pursuant to that chapter.~~

3 ~~(b) Any guidance or procedures that are issued or adopted by the~~
4 ~~Commissioner pursuant to this section shall be effective during the state of~~
5 ~~emergency in which they are adopted, and the Commissioner shall establish a~~
6 ~~procedure to transition those claims impacted by the emergency to pre-existing~~
7 ~~rules within 45 days after the termination of the state of emergency.~~

8 ~~(c) The Commissioner shall post any guidance issued or procedure adopted~~
9 ~~pursuant to this section on the Department's website and shall make reasonable~~
10 ~~efforts to provide prompt notice of the guidance or procedure to employers,~~
11 ~~attorneys, and employee organizations.~~

12 ~~(d) The Commissioner shall not be required to initiate rulemaking pursuant~~
13 ~~to 3 V.S.A. § 831(c) in relation to any guidance issued or procedure adopted~~
14 ~~pursuant to this section.~~

15 Sec. 2. COVID-19; PRESUMPTION OF COMPENSABILITY

16 ~~(a)(1) In the case of a front-line worker, disability or death resulting from~~
17 ~~COVID-19 shall be presumed to be compensable pursuant to 21 V.S.A. chapter~~
18 ~~9, provided that the front-line worker receives a positive laboratory test or a~~
19 ~~diagnosis by a licensed healthcare provider for COVID-19 between March 1,~~
20 ~~2020 and January 15, 2021.~~

21 ~~(2) As used in this subsection, "front line worker" means:~~

- 1 (A) a firefighter as defined in 20 V.S.A. § 3151(3) and (4);
- 2 (B) a law enforcement officer who has been certified by the Vermont
3 Criminal Justice Training Council pursuant to 20 V.S.A. chapter 151;
- 4 (C) an ambulance service, emergency medical personnel, first
5 responder service, and volunteer personnel as defined in 24 V.S.A. § 2651;
- 6 (D) a worker in a health care facility or in an institution or office
7 where health care services are provided by licensed healthcare professionals;
- 8 (E) a correctional officer;
- 9 (F) a worker in a long-term care facility or residential care facility;
- 10 (G) a childcare provider that is required to provide childcare to the
11 children of other front-line workers pursuant to Executive Order 01-20;
- 12 (H) an employee of a pharmacy or a grocery store;
- 13 (I) a home health care worker or personal care attendant; and
- 14 (J) a worker performing services that the Commissioner determines
15 place the worker at a similarly elevated risk of being exposed to or contracting
16 COVID-19 as the other occupations listed in this subsection (a).
- 17 (b) For an employee who is not a front-line worker as defined in
18 subdivision (a)(2) of this section, disability or death resulting from COVID-19
19 shall be presumed to be compensable pursuant to 21 V.S.A. chapter 9 if the
20 employee receives a positive laboratory test or a diagnosis by a licensed

1 ~~health care provider for COVID-19 between March 1, 2020 and January 15,~~

2 2021 and either:

3 (1) had documented occupational exposure in the course of employment
4 to an individual with COVID-19; or

5 (2) performed services at a residence or facility with residents or
6 employees who:

7 (A) were present at the time the services were performed; and either

8 (B)(i) had COVID-19 at that time; or

9 (ii) were diagnosed with COVID-19 within a reasonable period of
10 time after the services were performed.

11 (c) The presumption of compensability in subsections (a) and (b) of this
12 section shall not apply if it is shown by a preponderance of the evidence that
13 the disease was caused by non-employment-connected risk factors or non-
14 employment-connected exposure.

15 (d) The presumption of compensability in subsection (a) of this section
16 shall not apply if the employer offers a COVID-19 vaccine that is refused by
17 the worker and the worker is subsequently diagnosed with COVID-19.

18 (e) The Commissioner shall not be required to initiate rulemaking pursuant
19 to 3 V.S.A. § 831(c) in relation to any guidance issued or procedure adopted in
20 relation to this section.

1 ~~Sec. 3. PROSPECTIVE REPEAL~~

2 ~~In the absence of legislative action to the contrary, Secs. 1 and 2 of this act~~
3 ~~are repealed on January 15, 2021.~~

4 Sec. 4. EFFECTIVE DATE

5 ~~This act shall take effect on passage.~~

** * * Workers' Compensation * * **

*Sec. 1. WORKERS' COMPENSATION; ADMINISTRATIVE
FLEXIBILITY; TEMPORARY AUTHORITY*

(a) In order to effectuate the remedial purpose of Vermont's Workers' Compensation law and to ensure that injured workers are able to obtain the workers' compensation benefits they are entitled to, the Commissioner shall, during a declared state of emergency related to COVID-19, have authority to issue guidance and adopt procedures to extend deadlines or temporarily amend or waive specific requirements of 21 V.S.A. chapter 9 and the rules adopted pursuant to that chapter.

(b) Any guidance or procedures that are issued or adopted by the Commissioner pursuant to this section shall be effective during the state of emergency in which they are adopted, and the Commissioner shall establish a procedure to transition those claims impacted by the emergency to preexisting rules within 45 days after the termination of the state of emergency.

(c) The Commissioner shall post any guidance issued or procedure adopted pursuant to this section on the Department's website and shall make reasonable efforts to provide prompt notice of the guidance or procedure to employers, attorneys, and employee organizations.

(d) The Commissioner shall not be required to initiate rulemaking pursuant to 3 V.S.A. § 831(c) in relation to any guidance issued or procedure adopted pursuant to this section.

Sec. 2. COVID-19; PRESUMPTION OF COMPENSABILITY

(a)(1) In the case of a front-line worker, disability or death resulting from COVID-19 shall be presumed to be compensable pursuant to 21 V.S.A. chapter 9, provided that the front-line worker receives a positive laboratory test for COVID-19 or a diagnosis of COVID-19 from a licensed healthcare provider between March 1, 2020 and January 15, 2021.

(2) As used in this subsection:

(A)(i) “Elevated risk of exposure to COVID-19” means the performance of a job that requires the worker to have regular physical contact with known sources of COVID-19 or regular physical or close contact with patients, inmates in a correctional facility, residents of a residential care or long-term care facility, or members of the public in the course of his or her employment.

(ii) As used in this subdivision (2)(A), “close contact” means interactions with another individual that require the employee to be within six feet of that individual.

(B) “Front-line worker” means an individual with an elevated risk of exposure to COVID-19 who is employed as:

(i) a firefighter as defined in 20 V.S.A. § 3151(3) and (4);

(ii) a law enforcement officer who has been certified by the Vermont Criminal Justice Training Council pursuant to 20 V.S.A. chapter 151;

(iii) emergency medical personnel and volunteer personnel as defined in 24 V.S.A. § 2651;

(iv) a worker in a health care facility or in an institution or office where health care services are provided by licensed healthcare professionals;

(v) a correctional officer;

(vi) a worker in a long-term care facility or residential care facility;

(vii) a childcare provider who is permitted to provide childcare to the children of other front-line workers pursuant to Executive Order 01-20;

(viii) a home health care worker or personal care attendant;

(ix) a worker in a morgue, funeral establishment, or crematory facility; and

(x) a worker performing services that the Commissioner determines place the worker at a similarly elevated risk of being exposed to or contracting COVID-19 as the other occupations listed in this subsection (a).

(b) For an employee who is not a front-line worker as defined in subdivision (a)(2)(B) of this section, disability or death resulting from COVID-19 shall be presumed to be compensable pursuant to 21 V.S.A. chapter 9 if the employee receives a positive laboratory test for COVID-19 or a diagnosis of COVID-19 from a licensed healthcare provider between April 1, 2020 and January 15, 2021 and, not more than 14 days prior to the date on which the employee is tested or examined, either:

(1) had documented occupational exposure in the course of employment to an individual with COVID-19; or

(2) performed services at a residence or facility with one or more residents or employees who:

(A) were present at the time the services were performed; and either

(B)(i) had COVID-19 at that time; or

(ii) tested positive for COVID-19 within 14 days after the services were performed.

(c)(1) The presumption of compensability in subsection (a) of this section shall not apply if it is shown by a preponderance of the evidence that the disease was caused by non-employment-connected risk factors or non-employment-connected exposure.

(2) The presumption of compensability in subsection (b) of this section shall not apply if the employer can show by a preponderance of the evidence that:

(A) the disease was caused by non-employment-connected risk factors or non-employment-connected exposure; or

(B) at the time the employee was potentially exposed to COVID-19, the employee's place of employment was in compliance with:

(i) between April 1, 2020 and April 20, 2020, the relevant COVID-19 related guidance for businesses and workplaces issued by the U.S. Centers for Disease Control and the Vermont Department of Health and any similar guidance issued by local or municipal authorities; and

(ii) between April 20, 2020 and January 15, 2021, the Restart Vermont Worksafe Guidance issued by the Agency of Commerce and Community Development, and any similar guidance issued by local or municipal authorities.

(d) The Commissioner shall not be required to initiate rulemaking pursuant to 3 V.S.A. § 831(c) in relation to any guidance issued or procedure adopted in relation to this section.

Sec. 3. PROSPECTIVE REPEAL

In the absence of legislative action to the contrary, Secs. 1 and 2 of this act are repealed on January 15, 2021.

*Sec. 4. WORKERS' COMPENSATION COVID-19 REIMBURSEMENT;
STUDY; REPORT*

(a) The Commissioner of Financial Regulation shall examine the potential for creating a special fund that can be used to reimburse workers' compensation insurers, intermunicipal insurance associations, and self-insured employers for COVID-19 related workers' compensation costs related to COVID-19. In particular, the Commissioner shall examine the following issues:

(1) the average cost of paying a COVID-19 related workers' compensation claim in Vermont;

(2) factors that can influence the cost of a COVID-19 related workers' compensation claim, including medical costs, the average amount of time that a worker must be out of work, applicable deductibles, and any other factors that the Commissioner determines are appropriate;

(3) potential COVID-19 related impacts on workers' compensation costs and experience modifiers based on the experience of Vermont and other states with respect to COVID-19 infection rates and COVID-19 related workers' compensation claims, as well as projections for future rates of COVID-19 infections and COVID-19 related workers' claims in Vermont;

(4) the amount of funding and any legislative action that would be necessary to substantially mitigate or eliminate the impact of COVID-19 related workers' compensation claims on workers' compensation costs; and

(5) requirements for structuring such a fund so that monies from the Coronavirus Relief Fund can be used in compliance with the requirements of section 5001 of Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (the CARES Act), as may be amended, and any guidance issued pursuant to that section.

(b) The Commissioner shall consult with interested parties including relevant trade groups and advocates for employers, workers' compensation insurers, and employees.

(c) On or before August 15, 2020, the Commissioner shall submit a report to the House Committee on Commerce and Economic Development and the Senate Committee on Economic Development, Housing and General Affairs with his or her findings and any recommendations for legislative action.

Sec. 5. WORKERS' COMPENSATION RATE OF CONTRIBUTION

For fiscal year 2021, after consideration of the formula in 21 V.S.A. § 711(b) and historical rate trends, the General Assembly determines that the rate of contribution for the direct calendar year premium for workers'

compensation insurance shall remain at the rate of 1.4 percent. The contribution rate for self-insured workers' compensation losses and workers' compensation losses of corporations approved under 21 V.S.A. chapter 9 shall remain at one percent.

** * * Sales and Use Tax; Paper Bags * * **

Sec. 6. 32 V.S.A. § 9741(54) is added to read:

(54) Sales of recyclable paper carryout bags to customers pursuant to 10 V.S.A. § 6693, provided that sales of recyclable paper carryout bags to stores and food service establishments as defined under 10 V.S.A. § 6691 shall not be exempt under this subdivision and shall not be considered sales for resale under subdivision 9701(5) of this title.

** * * Effective Dates * * **

Sec. 7. EFFECTIVE DATES

(a) Notwithstanding 1 V.S.A. § 214, the section and Sec. 1 and 2 of this act shall take effect on passage and shall apply retroactively to March 1, 2020.

(b) Secs. 5 and 6 shall take effect on July 1, 2020, provided that if the date of passage of this act is after July 1, 2020, then notwithstanding 1 V.S.A. § 214, Secs. 5 and 6 shall take effect on passage and shall apply retroactively to July 1, 2020.

(c) The remaining sections of this act shall take effect on passage.