

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was
3 referred Senate Bill No. 342 entitled “An act relating to temporary workers’
4 compensation amendments related to COVID-19” respectfully reports that it
5 has considered the same and recommends that the House propose to the Senate
6 that the bill be amended by striking out all after the enacting clause and
7 inserting in lieu thereof the following:

8 Sec. 1. WORKERS’ COMPENSATION; ADMINISTRATIVE
9 FLEXIBILITY; TEMPORARY AUTHORITY

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

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

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

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

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

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

13 (2) As used in this subsection:

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

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

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

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

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

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

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

13 (v) a correctional officer;

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

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

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

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

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

4 (b) For an employee who is not a front-line worker as defined in
5 subdivision (a)(2)(B) of this section, disability or death resulting from COVID-
6 19 shall be presumed to be compensable pursuant to 21 V.S.A. chapter 9 if the
7 employee receives a positive laboratory test for COVID-19 between March 1,
8 2020 and January 15, 2021 and, not more than 14 days prior to the date on
9 which the employee is tested or examined, either:

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

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

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

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

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

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

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

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

6 (B) at the time the employee was potentially exposed to COVID-19,
7 the employee’s place of employment was in compliance with the Restart
8 Vermont Worksafe Guidance issued by the Agency of Commerce and
9 Community Development, and any similar guidance issued by local or
10 municipal authorities.

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

14 Sec. 3. PROSPECTIVE REPEAL

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

17 **Sec. 4. WORKERS’ COMPENSATION COVID-19 REIMBURSEMENT;**
18 **STUDY; REPORT**

19 (a) The Commissioner of Financial Regulation shall examine the potential
20 for creating a special fund that can be used to reimburse workers’
21 compensation insurers and self-insured employers for COVID-19 related

1 workers' compensation costs related to COVID-19. In particular, the

2 Commissioner shall examine the following issues:

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

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

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

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

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

