

1 H.286

2 Introduced by Representative Mulvaney-Stanak of Burlington

3 Referred to Committee on

4 Date:

5 Subject: Labor; workers' compensation; temporary partial disability benefits;
6 cost of living adjustment; appeals

7 Statement of purpose of bill as introduced: This bill proposes to permit an
8 injured worker to request preauthorization of benefits in addition to medical
9 treatment, specify when an employer may require an employee who has been
10 medically cleared to return to work to engage in a work search, to amend the
11 formula for determining the amount of compensation that is due to an
12 employee with a temporary partial disability, to clarify the requirements for
13 providing dependency benefits and cost of living adjustments to compensation
14 paid to an employee with a temporary partial disability, and to permit the
15 Commissioner to award the necessary costs of a proceeding to a claimant if the
16 claimant prevails.

17 An act relating to miscellaneous workers' compensation amendments

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

2 Sec. 1. 21 V.S.A. § 640b is amended to read:

3 § 640b. REQUEST FOR PREAUTHORIZATION TO DETERMINE IF
4 ~~TREATMENT IS~~ BENEFITS ARE NECESSARY

5 (a) As used in this section, “benefits” means medical treatment and
6 surgical, medical, and nursing services and supplies, including prescription
7 drugs and durable medical equipment.

8 (b) Within 14 days ~~of~~ after receiving a written request for preauthorization
9 for a proposed ~~medical treatment~~ benefits and medical evidence supporting the
10 requested ~~treatment~~ benefits, a workers’ compensation insurer shall do one of
11 the following, in writing:

12 (1) ~~authorize~~ Authorize the ~~treatment~~ benefits and notify the health care
13 provider, the injured worker, and the Department; ~~or,~~

14 (2)(A) ~~deny~~ Deny the ~~treatment~~ benefits because the entire claim is
15 disputed and the Commissioner has not issued an interim order to pay benefits;
16 ~~or.~~ The insurer shall notify the health care provider, the injured worker, and
17 the Department of the decision to deny benefits.

18 (B)(3) ~~deny~~ Deny the ~~treatment~~ benefits if, based on a preponderance
19 of credible medical evidence specifically addressing the proposed ~~treatment~~
20 benefits, it is the benefits are unreasonable or, unnecessary, or unrelated to the

1 work injury. The insurer shall notify the health care provider, the injured
2 worker, and the Department of the decision to deny ~~treatment~~; or benefits.

3 ~~(3)~~(4) ~~notify~~ Notify the health care provider, the injured worker, and
4 the Department that the insurer has scheduled an examination of the employee
5 pursuant to section 655 of this title or ordered a medical record review
6 pursuant to section ~~655~~ 655a of this title. Based on the examination or review,
7 the insurer shall authorize or deny the ~~treatment~~ benefits and notify the
8 Department and the injured worker of the decision within 45 days ~~of~~ after a
9 request for preauthorization. The Commissioner may, ~~in his or her~~ the
10 Commissioner's sole discretion, grant a 10-day extension to the insurer to
11 authorize or deny ~~treatment~~ benefits, and such an extension shall not be subject
12 to appeal.

13 ~~(b)~~(c) If the insurer fails to authorize or deny the ~~treatment~~ benefits
14 pursuant to subsection (a) of this section within 14 days ~~of~~ after receiving a
15 request, the claimant or health care provider may request that the Department
16 issue an order authorizing ~~treatment~~ benefits. After receipt of the request, the
17 Department shall issue an interim order within five days after notice to the
18 insurer, and five days in which to respond, absent evidence that the entire
19 claim is disputed. Upon request of a party, the Commissioner shall notify the
20 parties that the ~~treatment~~ has benefits have been authorized by operation of
21 law.

1 ~~(e)~~(d) If the insurer denies the preauthorization of the treatment benefits
2 pursuant to subdivision (a)(2) ~~or~~ (3), or (4) of this section, the Commissioner
3 may, ~~on his or her~~ the Commissioner's own initiative or upon a request by the
4 claimant, issue an order authorizing the treatment benefits if ~~he or she~~ the
5 Commissioner finds that the evidence shows that the ~~treatment is~~ benefits are
6 reasonable, necessary, and related to the work injury.

7 Sec. 2. 21 V.S.A. § 643d is added to read:

8 § 643d. WORK SEARCH; REQUIREMENTS; EXCEPTIONS

9 (a) An employer may require an employee who is receiving temporary
10 disability benefits pursuant to section 646 of this chapter to engage in a good
11 faith search for suitable work if:

12 (1) the injured employee is medically released to return to work, either
13 with or without limitations;

14 (2) the employer has provided the injured employee with written
15 notification that the employee is medically released to return to work and the
16 notification describes any applicable limitations; and

17 (3) the employer cannot offer the injured employee work that the
18 employee is medically released to do.

19 (b) An injured employee shall not be required to engage in a good faith
20 search for suitable work if the employee:

21 (1) is already employed; or

1 (2) has been referred for or is scheduled to undergo one or more surgical
2 procedures.

3 (c) An employer shall not require an injured employee to contact more than
4 three employers per week as part of a good faith work search performed
5 pursuant to this section.

6 Sec. 3. 21 V.S.A. § 646 is amended to read:

7 § 646. TEMPORARY PARTIAL DISABILITY BENEFITS

8 (a)(1) Where the disability for work resulting from an injury is partial,
9 ~~during the disability and~~ beginning on the eighth day ~~thereof~~ of the period of
10 disability, the employer shall pay the injured employee a weekly compensation
11 equal to:

12 (A) the difference between the wage the injured employee earns
13 during the period of disability and the amount the injured employee would be
14 eligible to receive pursuant to section 642 of this chapter, including any
15 applicable cost of living adjustment or dependency benefits that would be due;
16 or

17 (B) for an injured employee who would be eligible to receive the
18 maximum weekly compensation pursuant to section 642 of this chapter, two-
19 thirds of the difference between ~~his or her~~ the injured employee's average
20 weekly wage before the injury and the ~~average weekly wage which he or she is~~

1 ~~able to earn thereafter~~ amount the employee earns during the period of
2 disability.

3 (2) Compensation paid pursuant to this subsection shall be adjusted
4 following the receipt of 26 weeks of benefits and annually on each subsequent
5 July 1, so that the compensation continues to bear the same percentage
6 relationship to the average weekly wage in the State as it did at the time of
7 injury.

8 (b)(1) In addition to the amount paid pursuant to subsection (a) of this
9 section, the employer shall pay the injured employee during the disability
10 \$20.00 per week for each dependent child under 21 years of age, provided that
11 no other injured worker is receiving the same benefits on behalf of the
12 dependent child or children.

13 (2) The amount allowed for dependent children shall be adjusted weekly
14 to reflect the number of dependent children during each week of payment.

15 (c)(1)(A) For an injured employee who continues to work for the employer
16 from whom the employee is claiming workers' compensation, payment of
17 compensation pursuant to this section shall be mailed or deposited into the
18 injured employee's bank account within not more than seven days after the
19 injured employee's wages are paid.

20 (B) The employer shall be responsible for providing the injured
21 employee's wage information to the insurance carrier.

1 (2) For an injured employee who is working for a different employer
2 from the employer from whom the employee is claiming workers'
3 compensation, payment of compensation pursuant to this section shall be
4 mailed or deposited into the injured employee's bank account within not more
5 than three days after the injured employee submits the wage information to the
6 insurance carrier.

7 Sec. 4. 21 V.S.A. § 642 is amended to read:

8 § 642. TEMPORARY TOTAL DISABILITY BENEFITS

9 (a)(1) Where the injury causes total disability for work, during such the
10 disability, but not including the first three days; with the day of the accident to
11 be counted as the first day; unless the employee received full wages for that
12 day, the employer shall pay the injured employee a weekly compensation equal
13 to two-thirds of the employee's average weekly wages; but,

14 (2) The weekly compensation shall be in an amount that is not more
15 than the maximum nor less than the minimum weekly compensation.

16 (3) Compensation paid pursuant to this subsection shall be adjusted on
17 the first July 1 following the receipt of 26 weeks of benefits and annually on
18 each subsequent July 1, so that the compensation continues to bear the same
19 percentage relationship to the average weekly wage in the State as it did at the
20 time of injury.

1 (b)(1) In addition, ~~the injured employee, during the disability period shall~~
2 ~~receive \$10.00 a~~ to the amount paid pursuant to subsection (a) of this section,
3 the employer shall pay the injured employee during the disability \$20.00 per
4 week for each dependent child who is ~~unmarried and~~ under ~~the age of~~ 21 years
5 of age, provided that no other injured worker is receiving the same benefits on
6 behalf of the dependent child or children. ~~However, in no event shall an~~

7 (2) The amount allowed for the dependent children shall be adjusted
8 weekly to reflect the number of dependent children during each week of
9 payment.

10 (c) Notwithstanding any provision of subsection (a) or (b) of this section to
11 the contrary:

12 (1) An employee's total weekly wage replacement benefits, including
13 any payments for a dependent child, shall not exceed 90 percent of the
14 employee's average weekly wage prior to applying any applicable cost of
15 living adjustment. ~~The amount allowed for dependent children shall be~~
16 ~~increased or decreased weekly to reflect the number of dependent children~~
17 ~~extant during the week of payment.~~

18 (2) If the total disability continues after the third day for a period of
19 seven consecutive calendar days or more, compensation shall be paid for the
20 whole period of the total disability.

1 Sec. 5. 21 V.S.A. § 650 is amended to read:

2 § 650. PAYMENT; AVERAGE WAGE; COMPUTATION

3 * * *

4 (d)(1) Compensation computed pursuant to this section shall be adjusted
5 annually on July 1, so that ~~such~~ the compensation continues to bear the same
6 percentage relationship to the average weekly wage in the State ~~as computed~~
7 ~~under this chapter~~ as it did at the time of injury.

8 (2) Temporary total or temporary partial compensation shall first be
9 adjusted on the first July 1 following the receipt of 26 weeks of benefits.

10 (3) Permanent total and permanent partial compensation shall be
11 adjusted for each July 1 following the date of injury regardless of whether
12 indemnity benefits were paid on each intervening July 1.

13 (e)(1) If weekly compensation benefits or weekly accrued benefits are not
14 paid within 21 days after becoming due and payable pursuant to an order of the
15 Commissioner, or in cases in which the overdue benefit is not in dispute, ~~40~~ 25
16 percent of the overdue amount shall be added and paid to the employee, in
17 addition to any amounts due pursuant to subsection (f) of this section and
18 interest and any other penalties.

19 (2) In the case of an initial claim, benefits are due and payable upon
20 entering into an agreement pursuant to subsection 662(a) of this title, upon
21 issuance of an order of the Commissioner pursuant to subsection 662(b) of this

1 title, or if the employer has not denied the claim within 21 days after the claim
2 is filed.

3 (3) Benefits are in dispute if the claimant has been provided actual
4 written notice of the dispute within 21 days of the benefit being due and
5 payable and the evidence reasonably supports the denial.

6 (4) Interest shall accrue and be paid on benefits that are found to be
7 compensable during the period of nonpayment.

8 (5) The Commissioner shall promptly review requests for payment
9 under this section and, consistent with subsection 678(d) of this title, shall
10 allow for the recovery of reasonable attorney's fees associated with an
11 employee's successful request for payment under this subsection.

12 (f)(1)(A) When benefits have been awarded or are not in dispute as
13 provided in subsection (e) of this section, the employer shall establish a
14 weekday on which payment shall be mailed or deposited and notify the
15 claimant and the Department of that day. The employer shall ensure that each
16 weekly payment is mailed or deposited on or before the day established.

17 (B) Payment shall be made by direct deposit to a claimant who elects
18 that payment method. The employer shall notify the claimant of ~~his or her~~ the
19 claimant's right to payment by direct deposit.

1 (2) If the benefit payment is not mailed or deposited on the day
2 established, the employer shall pay to the claimant a late fee equal to the
3 greater of \$10.00 or;

4 (A) five percent of the benefit amount, ~~whichever is greater,~~ for each
5 ~~weekly~~ the first payment that is made after the established day;

6 (B) 10 percent of the benefit amount for the second payment that is
7 made after the established day;

8 (C) 15 percent of the benefit amount for the third payment that is
9 made after the established day; and

10 (D) 20 percent of the benefit amount for the fourth and any
11 subsequent payments that are made after the established day.

12 (3) As used in this subsection, “paid” means the payment is mailed to
13 the claimant’s mailing address or, in the case of direct deposit, transferred into
14 the designated account. In the event of a dispute, proof of payment shall be
15 established by affidavit.

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

17 § 678. COSTS; ATTORNEY’S FEES

18 (a) ~~Necessary costs of proceedings under this chapter, including deposition~~
19 ~~expenses, subpoena fees, and expert witness fees, shall be assessed by the~~
20 ~~Commissioner against the employer or its workers’ compensation carrier when~~
21 ~~the claimant prevails. The Commissioner may allow the claimant to recover~~

1 ~~reasonable attorney's fees when the claimant prevails.~~ Costs shall not be taxed
2 or allowed either party except as provided in this section.

3 (b)(1) When a claimant prevails in either a formal or informal proceeding
4 under this chapter, the Commissioner shall award the claimant necessary costs
5 incurred in relation to the proceeding, including deposition expenses, subpoena
6 fees, and expert witness fees.

7 (2) The Commissioner may allow a claimant to recover reasonable
8 attorney's fees when the claimant prevails.

9 (3) In cases for which a formal hearing is requested and the case is
10 resolved prior to a formal hearing:

11 (A) the Commissioner may award reasonable attorney's fees if the
12 claimant retained an attorney in response to an actual or effective denial of a
13 claim and payments were made to the claimant as a result of the attorney's
14 efforts; and

15 (B) the Commissioner may award necessary costs if the claimant
16 incurred the costs in response to an actual or effective denial of a claim and
17 payments were made to the claimant as a result of the costs incurred.

18 (c)(1) In appeals to the Superior or Supreme Court, if the claimant prevails,
19 he or she the claimant shall be entitled to reasonable attorney's fees as
20 approved by the court; necessary costs, including deposition expenses,

1 subpoena fees, and expert witness fees; and interest at the rate of 12 percent
2 per annum on that portion of any award the payment of which is contested.

3 (2) Interest shall be computed from the date of the award of the
4 Commissioner.

5 ~~(e)~~(d) By January 1, 1999, and at least every five years thereafter, the
6 Commissioner shall amend existing rules regarding reasonable attorney's fees
7 awarded under subsection (a) of this section. In amending these rules, the
8 Commissioner shall consider accessibility to legal services, appropriate
9 inflation factors, and any other related factors consistent with the purposes of
10 this chapter. In the event the Commissioner proposes no change in the rules in
11 any five-year period, the Commissioner shall provide a written report to the
12 Legislative Committee on Administrative Rules of the General Assembly
13 explaining the reasons for not changing the rules.

14 ~~(d) In cases for which a formal hearing is requested and the case is resolved~~
15 ~~prior to formal hearing, the Commissioner may award reasonable attorney's~~
16 ~~fees if the claimant retained an attorney in response to an actual or effective~~
17 ~~denial of a claim and thereafter payments were made to the claimant as a result~~
18 ~~of the attorney's efforts.~~

19 * * *

1 Sec. 7. ADOPTION OF RULES

2 The Commissioner of Labor shall, on or before July 1, 2024, adopt rules as
3 necessary to implement the provisions of this act.

4 Sec. 8. EFFECTIVE DATE

5 This act shall take effect on July 1, 2023.