

1 S.96

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

4 Date: March 15, 2011

5 Subject: Labor; workers' compensation; technical corrections

6 Statement of purpose: This bill proposes to make technical corrections to the
7 workers' compensation statutes.

8 An act relating to technical corrections to the workers' compensation
9 statutes

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

11 Sec. 1. FINDINGS

12 The general assembly finds:

13 (1) Workers who are injured on the job rely on workers' compensation
14 benefits to provide income for basic needs and medical expenses until they are
15 ready to return to work.

16 (2) Currently, insurers are allowed to unilaterally discontinue paying
17 benefits by submitting an independent medical examination (IME) and a notice
18 to discontinue benefits to the injured worker and the department of labor.
19 Benefits are discontinued seven days after the notice is received by the

1 department and the worker and usually before the department has time to
2 approve the discontinuance or the worker has time to respond.

3 (3) The result is that injured workers are cut off from weekly income
4 and medical care or services on seven days' notice and are not given a
5 reasonable opportunity to respond before losing benefits.

6 (4) Increasing the period in which benefits continue to be paid will give
7 injured workers a greater opportunity to respond to the insurer and will provide
8 fairer outcomes.

9 Sec. 2. 21 V.S.A. § 641 is amended to read:

10 § 641. VOCATIONAL REHABILITATION

11 * * *

12 (c) Any vocational rehabilitation plan for a claimant presented to the
13 employer shall be deemed valid if the employer was provided an opportunity
14 to participate in the development of the plan and has made no objections or
15 changes within 21 days after submission. A vocational rehabilitation counselor
16 shall provide the employer with a written invitation to participate in plan
17 development, including the date, time, and place to provide an opportunity to
18 participate in the development of the plan, with a copy to the department. The
19 participation in the development of the plan may be conducted by telephone.
20 The written notice shall be evidence of the opportunity to participate in plan
21 development and shall be appended to the proposed plan.

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Sec. 3. 21 V.S.A. § 643a is amended to read:

§ 643a. DISCONTINUANCE OF BENEFITS

Unless an injured worker has successfully returned to work, an employer shall notify both the commissioner and the employee prior to terminating benefits under either section 642 or 646 of this title. The notice of intention to discontinue payments shall be filed on forms prescribed by the commissioner and shall include the date of the proposed discontinuance, the reasons for it, and, if the employee has been out of work for 90 days, a verification that the employer offered vocational rehabilitation screening and services as required under this chapter. All relevant evidence, including evidence that does not support discontinuance in the possession of the employer not already filed, shall be filed with the notice. The liability for the payments shall continue for ~~seven days after the notice is received by the commissioner and the employee~~ at least 14 days after the notice is received by the commissioner and the employee, during which time the claimant may file with the commissioner an objection to discontinuance. The notice shall include a provision that the injured worker may object to the discontinuance with the commissioner with supporting evidence or arguments. If the employee files an objection with an explanation, the liability for the payments shall continue until a decision is issued by the commissioner. ~~Those payments~~ Payments made after the notice

1 of discontinuance is received by the commissioner shall be made without
2 prejudice to the employer and may be deducted from any amounts due
3 pursuant to section 648 of this title if the commissioner determines that the
4 discontinuance is warranted or if otherwise ordered by the commissioner.
5 Every notice shall be reviewed by the commissioner to determine the
6 sufficiency of the basis for the proposed discontinuance. If, after review of all
7 the evidence in the file, the commissioner finds that a preponderance of all the
8 evidence in the file does not reasonably support the proposed discontinuance,
9 the commissioner shall order that payments continue until a formal hearing is
10 held and a decision is rendered. Prior to a formal hearing, an injured worker
11 may request reinstatement of benefits by providing additional new evidence to
12 the department that establishes that a preponderance of all evidence now
13 supports the claim. If the commissioner's decision, after a hearing, is that the
14 employee was not entitled to any or all benefits paid between the
15 discontinuance and the final decision, upon request of the employer, the
16 commissioner may order that the employee repay all benefits to which the
17 employee was not entitled. The employer may enforce a repayment order in
18 any court of law having jurisdiction.

1 Sec. 4. 21 V.S.A. § 640b is added to read:

2 § 640b. REQUEST FOR PREAUTHORIZATION TO DETERMINE IF
3 PROPOSED TREATMENT IS NECESSARY

4 (a) Within 14 days of receiving a request for preauthorization for a
5 proposed medical treatment and medical evidence supporting the requested
6 treatment, a workers' compensation insurer shall:

7 (1) authorize the treatment; or

8 (2)(A) deny the treatment because the entire claim is disputed and the
9 commissioner has not issued an interim order to pay benefits; or

10 (B) deny the treatment if, based on a preponderance of credible
11 medical evidence specifically addressing the proposed treatment, it is
12 unreasonable or unnecessary. The insurer shall notify the health care provider,
13 the injured worker, and the department of the decision to deny treatment; or

14 (3) notify the health care provider, injured worker, and the department
15 that the issuer has scheduled an examination of the employee or ordered a
16 medical record review pursuant to section 655 of this title. The insurer based
17 on the examination or review shall authorize or deny the treatment and notify
18 the department and injured worker of the decision within 14 days of such
19 notice.

20 (b) If the insurer fails to authorize or deny the treatment pursuant to
21 subsection (a) of this section within 14 days of receiving a request, the

1 claimant or health care provider may request that the department issue an order
2 authorizing treatment. The department shall issue an order after notice to the
3 insurer, and five days in which to respond, absent evidence that the entire
4 claim is disputed. Upon request of a party, the commissioner shall notify the
5 parties that the treatment has been authorized by operation of law.

6 (c) If the insurer denies the preauthorization of the treatment pursuant to
7 subdivision (a)(2) of this section or within an additional 14 days pursuant to
8 subdivision (a)(3) of this section, the commissioner may on his or her own
9 initiative or upon a request by the claimant issue an order authorizing the
10 treatment if he or she finds that the evidence shows that the treatment is
11 reasonable, necessary, and related to the work injury.

12 Sec. 5. 21 V.S.A. § 655a is added to read:

13 § 655a. RELEASE OF RELEVANT MEDICAL RECORDS BY HEALTH
14 CARE PROVIDERS; DEPARTMENT TO OVERSEE RELEASE
15 AND USE OF RELEVANT MEDICAL INFORMATION

16 (a) Health care providers examining or attending the examination of an
17 injured worker pursuant to this chapter shall provide relevant medical records
18 and reports as requested by the injured worker, the employer, or the
19 department regarding the diagnosis, condition, or treatment of the worker,
20 permanent impairment, or any restrictions or limitations on the worker's ability
21 to work. All medical information determined by the department to be relevant

1 to the particular injury, condition, or disease that is the basis of a claim shall be
2 made available upon request at any stage of the proceedings to the employer,
3 the claimant's representative, or the department. A health care provider who is
4 in lawful possession of the medical information in connection with a pending
5 claim shall not be required to redact medical information if the record which
6 addresses a claim also includes medical information about an injury, condition,
7 or disease not related to the claim. No person shall incur any legal liability by
8 releasing such information.

9 (b) Medical information relevant to the specific claim includes a past
10 history of complaints or treatment of a condition similar to that presented in the
11 claim or other conditions related to the same body part. Information that may
12 be requested includes:

13 (1) Minimum data to justify services and payment, including that on the
14 standard paper 1500 form or electronic 837 form.

15 (2) Office notes of the examination relating to the injury diagnosis or
16 treatment.

17 (3) Any other relevant provider records contained in the file.

18 (c) An injured worker shall only be obligated to sign a medical record
19 release authorization approved by the department.

20 (d) Any medical information received by the employer or the insurance
21 carrier that is found not to be relevant to the claim may not be used to deny or

1 limit a claim. The commissioner may order that specific disclosure requests be
2 denied or rescinded and may make such other interim orders as are appropriate.

3 (e) Any medical information received in conjunction with a claim shall be
4 used only for the purpose of advancing or defending a claim relating to the
5 injury, or investigating a claim of false representation.

6 Sec. 6. 21 V.S.A. § 692 is amended to read:

7 § 692. PENALTIES; FAILURE TO INSURE; STOP WORK ORDERS

8 (a) Failure to insure. If after a hearing under section 688 of this title, the
9 commissioner determines that an employer has failed to comply with the
10 provisions of section 687 of this title, the employer shall be assessed an
11 administrative penalty of not more than \$100.00 for every day for the first
12 seven days the employer neglected to secure liability and not more than
13 \$150.00 for every day thereafter.

14 * * *

15 Sec. 7. Sec. 32 of No. 54 of the Acts of 2009 is amended to read:

16 Sec. 32. WORKERS' COMPENSATION; STATE CONTRACTS;
17 COMPLIANCE WITH DAVIS-BACON

18 (a) The agencies of administration and transportation shall establish
19 procedures to assure that state contracting procedures and contracts are
20 designed to minimize the incidents of miscoding of employees in NCCI job
21 codes and misclassification of the status of workers as independent contractors

1 rather than employees by state contractors on projects with a total project cost
2 of more than \$250,000.00 by requiring those contractors to provide, at a
3 minimum, all the following:

4 * * *

5 (3) For construction and transportation projects over \$250,000.00, a
6 payroll process by which during every pay period the contractor collects from
7 the subcontractors or independent contractors a list of all workers who were on
8 the jobsite during the pay period, the work performed by those workers on the
9 jobsite, and a daily census of the jobsite. This information, including
10 confirmation that contractors, subcontractors, and independent contractors
11 have the appropriate workers' compensation coverage for all workers at the job
12 site, and similar information for the subcontractors regarding their
13 subcontractors shall also be provided to the department of labor and to the
14 department of banking, insurance, securities, and health care administration,
15 upon request, and shall be available to the public.

16 * * *

17 (c) The agencies shall assure that any state contract funded in whole or in
18 part with American Recovery and Reinvestment Act of 2009 (ARRA) monies
19 or any project for which the state granted, allocated, or awarded ARRA monies
20 shall comply with the payment of Davis-Bacon wages when required by
21 ARRA. However, in the event the applicable Davis-Bacon wages in any

1 county have not been updated in the previous three years, the minimum state
2 required wage for a state contract subject to Davis-Bacon wages under ARRA
3 shall be that of the Vermont county that has most recently updated its
4 applicable Davis-Bacon wages, provided this provision does not result in the
5 loss of ARRA funds and is not otherwise contrary to federal law. In the event
6 that the most recently updated Davis-Bacon wages cannot be determined due
7 to the simultaneous updating by two or more counties, the agencies may select
8 the minimum state-required wage for a state contract subject to Davis-Bacon
9 wages under ARRA from among those counties.

10 Sec. 8. EFFECTIVE DATE

11 This act shall take effect on passage.