No. 50. An act relating to the workers' compensation and unemployment compensation statutes.

(S.96)

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

Sec. 1. FINDINGS

The general assembly finds that it is important to ensure that an injured worker's medical records and personal information are kept secure and that health care providers, workers' compensation insurers, and the department of labor adopt practices that are consistent with relevant state and federal statutes regarding medical and personal privacy.

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

§ 641. VOCATIONAL REHABILITATION

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

The written notice shall be evidence of the opportunity to participate in plan development and shall be appended to the proposed plan.

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Sec. 3. 21 V.S.A. § 640b is added to read:

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

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

(1) authorize the treatment and notify the health care provider, the injured worker, and the department; or

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

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

(3) notify the health care provider, the injured worker, and the department that the insurer has scheduled an examination of the employee or ordered a medical record review pursuant to section 655 of this title. Based on the examination or review, the insurer shall authorize or deny the treatment and

notify the department and the injured worker of the decision within 45 days of a request for preauthorization. The commissioner may in his or her sole discretion grant a 10-day extension to the insurer to authorize or deny treatment, and such an extension shall not be subject to appeal.

(b) If the insurer fails to authorize or deny the treatment pursuant to subsection (a) of this section within 14 days of receiving a request, the claimant or health care provider may request that the department issue an order authorizing treatment. After receipt of the request, the department shall issue an interim order within five days after notice to the insurer, and five days in which to respond, absent evidence that the entire claim is disputed. Upon request of a party, the commissioner shall notify the parties that the treatment has been authorized by operation of law.

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

Sec. 4. 21 V.S.A. § 655a is added to read:

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

(a) Health care providers examining or attending the examination of an injured worker pursuant to this chapter shall provide relevant medical records and reports as requested by the injured worker, the employer, or the department regarding the diagnosis, condition, or treatment of the worker, permanent impairment, or any restrictions or limitations on the worker's ability to work upon receiving a written medical release authorization from the injured worker. The authorization shall be on a form approved by the department. If the relevance of any medical information is disputed, the department shall determine whether the requested medical information is relevant.

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

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

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

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

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

(d) Any medical information received by the employer or the insurance carrier that is found not to be relevant to the claim may not be used to deny or limit a claim. The commissioner may order that specific disclosure requests be denied or rescinded and may make such other interim orders as are appropriate.

(e) Any medical information received in conjunction with a claim shall be used only for the purpose of advancing or defending a claim relating to the injury or of investigating a claim of false representation or of ensuring compliance with the workers' compensation statutes and rules.

Sec. 5. 21 V.S.A. § 692 is amended to read:

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

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

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Sec. 6. Sec. 32 of No. 54 of the Acts of 2009 is amended to read:

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

(a) The agencies of administration and transportation shall establish procedures to assure that state contracting procedures and contracts are designed to minimize the incidents of miscoding of employees in NCCI job codes and misclassification of the status of workers as independent contractors rather than employees by state contractors on projects with a total project cost of more than $250,000.00 by requiring those contractors to provide, at a minimum, all the following:

* * *

(3) For construction and transportation projects over $250,000.00, a payroll process by which during every pay period the contractor collects from the subcontractors or independent contractors a list of all workers who were on the jobsite during the pay period, the work performed by those workers on the jobsite, and a daily census of the jobsite. This information, including confirmation that contractors, subcontractors, and independent contractors have the appropriate workers' compensation coverage for all workers at the job site, and similar information for the subcontractors regarding their subcontractors shall also be provided to the department of labor and to the

department of banking, insurance, securities, and health care administration, upon request, and shall be available to the public.

* * *

(c) The agencies shall assure that any state contract funded in whole or in part with American Recovery and Reinvestment Act of 2009 (ARRA) monies or any project for which the state granted, allocated, or awarded ARRA monies shall comply with the payment of Davis-Bacon wages when required by ARRA. However, in the event the applicable Davis-Bacon wages in any county have not been updated in the previous three years, the minimum state required wage for a state contract subject to Davis-Bacon wages under ARRA shall be that of the Vermont county that has most recently updated its applicable Davis-Bacon wages, provided this provision does not result in the loss of ARRA funds and is not otherwise contrary to federal law. In the event that the most recently updated Davis-Bacon wages cannot be determined due to the simultaneous updating by two or more counties, the agencies may select the minimum state-required wage for a state contract subject to Davis-Bacon wages under ARRA from among those counties.

Sec. 7. 21 V.S.A. § 1314 is amended to read:

§ 1314. REPORTS AND RECORDS; SEPARATION INFORMATION; DETERMINATION OF ELIGIBILITY; FAILURE TO REPORT EMPLOYMENT INFORMATION; DISCLOSURE OF INFORMATION TO OTHER STATE AGENCIES TO INVESTIGATE MISCLASSIFICATION OR MISCODING

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(d)(1) Except as otherwise provided in this chapter, information obtained from any employing unit or individual in the administration of this chapter, and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or open to public inspection in any manner revealing the individual's or employing unit's identity, nor be admissible in evidence in any action or proceeding other than one arising out of this chapter, or to support or facilitate an investigation by a public agency identified in subdivision (e)(1) of this section.

(2) An individual or his or her duly authorized agent may be supplied with information from those records to the extent necessary for the proper presentation of his or her claims for benefits or to inform him or her of his or her existing or prospective rights to benefits; an employing unit may be furnished with such information as may be deemed proper, within the

discretion of the commissioner, to enable it to fully discharge its obligations and safeguard its rights under this chapter.

~~(2)~~(3) Automatic data processing services and systems and programming services within the department of labor shall be the responsibility and under the direct control of the commissioner in the administration of this chapter and chapter 15 of this title.

~~(3)~~(4) Notwithstanding the provisions in subdivision (2) of this section, the department of labor shall, at the request of the agency of administration, perform such services for other departments and agencies of the state as are within the capacity of its data processing equipment and personnel, provided that such services can be accomplished without undue interference with the designated work of the department of labor

(e)(1) Subject to such restrictions as the board may by regulation prescribe, information from unemployment insurance records may be made available to any public officer or public agency of this or any other state or the federal government dealing with the administration or regulation of relief, public assistance, unemployment compensation, a system of public employment offices, wages and hours of employment, workers' compensation, misclassification or miscoding of workers, occupational safety and health, or a public works program for purposes appropriate to the necessary operation of those offices or agencies. The commissioner may also make information

available to colleges, universities, and public agencies of the state for use in connection with research projects of a public service nature, and to the Vermont economic progress council with regard to the administration of subchapter 11E of chapter 151 of Title 32; but no person associated with those institutions or agencies may disclose that information in any manner which would reveal the identity of any individual or employing unit from or concerning whom the information was obtained by the commissioner.

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Sec. 8. 21 V.S.A. § 1453 is amended to read:

§ 1453. APPROVAL OR REJECTION; RESUBMISSION

The commissioner shall approve or reject a plan in writing within ~~15~~ 30 days of its receipt, and in the case of rejection shall state the reasons therefor. The reasons for rejection shall be final and nonappealable, but the employer shall be allowed to submit another plan for approval.

Sec. 9. REPORT

The department of labor shall review and assess information relating to workers' compensation medical information and records to determine whether the scope of information contained in the medical records exceeds that relating only to a work-related injury and whether nonrelevant medical information is being sent to the department without redaction. The department shall report its findings and any recommendations to the house committee on commerce and

economic development and the senate committee on economic development, housing and general affairs by January 15, 2012.

Sec. 9a. FINDINGS

The general assembly finds that:

(1) Federal law allows employees who work in a noninstructional, research, or principal administrative capacity in an educational institution to receive unemployment benefits between academic terms. This law allows bus drivers, custodians, and cafeteria staff, among others, to receive benefits.

(2) During the time Vermont allowed the receipt of these benefits, the Vermont supreme court held in Riddel v. Department of Employment Security that teachers' aides and para-educators were not eligible for unemployment benefits between academic terms because they were considered to be working in an instructional capacity.

(3) More study is needed to determine the impact of reinstating unemployment benefits between school terms.

Sec. 9b. STUDY

(a) The commissioner of labor in consultation with the Vermont school boards association and any other interested parties shall study the issue of allowing the receipt of unemployment benefits between academic terms for noninstructional employees. The study shall consider the costs of allowing receipt of such benefits, the employees who would be eligible for benefits, and

any other relevant issues. In addition, the study shall consider the potential benefit to those employees of school-district-coordinated job placement services for the months between academic terms.

(b) The commissioner shall also study the issue of whether wages paid by an elderly individual for in-home assistance should be subject to the unemployment insurance statutes.

(c) The commissioner shall also study the issue of allowing the employees of a school district to elect to have their wages paid over the course of a calendar year.

(d) The commissioner shall report his or her findings and any recommendations to the senate committee on economic development, housing and general affairs and the house committees on commerce and economic development and on general, housing and military affairs by January 15, 2012.

Sec. 9c. 21 V.S.A. § 1325 is amended to read:

§ 1325. EMPLOYERS' EXPERIENCE-RATING RECORDS; DISCLOSURE TO SUCCESSOR ENTITY; EMPLOYEE PAID $1,000.00 OR LESS DURING BASE PERIOD

(a) The commissioner shall maintain an experience-rating record for each employer. Benefits paid shall be charged against the experience-rating record of each subject employer who provided base-period wages to the eligible individual. Each subject employer's experience-rating charge shall bear the

same ratio to total benefits paid as the total base-period wages paid by that employer bear to the total base-period wages paid to the individual by all base-period employers. The experience-rating record of an individual subject base-period employer shall not be charged for benefits paid to an individual under any of the following conditions:

(1) The individual's employment with that employer was terminated under disqualifying circumstances.

(2) The individual's employment or right to reemployment with that employer was terminated by retirement of the individual pursuant to a retirement or lump-sum retirement pay plan under which the age of mandatory retirement was agreed upon by the employer and its employees or by the bargaining agent representing those employees.

(3) As of the date on which the individual filed an initial claim for benefits, the individual's employment with that employer had not been terminated or reduced in hours.

(4) The individual was employed by that employer as a result of another employee taking leave under subchapter 4A of chapter 5 of this title, and the individual's employment was terminated as a result of the reinstatement of the other employee under subchapter 4A of chapter 5 of this title.

(5) The individual was paid wages of $1,000.00 or less by the employer in the individual's base period.

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Sec. 9d. STUDY; EMPLOYER FURNISHING REQUIRED APPAREL

(a) The department of labor shall study the issue of requiring employers that require their employees to wear apparel that displays the employer's trademark, logo, or other identifying characteristic to furnish the apparel free of charge to their employees. The study shall consider the economic impact of such a requirement on employers and employees and any other relevant issues.

(b) The department shall report its findings and any recommendations to the senate committee on economic development, housing and general affairs and the house committees on commerce and economic development and on general, housing and military affairs by January 15, 2012.

Sec. 9e. SUNSET

21 V.S.A. § 1325(a)(5) (relating to relieving an employer's experience record of charges) shall be repealed on July 1, 2012.

Sec. 10. EFFECTIVE DATES

This section and Secs. 5, 6, 7, 8, and 9 of this act shall take effect on passage. The remaining sections shall take effect on July 1, 2011.

Approved: May 26, 2011