This information is provided to attendees at the Annual Workers' Compensation Educational Conference. These statutes and rules are provided for the convenience of the user and no representation or warranty is made that the information is current or accurate. With the printing of these statutory and, where applicable, regulatory provisions, we attempt to be correct and accurate. We will correct any errors or omissions and we encourage readers to inform us of any errors by emailing stephanie@wci360.com. For the "official text" of each state's law, please refer to the promulgated statutory provisions of each such state.

Vermont Statutes

Title 21: Labor

Chapter 9: Employer's Liability And Workers' Compensation

§ 601. Definitions

§ 602. Process and procedure

§ 603. Witnesses, oaths, books, papers, records

§ 604. Manner of trying causes; evidence

§ 605. Testimony of person without the state, how taken

§ 606. Determination of questions

§ 607. Decisions; enforcement; appeals

§ 608. Application of chapter when state not an employer

§ 609. Repealed. 1981, No. 165 (Adj. Sess.), § 7.

§ 610. Election by state as employer

§ 611. Repealed . 1977, No. 182 (Adj. Sess.), Section 22, eff. May 3, 1978.

§§ 612- 615. Repealed . 1973, No. 70, Section 3.

§ 616. Employments covered

§ 617. Repealed. 1969, No. 186 (Adj. Sess.), § 2.

§ 618. Compensation for personal injury

§ 619. Injuries outside of state

§ 620. Worker hired outside of state

§ 621. Interstate commerce

§ 622. Right to compensation exclusive

§ 623. Contracts to work outside state

§ 624. Dual liability; claims, settlement procedure

§ 625. Contracting out forbidden

§§ 626- 628. Repealed . 1981, No. 165 (Adj. Sess.), Section 7.

§ 629. Repealed. 1989, No. 104, § 2, eff. Feb. 1, 1990.

§§ 630, 631. Repealed . 1981, No. 165 (Adj. Sess.), Section 7.

§ 632. Compensation to dependents; burial and funeral expenses

§ 633. Apportionment of compensation

§ 634. Dependents; construction

§ 635. Periods of compensation

§ 636. Compensation for unexpired period; determined

§ 637. Death benefits; rival claimants

§ 638. Repealed. 1977, No. 182 (Adj. Sess.), § 22, eff. May 3, 1978.

§ 639. Death, payment to dependents

§ 640. Medical benefits; assistive devices; home and automobile modifications

§ 640a. Medical bills; payment; dispute

§ 640b. Request for preauthorization to determine if proposed treatment is necessary

§ 640c. Opioid usage deterrence

§ 641. Vocational rehabilitation

§ 642. Temporary total disability benefits

§ 642a. Temporary total; insurer review

§ 643. Period of payments

§ 643a. Discontinuance of benefits

[Section 643a effective until July 1, 2018; see also section 643a effective July 1, 2018 set out below.]

§ 643a. Discontinuance of benefits

[Section 643a effective July 1, 2018; see also section 643a effective until July 1, 2018 set out above.]

§ 643b. Reinstatement; seniority and benefits protected

§ 643c. Commissioner to provide notice; monitoring

§ 644. Permanent total disability

§ 645. Amount payable

§ 646. Temporary partial disability benefits

§ 647. Period of payment

§ 648. Permanent partial disability benefits

§ 649. Injuries not covered; burden of proof

§ 650. Payment; average wage; computation

§ 651. Voluntary payments

§ 652. Periodical payments; lump sum payments

§ 653. Repealed. 1977, No. 182 (Adj. Sess.), § 22, eff. May 3, 1978.

§ 654. Trustee in case of lump payments; appointment; expense

§ 655. Procedure in obtaining compensation; medical examination; video and audio recording

§ 655a. Release of relevant medical records by health care providers; Department to oversee release and use of relevant medical information

§ 656. Notice of injury and claim for compensation

§ 657. After court judgment against employee

§ 658. Form of notice and claim

§ 659. Giving of notice and making of claim

§ 660. Sufficiency of notice of injury

§ 660a. Electronic filing of reports of injury

§ 661. Limitation of time as regards minors and persons with a mental condition or psychiatric disability

§ 662. Agreements; required payments in absence of

§ 663. Hearings, where held; decision

§ 663a. Workers' compensation dispute mediation

§ 663b. Fraud

§ 664. Trial and award

§ 665. Repealed. 1985, No. 194 (Adj. Sess.), § 6.

§ 666. Manner of giving notice of hearing

§ 667. Examination by independent medical examiners

§ 668. Modification of awards

§ 669. Finality of award

§ 670. Appeals to superior court

§ 671. Jurisdiction; findings for new award

§ 672. Appeals to the supreme court

§ 673. Appeal in case of fraud, accident, or mistake

§ 674. Service of petition

§ 675. Enforcement of award

§ 676. Revision of decrees

§ 677. New hearings; when granted; procedure

§ 678. Costs; attorney's fees

§ 679. Fees of sheriffs and witnesses

§ 680. Preferences

§ 681. Claims not assignable

§ 682. Liens against compensation

§§ 683- 686. Repealed . 1999, No. 41, Section 8(a)(2).

§ 687. Security for compensation

§ 687a. Self-insurance by associations

§ 688. Administrative penalties; insurance company's license suspended

§ 689. Employer compelled to insure

§ 690. Certificate, form; copy of policy

§ 691. Posting of notice of compliance

§ 691a. Posting of safety records

§ 692. Penalties; failure to insure; stop work orders

§ 693. The insurance contract

§ 694. Knowledge of employer to affect insurance carrier

§ 695. Insolvency of employer not to release insurance carrier

§ 696. Cancellation of insurance contracts

§ 697. Notice of intent not to renew policy

§ 698. Insurance by state and municipalities

§ 699. Employees not to pay for insurance

§ 700. Examination of policy

§ 701. Reports of accidents by employers

§ 702. Contents; penalty

§ 703. Reports of payments made by employers

§ 704. Reports, penalty

§ 705. Registration, penalty

§ 706. Construction

§ 707. Repealed. 2003, No. 122 (Adj. Sess.), § 294(o).

§ 708. Penalty for false representation

§ 709. Rules of construction

§ 710. Unlawful discrimination

§ 711. Workers' Compensation Administration Fund

Title 21: Labor

Chapter 9: Employer's Liability And Workers' Compensation

§ 601. Definitions

Unless the context otherwise requires, words and phrases used in this chapter shall be construed as follows:

(1) "Brother" and "sister" includes a stepbrother and stepsister, half-brother and half-sister, and a brother and sister by adoption, but does not include a married brother or a married sister unless dependent.

(2) "Child" includes a stepchild, adopted child, posthumous child, grandchild, and a child for whom parentage has been established pursuant to 15 V.S.A. chapter 5, but does not include a married child unless the child is a dependent.

(3) "Employer" includes any body of persons, corporate or unincorporated, public or private, and the legal representative of a deceased employer, and includes the owner or lessee of premises or other person who is virtually the proprietor or operator of the business there carried on, but who, by reason of there being an independent contractor or for any other reason, is not the direct employer of the workers there employed. If the employer is insured, "employer" includes the employer's insurer so far as applicable. A person is not deemed to be

an "employer" for the purposes of this chapter as the result of entering into a contract for services or labor with an individual who has knowingly and voluntarily waived coverage of this chapter pursuant to subdivision (14)(F) of this section.

(4) "Employment" includes public employment, and, in the case of private employers, includes all employment in any trade or occupation notwithstanding that an employer may be a nonprofit corporation, institution, association, partnership, or proprietorship.

(5) "Grandchild" includes a child of an adopted child and a child of a stepchild, but does not include a stepchild of a child, a stepchild of a stepchild, a stepchild of an adopted child, or a married grandchild unless dependent.

(6) "Grandparent" includes a parent of a parent by adoption, but does not include a parent of a step-parent, a step-parent of a parent, or a step-parent of a step-parent.

(7) "Injury" and "personal injury" includes occupational diseases, death resulting from injury within two years and includes injury to and cost of acquiring and replacement of prosthetic devices, hearing aids, and eye glasses.

(8) "Insurance carrier" includes any corporation from which an employer has obtained workers' compensation insurance or guaranty insurance in accordance with the provisions of this chapter.

(9) "Parent" includes a step-parent and a parent by adoption.

(10) "Partial disability" may be held to include diminished ability to obtain employment owing to disfigurement resulting from an injury.

(11) "Personal injury by accident arising out of and in the course of employment" includes an injury caused by the willful act of a third person directed against an employee because of that employment.

(A) In the case of constables, chiefs of police, police officers, rescue or ambulance workers, and volunteer reserve police officers in any city, town, or incorporated village, disability or death from a heart injury or heart disease incurred or aggravated and proximately caused by service in the line of duty and that becomes symptomatic within 72 hours from the date of last service in the line of duty shall be presumed to be incurred in the line of duty.

(B) In the case of firefighters, as defined in 20 V.S.A. § 3151(3) and (4), disability or death from heart injury or heart disease that becomes symptomatic within 72 hours of service in the line of duty shall be presumed to be compensable.

(C) "Line of duty," as applied to firefighters and rescue and ambulance workers means one or more of the following:

(i) Service in the worker's town or district, in answer to a call of the department, including going to and returning from a fire or emergency or participating in a fire or emergency drill, parade, test, or trial of any firefighting or emergency equipment.

(ii) Similar service in another town or district to which the department has been called for firefighting or emergency purposes.

(iii) Service under orders of any department officer in any other emergency to which the department is called in the town or district where the department is established.

(iv) Activities authorized by the department for the purpose of raising funds for the department.

(D) "Line of duty" as applied to constables, police officers, or volunteer reserve police officers means either or both of the following:

(i) Service as a police officer in answer to a complaint lodged with the department, including going to, returning from, and investigating the complaint or disorder.

(ii) Service under orders from the department or in any emergency for which the employee serves as constable, police officer, or volunteer reserve police officer.

(E) In the case of a firefighter, as defined in 20 V.S.A. § 3151(3) and (4), who dies or has a disability from a cancer listed in subdivision (iv) of this subdivision (E), the firefighter shall be presumed to have had the cancer as a result of exposure to conditions in the line of duty, unless it is shown by a preponderance of the evidence that the cancer was caused by non-service-connected risk factors or non-service-connected exposure, provided:

(i) The firefighter completed an initial and any subsequent cancer screening evaluations as recommended by the American Cancer Society based on the age and sex of the firefighter prior to becoming a firefighter or within two years of the effective date of this act, and the evaluation indicated no evidence of cancer.

(ii) The firefighter was engaged in firefighting duties or other hazardous activities over a period of at least five years in Vermont prior to the diagnosis.

(iii) The presumption shall not apply to any firefighter who has used tobacco products at any time within 10 years of the date of diagnosis.

(iv) The disabling cancer shall be limited to leukemia, lymphoma, or multiple myeloma, and cancers originating in the bladder, brain, colon, gastrointestinal tract, kidney, liver, pancreas, skin, or testicles.

(v) The firefighter is under the age of 65.

(F) A firefighter who is diagnosed with cancer within 10 years of the last active date of employment as a firefighter shall be eligible for benefits under this subdivision. The date of injury shall be the date of the last injurious exposure as a firefighter.

(G) It is recommended that fire departments maintain incident report records for at least 10 years.

(H)(i) In the case of firefighters and members of a rescue or an ambulance squad, disability or death resulting from lung disease or an infectious disease either one of which is caused by aerosolized airborne infectious agents or blood-borne pathogens and acquired after a documented occupational exposure in the line of duty to a person with an illness shall be presumed to be compensable, unless it is shown by a preponderance of the evidence that the disease was caused by nonservice-connected risk factors or nonservice-connected exposure. The presumption of compensability shall not be available if the employer offers a vaccine that is refused by the firefighter or rescue or ambulance worker and the firefighter or rescue or ambulance worker is subsequently diagnosed with the particular disease for which the vaccine was offered, unless the firefighter or rescue or ambulance worker's physician deems that the vaccine is not medically safe or appropriate for the firefighter or rescue or ambulance worker.

(ii) In the case of lung disease the presumption of compensability shall not apply to any firefighter or rescue or ambulance worker who has used tobacco products at any time within 10 years of the date of diagnosis.

(iii) A firefighter or rescue or ambulance worker shall have been diagnosed within 10 years of the last active date of employment as a firefighter or rescue or ambulance worker.

(iv) As used in this subdivision, "exposure" means contact with infectious agents such as bodily fluids through inhalation, percutaneous inoculation, or contact with an open wound, nonintact skin, or mucous membranes, or other potentially infectious materials that may result from the performance of an employee's duties. Exposure includes:

(I) Percutaneous exposure. Percutaneous exposure occurs when blood or bodily fluid is introduced into the body through the skin, including by needle sticks, cuts, abrasions, broken cuticles, and chapped skin.

(II) Mucocutaneous exposure. Mucocutaneous exposure occurs when blood or bodily fluids come in contact with a mucous membrane.

(III) Airborne exposure. Airborne exposure means contact with an individual with a suspected or confirmed case of airborne disease or contact with air containing aerosolized airborne disease.

(12) "Public employment" means the following:

(A) all officers and State employees, as defined in 3 V.S.A. § 1101, of all State agencies, departments, divisions, boards, commissions, and institutions, and the Vermont Historical Society;

(B) full-time State's Attorneys and full-time Deputy State's Attorneys;

(C) officers and employees of the General Assembly, provided however, that members of the General Assembly shall be considered as public employees only for the periods that the General Assembly is in session or while engaged in duties for which compensation is provided by law;

(D) members of the Military Forces of the State of Vermont while in the active service of this State ordered by competent authority;

(E) employees of towns, town school districts, incorporated school districts, incorporated villages, and fire districts;

(F) road commissioners or selectboard members while actually engaged in highway maintenance or construction;

(G) policemen, firemen, and other municipal employees entitled to pensions;

(H) all teachers, as defined in 16 V.S.A. § 1931. No municipality may vote to exclude teachers from the applicability of this chapter;

(I) personnel who are engaged by the State of Vermont in forest fire suppression under the provisions of the Northeastern Forest Fire Protection Compact, while in the active service of this State ordered by competent authority;

(J) volunteer reserve police officers of towns and incorporated villages while acting in the line of duty, when the selectboard members or trustees vote to have those officers covered by this chapter;

(K) other municipal workers, including volunteer firefighters and rescue and ambulance squads while acting in any capacity under the direction and control of the fire department or rescue and ambulance squads;

(L) members of any regularly organized private volunteer fire department while acting in any capacity under the direction and control of the fire department;

(M) members of any regularly organized private volunteer rescue or ambulance squad while acting in any capacity under the direction and control of the rescue or ambulance squad;

(N) sheriffs, full-time deputy sheriffs and county clerks, judges of probate, probate registers, and clerks paid by the State of Vermont;

(O) the term "public employment" shall not include the following:

(i) public officials who are elected by popular vote, except those hereinbefore mentioned in this subdivision;

(ii) assistant judges of the Superior Court, high bailiffs, county treasurers, or any of their deputies or subordinates;

(iii) prisoners or wards of the State;

(iv) any person engaged by the State under retainer or special agreement.

(13) "Wages" includes bonuses and the market value of board, lodging, fuel, and other advantages which can be estimated in money and which the employee receives from the employer as a part of his or her remuneration; but does not include any sum paid by the employer to his or her employee to cover any special expenses entailed on the employee by the nature of his or her employment.

(14) "Worker" and "employee" means an individual who has entered into the employment of, or works under contract of service or apprenticeship with, an employer. Any reference to a worker who has died as the result of a work injury shall include a reference to the worker's dependents, and any reference to a worker who is a minor or incompetent shall include a reference to the minor's committee, guardian, or next friend. The term "worker" or "employee" does not include:

(A) An individual whose employment is of casual nature, and not for the purpose of the employer's trade or business.

(B) An individual engaged in amateur sports even if an employer contributes to the support of such sports.

(C) An individual engaged in agriculture or farm employment for an employer whose aggregate payroll is less than $10,000.00 in a calendar year, unless the employer notifies the

Commissioner that the employer wishes to be included within the provisions of this chapter; the existence of a contract of insurance shall be considered sufficient notice.

(D) A member of the employer's family dwelling in the employer's house; but, if in any contract of insurance the wages or salary of such a member of the employer's family is included in the payroll on which the premium is based, then that family member shall, in the event of sustaining an injury arising out of and in the course of employment be deemed an employee and compensated accordingly.

(E) Any individual engaged in any type of service in or about a private dwelling unless the employer notifies the Commissioner that the employer wishes to be included within the provisions of this chapter; the existence of a contract of insurance shall be considered sufficient notice.

(F) The sole proprietor or partner owner or partner owners of an unincorporated business provided:

(i) The individual performs work that is distinct and separate from that of the person with whom the individual contracts.

(ii) The individual controls the means and manner of the work performed.

(iii) The individual holds him or herself out as in business for him or herself.

(iv) The individual holds him or herself out for work for the general public and does not perform work exclusively for or with another person.

(v) The individual is not treated as an employee for purposes of income or employment taxation with regard to the work performed.

(vi) The services are performed pursuant to a written agreement or contract between the individual and another person, and the written agreement or contract explicitly states that the individual is not considered to be an employee under this chapter, is working independently, has no employees, and has not contracted with other independent contractors. The written contract or agreement shall also include information regarding the right of the individual to purchase workers' compensation insurance coverage and the individual's election not to purchase that coverage. However, if the individual who is party to the agreement or contract under this subdivision is found to have employees, those employees may file a claim for benefits under this chapter against either or both parties to the agreement.

(G) An individual who performs services as a real estate broker or real estate salesperson, provided:

(i) the individual is licensed to broker or sell real estate pursuant to 26 V.S.A. chapter 41;

(ii) all the individual's compensation from performing real estate broker or sales services is based on commissions from sales production or results and is not based on time worked or an hourly wage;

(iii) the services are performed pursuant to a written agreement or contract between the individual and the real estate sales or broker business or another person with whom the individual is affiliated or associated and the written agreement or contract explicitly states that the individual is not considered to be an employee under this chapter and is not eligible for coverage under this chapter; and

(iv) the individual is not treated as an employee for the purposes of federal income and employment taxation with regard to the real estate broker or sales services performed.

(H) With the approval of the Commissioner, a corporation or a limited liability company (L.L.C.) may elect to file exclusions from the provisions of this chapter. A corporation or an L.L.C. may elect to exclude up to four executive officers or managers or members from coverage requirements under this chapter. If all officers of the corporation or all managers or members of an L.L.C. make such election, receive approval, and the business has no employees, the corporation or L.L.C. shall not be required to purchase workers' compensation coverage. If after election, the officer, manager, or member experiences a personal injury and files a claim under this chapter, the employer shall have all the defenses available in a personal injury claim. However, this election shall not prevent any other individual, other than the individual excluded under this section, found to be an employee of the corporation or L.L.C. to recover workers' compensation from either the corporation, L.L.C., or the statutory employer.

(15) "Average weekly wages" means the average weekly wages as computed under section 650 of this title.

(16) "Average compensation" means the current "average weekly wage" under section 1338 of this title, determined previous to the first day of July preceding the date of injury or when compensation is awarded, whichever is later.

(17) Repealed.]

(18) "Maximum weekly compensation" shall mean a sum of money equal to 150 percent of the average compensation, rounded to the next higher dollar.

(19) "Minimum weekly compensation" shall mean a sum of money equal to 50 percent of the average compensation, rounded to the next higher dollar. However, solely for the purposes of determining permanent total or partial disability compensation where the employee's average

weekly wage computed under section 650 of this title is lower than the minimum weekly compensation, the employee's weekly compensation shall be the full amount of the employee's average weekly wages. For the purpose of determining temporary total or temporary partial disability compensation where the employee's average weekly wage computed under section 650 of this title is lower than the minimum weekly compensation, the employee's weekly compensation shall be 90 percent of the employee's average weekly wage prior to any cost of living adjustment calculated under subsection 650(d) of this title.

(20) "Commissioner" means the Commissioner of Labor or the Commissioner's designee.

(21) Repealed.]

(22) "Health care provider" means a person, partnership, corporation, facility, or institution licensed or certified or authorized by law to provide professional health care service to an individual during the individual's medical care, treatment, or confinement.

(23) "Occupational disease" means a disease that results from causes and conditions characteristic of and peculiar to a particular trade, occupation, process, or employment, and to which an employee is not ordinarily subjected or exposed outside or away from the employment and arises out of and in the course of the employment.

(24) "Evidence that reasonably supports an action" means, for the purposes of section 643a and subsections 650(e) and 662(b) of this title, relevant evidence that a reasonable mind might accept as adequate to support a conclusion that must be based on the record as a whole, and take into account whatever in the record fairly detracts from its weight.

(25) "Medical bill" means any claim, bill, or request for payment from a health care provider or employee for all or any portion of health care services provided to the employee for an injury for which the employee has filed a claim under this chapter.

(26) "Denied medical payment" or "medical bill denial" means a refusal to pay a medical bill based on the employer or insurance carrier asserting, supported by reasonable evidence, any one or more of the following:

(A) The employer or insurance carrier was not provided with sufficient information to determine the payer liability.

(B) The employer or insurance carrier was not provided with reasonable access to information needed to determine the liability or basis for payment of the claim.

(C) The employer or insurance carrier has no liability to pay a medical bill under the provisions of this chapter.

(D) The service was not reasonable or medically necessary.

(E) Another payer is liable.

(F) Another legal or factual ground for nonpayment.

(27) "Medically necessary care" means health care services for which an employer is otherwise liable under the provisions of this chapter, including diagnostic testing, preventive services, and aftercare, that are appropriate, in terms of type, amount, frequency, level, setting, and duration, to the injured employee's diagnosis or condition. Medically necessary care must be informed by generally accepted medical or scientific evidence and consistent with generally accepted practice parameters as recognized by health care professionals in the same specialties as typically provide the procedure or treatment, or diagnose or manage the medical condition; must be informed by the unique needs of each individual patient and each presenting situation; and must:

(A) help restore or maintain the injured employee's health; or

(B) prevent deterioration of or palliate the injured employee's condition; or

(C) prevent the reasonably likely onset of a health problem or detect an incipient problem.

(28) "Aerosolized airborne infectious agents" means microbial aerosols that can enter the human body, usually through the respiratory tract, and cause disease, including mycobacterium tuberculosis, meningococcal meningitis, varicella zoster virus, diphtheria, mumps, pertussis, pneumonic plague, rubella, severe acute respiratory syndrome, anthrax, and novel influenza.

(29) "Blood-borne pathogens" means pathogenic microorganisms that are present in human blood and can cause disease in humans, including anthrax, hepatitis B virus (HBV), hepatitis C virus (HCV), human immunodeficiency virus (HIV), rabies, vaccinia, viral hemorrhagic fevers, and methicillin-resistant staphylococcus aureus.

(30) "Bodily fluids" means blood and bodily fluids containing blood or other potentially infectious materials as defined in the Vermont Occupational Safety and Health Administration Bloodborne Pathogen Standard (1910.1030). Bodily fluids also include respiratory, salivary, and sinus fluids, including droplets, sputum and saliva, mucus, and other fluids through which infectious airborne organisms can be transmitted between persons. (Amended 1959, No. 222; 1965, No. 169; 1967, No. 122, § 1; 1969, No. 186 (Adj. Sess.), § 1; 1971, No. 241 (Adj. Sess.), §§ 1, 2; 1973, No. 64, § 1; 1973, No. 70, § 1; 1975, No. 177 (Adj. Sess.), § 1; 1975, No. 201 (Adj. Sess.); 1977, No. 182 (Adj. Sess.), §§ 1, 21, eff. May 3, 1978; 1981, No. 39; 1981, No. 165 (Adj. Sess.), §§ 1, 3, 4; 1981, No. 204 (Adj. Sess.), §§ 1, 2; 1983, No. 121 (Adj. Sess.), § 1, eff. March 28, 1984; 1985, No. 194 (Adj. Sess.), §§ 1, 2; 1987, No. 183 (Adj. Sess.), § 13; 1987, No. 189 (Adj.

Sess.); 1993, No. 23, §§ 1, 2, eff. May 19, 1993; 1993, No. 225 (Adj. Sess.), §§ 1, 2; 1995, No. 180 (Adj. Sess.), § 38a; 1999, No. 41, §§ 2, 3; 2003, No. 132 (Adj. Sess.), §§ 4, 14, eff. May 26, 2004; 2005, No. 69, § 1; 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006; 2005, No. 108 (Adj. Sess.), § 2; 2005, No. 209 (Adj. Sess.), § 32; 2005, No. 212 (Adj. Sess.), § 11, eff. May 29, 2006; 2007, No. 42, § 2; 2009, No. 61, § 26; 2011, No. 133 (Adj. Sess.), § 3; 2011, No. 155 (Adj. Sess.), § 44; 2013, No. 86, § 1; 2013, No. 96 (Adj. Sess.), § 136; 2013, No. 161 (Adj. Sess.), § 72.)

§ 602. Process and procedure

(a) All process and procedure under the provisions of this chapter shall be as summary and simple as reasonably may be. The Commissioner may make rules not inconsistent with such provisions for carrying out the same and shall cause to be printed and furnished, free of charge, to any employer or employee such forms as he or she deems necessary to facilitate or promote the efficient administration of such provisions.

(b) The Commissioner shall determine the form in which reports are filed and what shall constitute a signature on the reports, including those filed in other than paper form, such as electronically or over telephone lines.

(c) Any communication from an employer or an insurer to a claimant that is not otherwise required to be provided on a form prescribed by the Commissioner must include a statement advising the claimant that he or she should contact the Department of Labor's Workers' Compensation Division to determine any right to object or appeal, as provided by law, and to seek information from the Department on the process and procedures. (Amended 2009, No. 146 (Adj. Sess.), § B17; 2013, No. 199 (Adj. Sess.), § 61, eff. June 24, 2014.)

§ 603. Witnesses, oaths, books, papers, records

(a) So far as it is necessary in his or her examinations, investigations and in the determination of matters within his or her jurisdiction, the commissioner shall have power to subpoena witnesses, administer oaths and to demand the production of books, papers, records and documents for his or her examination.

(b) The superior court, a justice of the supreme court or a superior judge shall have power to enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of such books, papers, records and documents before such commissioner, and in the case of a corporation, the provisions of sections 441-444 of Title 11 shall apply. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)

§ 604. Manner of trying causes; evidence

The commissioner shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure except as provided in this chapter, but he or she may make such investigation or inquiry or conduct such hearing or trial in such manner as to ascertain the substantial rights of the parties. Declarations of the deceased employee concerning his or her accident may be received in evidence and shall be sufficient to establish the accident and the injury, if corroborated by circumstances or other evidence.

§ 605. Testimony of person without the state, how taken

Upon the application of a party in a cause pending before him or her and on such notice to the adverse party or his or her attorney as he or she thinks reasonable, the commissioner may issue a commission to a person designated by the commissioner, to take the testimony of a person residing or being without the state. Such testimony shall be taken upon interrogatories settled by order of the commissioner or upon oral examination, as he or she directs.

§ 606. Determination of questions

Questions arising under the provisions of this chapter, if not settled by agreement of the parties interested therein with the approval of the commissioner, shall be determined, except as otherwise provided, by the commissioner.

§ 607. Decisions; enforcement; appeals

The decisions of the commissioner shall be enforceable by the superior court under the provisions of section 675 of this title. From such a decision an appeal shall lie in the same manner as other appeals from the commissioner. However, in no case shall such an appeal operate as a supersedeas or stay unless he, she, or the court to which such appeal is taken shall so order. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)

§ 608. Application of chapter when state not an employer

The provisions of this chapter shall not be construed so as to make the state an employer where it only renders state aid to a municipality or approves of its plans or supervisors.

§ 609. Repealed. 1981, No. 165 (Adj. Sess.), § 7.

§ 610. Election by state as employer

The provisions of this chapter relating to the state as an employer shall be deemed to be an election by the state where an election is required by the provisions of this chapter.

§§ 611Repealed. 1977, No. 182 (Adj. Sess.), § 22, eff. May 3, 1978.

§§ 612-615. Repealed. 1973, No. 70, § 3.

§ 616. Employments covered

(a) Except as otherwise provided in this section and other provisions of this chapter, this chapter shall apply to all employment in this state, and where provided, to employment outside of the state.

(b) This chapter does not apply to employment in any case where the laws of the United States of America provide for compensation, by an employer to his or her employee, for injury or death in employment. However, if jurisdiction is vested in this state under such laws, this chapter shall apply to the employment. (Amended 1967, No. 51; 1973, No. 70, § 2.)

§ 617. Repealed. 1969, No. 186 (Adj. Sess.), § 2.

§ 618. Compensation for personal injury

(a)(1) If a worker receives a personal injury by accident arising out of and in the course of employment by an employer subject to this chapter, the employer or the insurance carrier shall pay compensation in the amounts and to the person hereinafter specified. The compensation of a person who is under guardianship shall be paid to the person's guardian.

(2) If the injury occurred while engaged off the premises of the employer in a recreational activity that is available to the employee as part of the employee's compensation package or as an inducement to attract employees, it shall not be considered to have occurred in the course of employment unless the Commissioner finds at least one of the following:

(A) The employer derived substantial benefit from the activity, beyond that of attracting labor or improving employee health and morale.

(B) The activity was reasonably part of the employee's regular duties or undertaken to meet the expectations of the employer.

(C) The activity was undertaken at the request of the employer.

(3) [Repealed.]

(b) A worker who receives a personal injury by accident arising out of and in the course of employment with an employer who has failed to comply with section 687 of this title may elect to claim compensation under this chapter or to bring a civil action against the employer for full damages resulting from the work injury. In the civil action the employer has the burden of proving that the injury did not result from the employer's negligence and that the employer's

negligence was not the proximate cause of the injury. The employer may not plead as a defense any of the following:

(1) The injury was caused by the negligence of a fellow-employee.

(2) The defense provided under 12 V.S.A. § 1036 unless the negligence was willful and with the intent of causing an injury.

(3) The employee assumed any risk in the employment.

(c) A worker shall commence a civil action under subsection (b) of this section within the three-year limitation period as provided in 12 V.S.A. § 512(4).

(d) The acceptance of any payment by an employee for a work injury shall not bar a subsequent election to pursue a civil suit under subsection (b) of this section unless the employee, with knowledge of his or her rights, signs a written agreement waiving the right to pursue a civil action. The agreement shall be filed with and approved by the Commissioner. If the employer fails to pay any amount due and owing under the workers' compensation act, the waiver agreement shall be void and the employee may pursue a civil action.

(e) Any employee who prevails in a civil action under subsection (b) of this section shall be entitled to costs, interest from the date of filing the claim, and reasonable attorney's fees.

(f)(1) If an injured worker voluntarily consents in writing, the worker may be paid compensation benefits by means of direct deposit or an electronic prepaid benefit card account in accord with the requirements of section 342 of this title.

(2) The issuer of the card shall comply with all of the requirements, and provide the holder of the card with all of the consumer protections, that apply to a payroll card account under the rules implementing the Electronic Fund Transfer Act, 15 U.S.C. § 1693 et seq., as may be amended.

(3) An electronic prepaid benefit card account may be used only for weekly payment of temporary benefits and not for the payment of a lump sum award or for permanent benefits.

(4) The Commissioner, in consultation with the Commissioner of Financial Regulation, may adopt rules to implement this section. (Amended 1981, No. 165 (Adj. Sess.), § 1; 1997, No. 19, § 1; 1997, No. 59, § 34a, eff. June 30, 1997; 1999, No. 85 (Adj. Sess.), § 2, eff. April 19, 2000; 2003, No. 132 (Adj. Sess.), § 9, eff. May 26, 2004; 2013, No. 6, § 1.)

§ 619. Injuries outside of state

If a worker who has been hired in this state receives personal injury by accident arising out of and in the course of such employment, he or she shall be entitled to compensation according to the law of this state even though such injury was received outside of this state. (Amended 1981, No. 165 (Adj. Sess.), § 1.)

§ 620. Worker hired outside of state

If a worker who has been hired outside of this state is injured while engaged in his or her employer's business and is entitled to compensation for such injury under the law of the state where he or she was hired, he or she shall be entitled to enforce against his or her employer his or her rights in this state, if his or her rights are such that they can be reasonably determined and dealt with by the commissioner and the court in this state. (Amended 1981, No. 165 (Adj. Sess.), § 1.)

§ 621. Interstate commerce

The provisions of this chapter shall affect the liability of employers to employees engaged in interstate or foreign commerce or otherwise only so far as the same is permissible under the laws of the United States.

§ 622. Right to compensation exclusive

Except as provided in subsection 618(b) and section 624 of this title, the rights and remedies granted by the provisions of this chapter to an employee on account of a personal injury for which he or she is entitled to compensation under the provisions of this chapter shall exclude all other rights and remedies of the employee, the employee's personal representatives, dependents or next of kin, at common law or otherwise on account of such injury. (Amended 1997, No. 19, § 2.)

§ 623. Contracts to work outside state

Employers who hire workers within this state to work outside of the state may agree with such workers that the remedies under the provisions of this chapter shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment. All contracts of hiring in this state shall be presumed to include such an agreement. (Amended 1981, No. 165 (Adj. Sess.), § 1.)

§ 624. Dual liability; claims, settlement procedure

(a) Where the injury for which compensation is payable under the provisions of this chapter was caused under circumstances creating a legal liability to pay the resulting damages in some person other than the employer, the acceptance of compensation benefits or the

commencement of proceedings to enforce compensation payments shall not act as an election of remedies, but the injured employee or the employee's personal representative may also proceed to enforce the liability of such third party for damages in accordance with the provisions of this section. If the injured employee or the employee's personal representative does not commence the action within one year after the occurrence of the personal injury, then the employer or its insurance carrier may, within the period of time for the commencement of actions prescribed by statute, enforce the liability of the third party in the name of the injured employee or the employee's personal representative. Not less than 30 days before the commencement of suit by any party under this section, the party shall notify, by registered mail at their last known address, the Commissioner, the injured employee, or in the event of death, the employee's known dependents, or personal representative or known next of kin, the employee's employer and the workers' compensation insurance carrier. Any party in interest shall have a right to join in the suit but the direction and control of said suit shall be with the injured employee.

(b) Prior to entry of judgment, either the employer or the employer's insurance carrier or the employee or the employee's personal representative may settle their claims as their interest shall appear and may execute releases therefor, but the consent of the employer, or, if insured, the insurance carrier, shall be required, if the amount of the settlement by the employee or the employee's personal representative is less than the compensation benefits which would have been payable in the future but for the provisions of this section.

(c) The settlement and release by the employee shall not be a bar to action by the employer or its insurance carrier to proceed against the third party for any interest or claim it might have.

(d) In the event the injured employee or personal representative settle the claim for injury or death, or commence proceedings thereon against the third party before the payment of workers' compensation, the recovery or commencement of proceedings shall not act as an election of remedies and any monies so recovered shall be applied as herein provided.

(e)(1) In an action to enforce the liability of a third party, the injured employee may recover any amount which the employee or the employee's personal representative would be entitled to recover in a civil action. Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or its workers' compensation insurance carrier for any amounts paid or payable under this chapter to date of recovery, and the balance shall forthwith be paid to the employee or the employee's dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payment of compensation benefits. Reimbursement required under this subsection, except to prevent double recovery, shall not reduce the employee's recovery of any benefit or payment provided by a plan or policy that

was privately purchased by the injured employee, including uninsured-underinsured motorist coverage, or any other first party insurance payments or benefits.

(2) Should the recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, be less than the full value of the claim for personal injuries or death, the reimbursement to the employer or workers' compensation insurance carrier shall be limited to that portion of the recovery allocated for damages covered by the Workers' Compensation Act. If a court has not allocated or the parties cannot agree to the allocation of the recovered damages, either party may request that the Commissioner make an administrative determination. Upon receiving a request, the Commissioner shall order mediation with a mediator selected from a list approved by the Commissioner. If mediation is unsuccessful, the Commissioner may adjudicate the dispute or refer the dispute to an arbitrator approved by the Commissioner. The determination of the Commissioner or of an arbitrator approved by the Commissioner shall be final. The cost of any mediation or arbitration shall be split equally by the parties.

(f) Expenses of recovery shall be the reasonable expenditures, including attorney's fees, incurred in effecting the recovery. Attorney's fees, unless otherwise agreed upon, shall be divided among the attorneys for the plaintiff as directed by the court. The expenses of recovery above mentioned shall be apportioned by the court between the parties as their interests appear at the time of the recovery.

(g) Compensation benefits referred to in this section shall in each instance include but not be limited to all expenses incurred under sections 639 and 640 of this title.

(h) The injured employee or the employee's personal representative shall be prohibited from commencing a civil action to enforce liability against the workers' compensation insurance carrier for conducting workplace inspections, or an employer-employee safety committee except in the case of gross negligence or wilful misconduct. The employee or the employee's personal representative shall have the burden of proving gross negligence or wilful misconduct.

(i) The Commissioner, by rule, may require workers' compensation carriers to conduct periodic workplace inspections and to provide other safety related advice to their insureds.

(j) The Commissioner shall determine, by rule, workplaces where an insured has demonstrated an unusually poor safety record, as defined by the Commissioner.

(k) Employers with unusually poor safety records, as defined by the Commissioner, shall create workplace safety committees with balanced representation between management and employees and, with the assistance of the Department, shall design and implement written accident prevention plans that shall be distributed to all employees. The Department shall issue

bulletins of best safety practices. (Amended 1959, No. 232; 1977, No. 182 (Adj. Sess.), § 2, eff. May 3, 1978; 1981, No. 165 (Adj. Sess.), § 1; 1993, No. 225 (Adj. Sess.), § 3; 1997, No. 140 (Adj. Sess.), § 2; 1999, No. 41, § 4; 2003, No. 132 (Adj. Sess.), § 15, eff. May 26, 2004; 2013, No. 199 (Adj. Sess.), § 65, eff. June 24, 2014.)

§ 625. Contracting out forbidden

An employer shall not be relieved in whole or in part from liability created by the provisions of this chapter by any contract, rule, regulation or device whatsoever. (Amended 1963, No. 134, § 1, eff. June 6, 1963.)

§§ 626-628. Repealed. 1981, No. 165 (Adj. Sess.), § 7.

§ 629. Repealed. 1989, No. 104, § 2, eff. Feb. 1, 1990.

§§ 630, 631. Repealed. 1981, No. 165 (Adj. Sess.), § 7.

§ 632. Compensation to dependents; burial and funeral expenses

If death results from the injury, the employer shall pay to the persons entitled to compensation or, if there is none, then to the personal representative of the deceased employee, the actual burial and funeral expenses not to exceed $10,000.00 and the actual expenses for out-of-state transportation of the decedent to the place of burial not to exceed $5,000.00. Every two years, the Commissioner of Labor shall evaluate the average burial and funeral expenses in the State and make a recommendation to the House Committee on Commerce and Economic Development and the Senate Committee on Finance as to whether an adjustment in compensation is warranted. The employer shall also pay to or for the benefit of the following persons, for the periods prescribed in section 635 of this title, a weekly compensation equal to the following percentages of the deceased employee's average weekly wages. The weekly compensation payment herein allowed shall not exceed the maximum weekly compensation or be lower than the minimum weekly compensation:

(1) To the spouse, if there are no dependent children, 662/3 percent;

(2) To the spouse, if there is one dependent child, 712/3 percent; or if there are two or more dependent children, 762/3 percent. The compensation to the spouse shall be for the use and benefit of the spouse and of the dependent children;

(3) If there is no spouse, but a dependent child or children, then to the child or children, the amount or amounts payable to a spouse with the same number of dependent children, to be divided equally among the children if more than one;

(4) If there is neither spouse, nor child, but there is a dependent father or mother, then to the parent, if wholly dependent, 30 percent, or if partially dependent, 20 percent or if both parents are dependent, then half of the foregoing compensation to each of them. If there is no such parent, but a dependent grandparent, then to every such grandparent the same compensation as to a parent;

(5) If there is neither dependent spouse, child, parent nor grandparent, but there is a dependent grandchild, brother or sister, or two or more of them, to the dependents 15 percent for one dependent and five percent additional for each additional dependent, with a maximum of 25 percent to be divided equally between the dependents if more than one. (Amended 1959, No. 191, § 1; 1961, No. 22; 1963, No. 191, § 1; 1965, No. 67, § 1; 1965, No. 87, § 1; 1967, No. 122, § 2; 1975, No. 177 (Adj. Sess.), § 2; 1977, No. 182 (Adj. Sess.), § 4, eff. May 3, 1978; 1985, No. 194 (Adj. Sess.), § 3; 1995, No. 107 (Adj. Sess.), § 1; 2013, No. 199 (Adj. Sess.), § 50.)

§ 633. Apportionment of compensation

The commissioner shall, from time to time, apportion such compensation between any and all dependents named in section 632 of this title in such manner as he or she deems best and in making such apportionment he or she shall, insofar as it is possible, apportion such sum so that each dependent shall be self-supporting.

§ 634. Dependents; construction

The following persons, and they only, shall be deemed dependents and entitled to compensation under the provisions of sections 632 and 633 of this title:

(1) A child, if under 18 years of age, or incapable of self-support and unmarried, whether or not ever actually dependent upon the deceased; or a child while regularly enrolled in an approved educational or vocational training institution, who was at the time of the employee's injury or death partially or wholly dependent on the employee, regardless of age; or a child of any age who was mentally or physically disabled at the time of the employee's death and partially or wholly dependent upon him or her;

(2) A spouse;

(3) A parent or grandparent only if dependent, wholly or partially, upon the deceased;

(4) A grandchild, brother or sister under 18 years of age, or incapable of self-support, and wholly dependent upon the deceased employee, or who is regularly enrolled in an approved educational or vocational training institution, and was at the time of the employee's death, partially or wholly dependent upon the employee, regardless of age; or a grandchild, brother or sister of any age who was mentally or physically disabled at the time of the employee's death

and partially or wholly dependent upon him or her. The relation of dependency must exist at the time of the injury. (Amended 1967, No. 122, § 3; 1977, No. 182 (Adj. Sess.), § 5, eff. May 3, 1978; 1981, No. 204 (Adj. Sess.), § 3.)

§ 635. Periods of compensation

The compensation provided for by the provisions of this chapter shall be payable during the following periods:

(1) To a spouse until:

(A) The age of 62 if at that time the spouse is entitled to benefits under the Social Security Act as amended or thereafter at such time as the spouse is entitled to benefits under the Social Security Act as amended; or

(B) Remarriage; or

(C) Death, whichever occurs first.

However, in no event shall the spouse receive less than a sum equal to 330 times the maximum weekly compensation except when the compensation terminates by reason of death;

(2) To or for a child, during dependency as hereinbefore defined in section 634 of this title;

(3) To a parent or grandparent, during the continuation of a condition of actual dependency, but in no case to exceed 264 weeks; and

(4) To or for a grandchild, brother or sister, during dependency as hereinbefore defined, but in no case to exceed 264 weeks. (Amended 1967, No. 122, § 4; 1969, No. 120, eff. April 22, 1969; 1971, No. 158 (Adj. Sess.), § 1; 1977, No. 182 (Adj. Sess.), § 6, eff. May 3, 1978; 1985, No. 194 (Adj. Sess.), § 4.)

§ 636. Compensation for unexpired period; determined

Upon the cessation of compensation under section 635 of this title to or on account of any person, the compensation of the remaining persons entitled to compensation for the unexpired part of the period during which their compensation is payable shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedent's death.

§ 637. Death benefits; rival claimants

Payment of death benefits by an employer in good faith to a dependent subsequent in right to another or other dependents shall protect and discharge the employer unless and until such

dependent or dependents prior in right have given him notice of his, her, or their claim. In case the employer is in doubt as to the respective rights of rival claimants, he or she may apply to the commissioner to decide between them.

§ 638. Repealed. 1977, No. 182 (Adj. Sess.), § 22, eff. May 3, 1978.

§ 639. Death, payment to dependents

In cases of the death of a person from any cause other than the accident during the period of payments for disability or for the permanent injury, the remaining payments for disability then due or for the permanent injury shall be made to the person's dependents according to the provisions of sections 635 and 636 of this title, or if there are none, the remaining amount due, but no more than the actual burial and funeral expenses not to exceed $10,000.00 and the actual expenses for out-of-state transportation of the decedent to the place of burial not to exceed $5,000.00, shall be paid in a lump sum to the proper person. Every two years, the Commissioner of Labor shall evaluate the average burial and funeral expenses in the State and make a recommendation to the House Committee on Commerce and Economic Development and the Senate Committee on Finance as to whether an adjustment in compensation is warranted. (Amended 1961, No. 66; 1963, No. 191, § 2; 1977, No. 182 (Adj. Sess.), § 7, eff. May 3, 1978; 1985, No. 194 (Adj. Sess.), § 5; 1995, No. 107 (Adj. Sess.), § 2; 2013, No. 199 (Adj. Sess.), § 51.)

§ 640. Medical benefits; assistive devices; home and automobile modifications

(a) An employer subject to the provisions of this chapter shall furnish to an injured employee reasonable surgical, medical and nursing services and supplies, including prescription drugs and durable medical equipment. The employer shall provide assistive devices and modification to vehicles and residences reasonably necessary to permit an injured worker who is determined to have or expected to suffer a permanent disability, such as an ambulatory disability as defined in section 271 of this title or blindness as defined in section 271, that substantially and permanently prevents or limits the worker's ability to continue to live at home or perform basic life functions. In determining what devices and modifications are reasonably necessary, consideration shall be given to factors that include ownership of the residence to be modified, the length of time the worker is expected to utilize and benefit from the devices or modifications, and the extent to which the devices or modifications enhance or improve the worker's independent functioning. The employer shall also furnish reasonable hospital services and supplies, including surgical, medical, and nursing services while the injured employee is confined in a hospital for treatment and care.

(b) An employer may designate the treating health care provider to initially treat an injured employee immediately following a compensable injury. Thereafter, the employee may select

another health care provider upon giving the employer written notice of the employee's reasons for dissatisfaction with the health care provider designated by the employer and the name and address of the health care provider selected by the employee. The commissioner may permit an employer to refuse to reimburse a health care provider selected by the employee if notice required in this subsection is not provided to the employer unless the failure to provide notice is due to excusable neglect or inadvertence.

(c) An employer shall not withhold any wages from an employee for the employee's absence from work for treatment of a work injury or to attend a medical examination related to a work injury. If the employee selects a new health care provider in accordance with subsection (b) of this section, the employer shall have the right to require other medical examinations as provided in this chapter.

(d) The liability of the employer to pay for medical, surgical, hospital, and nursing services and supplies, prescription drugs, and durable medical equipment provided to the injured employee under this section shall not exceed the maximum fee for a particular service, prescription drug, or durable medical equipment as provided by a schedule of fees and rates prepared by the commissioner. The reimbursement rate for services and supplies in the fee schedule shall include consideration of medical necessity, clinical efficacy, cost-effectiveness, and safety, and those services and supplies shall be provided on a nondiscriminatory basis consistent with workers' compensation and health care law. The commissioner shall authorize reimbursement at a rate higher than the scheduled rate if the employee demonstrates to the commissioner's satisfaction that reasonable and necessary treatment, prescription drugs, or durable medical equipment is not available at the scheduled rate. An employer shall establish direct billing and payment procedures and notification procedures as necessary for coverage of medically-necessary prescription medications for chronic conditions of injured employees, in accordance with rules adopted by the commissioner.

(e) In the case of a work-related, first-aid-only injury, the employer shall file the first report of injury with the department of labor. The employer shall file the first report of injury with the workers' compensation insurance carrier or pay the medical bill within 30 days. If the employer contests a claim, a first report of injury shall be forwarded to the department of labor and the insurer within five days of notice. If additional treatment or medical visits are required or if the employee loses more than one day of work, the claim shall be promptly reported to the workers' compensation insurer, which shall adjust the claim. "Work-related, first-aid-only-treatment" means any one-time treatment that generates a bill for less than $750.00 and for which the employee loses no time from work except for the time for medical treatment and recovery not to exceed one day of absence from work. (Amended 1959, No. 36, eff. March 12, 1959; 1961, No. 148, § 1; 1967, No. 122, § 5; 1989, No. 165 (Adj. Sess.); 1993, No. 225 (Adj.

Sess.), § 4; 1999, No. 41, § 1; 2003, No. 132 (Adj. Sess.), § 11, eff. May 26, 2004; 2007, No. 208 (Adj. Sess.), § 8.)

§ 640a. Medical bills; payment; dispute

(a) No later than 30 days following receipt of a bill from a health care provider for medical, surgical, hospital, nursing services, supplies, prescription drugs, or durable medical equipment provided to an injured employee, an employer or insurance carrier shall do one of the following:

(1) Pay or reimburse the bill.

(2) Provide written notification to the injured employee, the health care provider, and the Commissioner that the medical bill is contested or denied. The notice shall include specific reasons supporting the contest or denial, a description of any additional information needed by the employer or insurance carrier to determine liability for the medical bill, and a request that such information be submitted to the employer or insurance carrier within 30 days following receipt of the notice.

(b) Disputes regarding payment of a medical bill may be filed with the Commissioner by the injured employee or the health care provider. Disputes regarding payment of a medical bill or interest on that bill shall be determined by the Commissioner or, at the option of either party, be settled by arbitration in accordance with the Commercial Rules of the American Arbitration Association. The decision of an arbitrator shall be provided to the Commissioner, and the award may be entered as a judgment in a court of jurisdiction.

(c) If a medical bill was denied on the basis that the employer or insurance carrier was not provided with sufficient information to determine liability for payment pursuant to subdivision (a)(2) of this section, the employer or insurance carrier has 30 days following receipt of the additional information requested to pay or deny payment of the bill.

(d) Medical bills shall be paid within the time required in this section or according to the time requirements specified in a contract between the health care provider and the employer or insurance carrier.

(e) Interest shall accrue on an unpaid medical bill at the rate of 12 percent per annum calculated as follows:

(1) From the first calendar day following 30 days after the date the medical bill is received by the employer or insurance carrier for any of the following:

(A) A medical bill that was not denied.

(B) A medical bill that was denied and written notice was not provided or not provided within 30 days after receipt of the medical bill.

(2) For a medical bill that was denied based on insufficient information and notice was provided in compliance with subdivision (a)(2) of this section, from the first calendar day following 30 days after receipt of additional information sufficient to determine liability for payment.

(3) For a medical bill that was denied and notice was provided in compliance with subsection (a) of this section, from the first calendar day following 30 days after the date of a final arbitration award, judgment, or administrative order awarding payment of the disputed medical bill.

(4) For a medical bill that is paid in accordance with a contract between the health care provider and the employer or insurance carrier, from the day following the contract payment period or as otherwise specified in the contract.

(f) A health care provider shall submit a medical bill accompanied by medical documentation to the employer or insurance carrier within six months after the date the health care provider had actual knowledge that the services provided were related to a claim under this chapter. For the purposes of this section, "medical documentation" means documentation that describes an injury and the treatment provided and includes all relevant treatment notes, medical records, and diagnostic codes with sufficient detail to review the medical necessity of the service and the appropriateness of the fee charged. Failure to submit the bill within six months does not bar payment unless the employer or insurance carrier is prejudiced by the delay. The Commissioner may extend the six-month limit if the Commissioner determines that the delay resulted from circumstances outside the control of the health care provider.

(g) A medical bill shall be submitted in a legible form with every field or data element relevant to the treatment completed and treatment coding that conforms to the criteria of the National Correct Coding Initiative. The medical bill shall be submitted in any one of the following electronic or paper formats:

(1) CMS 1500 or its electronic equivalent for medical services.

(2) UB04 or its electronic equivalent for hospital inpatient and outpatient services.

(3) ADA J515 or its electronic equivalent for dental services.

(h) The Commissioner may assess penalties as provided in section 688 of this title against an employer or insurance carrier that fails to comply with the provisions of this section and may also refer to the Commissioner of Financial Regulation any employer or insurance carrier that neglects or refuses to pay medical bills as required by this section.

(i) Any interest or penalty paid by an employer or insurance carrier under this chapter shall be excluded from the claims data reported pursuant to 8 V.S.A. § 4687.

(j) An employer or insurance carrier shall not impose on any health care provider any retrospective denial of a previously paid medical bill or any part of that previously paid medical bill, unless:

(1) The employer or insurance carrier has provided at least 30 days' notice of any retrospective denial or overpayment recovery or both in writing to the health care provider. The notice must include:

(A) the injured employee's name;

(B) the service date;

(C) the payment amount;

(D) the proposed adjustment; and

(E) a reasonably specific explanation of the proposed adjustment.

(2) The time that has elapsed does not exceed 12 months from the later of the date of payment of the previously paid medical bill or the date of a final determination of compensability.

(k) The retrospective denial of a previously paid medical bill shall be permitted beyond 12 months from the later of the date of payment or the date of a final determination of compensability for any of the following reasons:

(1) The employer or insurance carrier has a reasonable belief that fraud or other intentional misconduct has occurred;

(2) The medical bill payment was incorrect because the health care provider was already paid for the health services identified in the medical bill;

(3) The health care services identified in the medical bill were not delivered by the health care provider;

(4) The medical bill payment is the subject of adjustment with another workers' compensation or health insurer; or

(5) The medical bill is the subject of legal action.

(l)(1) For purposes of subsections (j) and (k) of this section, for routine recoveries as described in subdivisions (A) through (J) of this subdivision (1), retrospective denial or overpayment

recovery of any or all of a previously paid medical bill shall not require 30 days' notice before recovery may be made. A recovery shall be considered routine only if one of the following situations applies:

(A) Duplicate payment to a health care provider for the same professional service;

(B) Payment with respect to an individual for whom the employer or insurance carrier is not liable as of the date the service was provided;

(C) Payment for a noncovered service, not to include services denied as not medically necessary, experimental, or investigational in nature, or services denied through a utilization review mechanism;

(D) Erroneous payment for services due to employer or insurance carrier administrative error;

(E) Erroneous payment for services where the medical bill was processed in a manner inconsistent with the data submitted by the health care provider;

(F) Payment where the health care provider provides the employer or insurance carrier with new or additional information demonstrating an overpayment;

(G) Payment to a health care provider at an incorrect rate or using an incorrect fee schedule;

(H) Payment of medical bills for the same injured employee that are received by the employer or insurance carrier out of the chronological order in which the services were performed;

(I) Payment where the health care provider has received payment for the same services from another payer whose obligation is primary; or

(J) Payments made in coordination with a payment by a government payer that require adjustment based on an adjustment in the government-paid portion of the medical bill.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, recoveries which, in the reasonable business judgment of the employer or insurance carrier, would be likely to affect a significant volume of claims or accumulate to a significant dollar amount shall not be deemed routine, regardless of whether one or more of the situations in subdivisions (1)(A) through (J) of this subsection apply.

(3) Nothing in this subsection shall be construed to affect the time frames established in subdivision (j)(2) or subsection (k) of this section. (Added 2009, No. 61, § 27; amended 2011, No. 78 (Adj. Sess.), § 2, eff. April 2, 2012.)

§ 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. (Added 2011, No. 50, § 3.)

§ 640c. Opioid usage deterrence

(a) In support of the State's fundamental interest in ensuring the well-being of employees and employers, it is the intent of the General Assembly to protect employees from the dangers of

prescription drug abuse while maintaining a balance between the employee's health and the employee's expedient return to work.

(b) As it pertains to workers' compensation claims, the Commissioner of Labor, in consultation with the Department of Health, the State Pharmacologist, the Vermont Board of Medical Practice, and the Vermont Medical Society, shall adopt rules consistent with the best practices governing the prescription of opioids, including patient screening, drug screening, and claim adjudication for patients prescribed opioids for chronic pain. In adopting rules, the Commissioner shall consider guidelines and standards such as the Occupational Medicine Practice Guidelines published by the American College of Occupational and Environmental Medicine and other medical authorities with expertise in the treatment of chronic pain. The rules shall be consistent with the standards and guidelines under 18 V.S.A. § 4289 and any rules adopted by the Department of Health pursuant to 18 V.S.A § 4289. (Added 2013, No. 199 (Adj. Sess.), § 52.)

§ 641. Vocational rehabilitation

(a) When as a result of an injury covered by this chapter, an employee is unable to perform work for which the employee has previous training or experience, the employee shall be entitled to vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore the employee to suitable employment. Vocational rehabilitation services shall be provided as follows:

(1) The employer shall designate a vocational rehabilitation provider from a list provided by the Commissioner to initially provide services. Thereafter, absent good cause, the employee may have only one opportunity to select another vocational rehabilitation provider from a list provided by the Commissioner upon giving the employer written notice of the employee's reasons for dissatisfaction with the designated provider and the name and address of the provider selected by the employee.

(2) The Department shall provide an injured worker with a form that includes information and employee rights. The form shall clearly and simply explain the worker's rights, including the choice of provider, the right to challenge a determination, and reimbursement for related expenses. The worker shall sign the form and return it to the Department.

(3) The Commissioner shall adopt rules to ensure that a worker who requests services or who has been out of work for more than 90 days is timely and cost-effectively screened for benefits under this section. The rules shall:

(A) Provide that all vocational rehabilitation work, except for initial screenings, be performed by a Vermont-certified vocational rehabilitation counselor including counselors currently certified

pursuant to the rules of the Department. Initial screenings shall be performed by an individual with sufficient knowledge or experience to perform adequately the vocational rehabilitation screening functions.

(B) Provide for an initial screening to determine whether a full assessment is appropriate. An injured worker who is determined to be eligible for a full assessment shall be timely assessed and offered appropriate vocational rehabilitation services.

(C) Provide a mechanism for a periodic and timely screening of injured workers who are initially found not to be ready or eligible for a full assessment to determine whether a full assessment has become appropriate.

(D) Protect against potential conflicts of interest in the assignment and performance of initial screenings.

(E) Ensure the injured worker has a choice of a vocational rehabilitation counselor.

(4) If services are not voluntarily offered and accepted by the employee, the Commissioner, if necessary through informal hearing, may refer the employee to a qualified physician or appropriate facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render the employee fit for a remunerative occupation. Upon receipt of findings and after affording the parties an opportunity to be heard, the Commissioner may order that the services and treatment recommended, or such other rehabilitation treatment or service the Commissioner may deem necessary be provided at the expense of the employer. When vocational rehabilitation requires residence at or near a facility or institution, away from the employee's customary residence, the reasonable cost of board, lodging, or travel, or both, shall be paid for by the employer. In addition, the employer shall pay reasonable costs of books, tools, or other basic materials required in such rehabilitation process. Refusal to accept vocational rehabilitation pursuant to an order of the Commissioner may result in loss of compensation for each week of the refusal, if the Commissioner so directs.

(5) The Commissioner may set by rule reasonable reimbursement rates for vocational rehabilitation benefits and services, provided access to vocational rehabilitation services is not diminished, and reasonable choices and access to benefits and services are maintained. The fee schedule shall require the individual vocational rehabilitation counselor who provides services to review, initial, and certify the accuracy of the billing.

(6) Repealed.]

(b) Any person offering to provide vocational rehabilitation services to workers' compensation recipients shall register with the Department and shall possess appropriate qualification as

established by the Department by rule. The Commissioner may determine that a vocational rehabilitation service provider lacks the appropriate qualifications if the provider fails to comply with the educational and training requirements established by the Commissioner and may revoke the provider's registration.

(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.

(d) The Commissioner may adopt rules necessary to carry out the purpose of this section.

(e)(1) In support of the State's fundamental interest in ensuring the well-being of employees and employers, it is the intent of the General Assembly that, following a workplace accident, an employee return to work as soon as possible but remain cognizant of the limitations imposed by his or her medical condition.

(2) The Commissioner shall adopt rules promoting development and implementation of cost-effective, early return-to-work programs. (Amended 1973, No. 64, § 2; 1975, No. 177 (Adj. Sess.), § 3; 1981, No. 204 (Adj. Sess.), § 4; 1993, No. 225 (Adj. Sess.), § 5; 1997, No. 140 (Adj. Sess.), § 3; 1999, No. 97 (Adj. Sess.), § 1; 2003, No. 132 (Adj. Sess.), § 7, eff. May 26, 2004; 2005, No. 212 (Adj. Sess.), § 3, eff. May 29, 2006; 2007, No. 208 (Adj. Sess.), § 14; 2009, No. 33, § 43; 2011, No. 50, § 2; 2011, No. 133 (Adj. Sess.), § 1; 2013, No. 199 (Adj. Sess.), § 53, eff. June 24, 2014.)

§ 642. Temporary total disability benefits

Where the injury causes total disability for work, during such disability, but not including the first three days, the day of the accident to be counted as the first day, unless the employee received full wages for that day, the employer shall pay the injured employee a weekly compensation equal to two-thirds of the employee's average weekly wages, but not more than the maximum nor less than the minimum weekly compensation. In addition, the injured employee, during the disability period shall receive $10.00 a week for each dependent child who is unmarried and under the age of 21 years, provided that no other injured worker is receiving the same benefits on behalf of the dependent child or children. However, in no event shall an employee's total weekly wage replacement benefits, including any payments for a

dependent child, exceed 90 percent of the employee's average weekly wage prior to applying any applicable cost of living adjustment. The amount allowed for dependent children shall be increased or decreased weekly to reflect the number of dependent children extant during the week of payment. If the total disability continues after the third day for a period of seven consecutive calendar days or more, compensation shall be paid for the whole period of the total disability. (Amended 1959, No. 191, § 2; 1963, No. 191, § 3; 1965, No. 67, § 2; 1965, No. 73; 1967, No. 122, § 6; 1971, No. 158 (Adj. Sess.), § 2; 1973, No. 64, § 3; 1977, No. 182 (Adj. Sess.), § 8, eff. May 3, 1978; 1981, No. 204 (Adj. Sess.), § 5; 1993, No. 225 (Adj. Sess.), § 6; 2003, No. 132 (Adj. Sess.), § 3, eff. May 26, 2004.)

§ 642a. Temporary total; insurer review

The employer shall review every claim for temporary total disability benefits that continues for more than 104 weeks. No later than 30 days after 104 weeks of continuous temporary total disability benefits have been paid, the employer shall file with the department and the claimant a medical report from a physician that evaluates the medical status of the claimant, the expected duration of the disability, and when or if the claimant is expected to return to work. If the evaluating physician concludes that the claimant has reached a medical end result, the employer shall file a notice to discontinue. (Added 2007, No. 208 (Adj. Sess.), § 13.)

§ 643. Period of payments

Payments shall not continue after such disability ends. (Amended 1977, No. 182 (Adj. Sess.), § 9, eff. May 3, 1978.)

[Section 643a effective until July 1, 2018; see also section 643a effective July 1, 2018 set out below.]

[Section 643a effective until July 1, 2018; see also section 643a effective July 1, 2018 set out below.]**§ 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. If the claimant disputes the discontinuance, the claimant may file with the Commissioner an

objection to the discontinuance and seek an extension of 14 days. The objection to the discontinuance shall be specific as to the reasons and include supporting evidence. A copy of the objection shall be provided to the employer at the time the request is made to the Commissioner. Those payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the Commissioner determines that the discontinuance is warranted or if otherwise ordered by the Commissioner. Every notice shall be reviewed by the Commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, after review of all the evidence in the file, the Commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the Commissioner shall order that payments continue until a hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the Department that establishes that a preponderance of all evidence now supports the claim. If the Commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the Commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce a repayment order in any court of law having jurisdiction. (Added 1981, No. 204 (Adj. Sess.), § 6; amended 1991, No. 264 (Adj. Sess.), § 1; 1997, No. 19, § 3; 2005, No. 212 (Adj. Sess.), § 4, eff. May 29, 2006; 2009, No. 142 (Adj. Sess.), § 14, eff. June 1, 2010; 2013, No. 199 (Adj. Sess.), § 54.)

[Section 643a effective July 1, 2018; see also section 643a effective until July 1, 2018 set out above.]

[Section 643a effective July 1, 2018; see also section 643a effective until July 1, 2018 set out above.]**§ 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. Those payments shall be made without prejudice to the employer and may be deducted from any amounts due pursuant to section 648 of this title if the Commissioner determines that the discontinuance is warranted or if otherwise ordered by the Commissioner. Every notice shall be

reviewed by the Commissioner to determine the sufficiency of the basis for the proposed discontinuance. If, after review of all the evidence in the file, the Commissioner finds that a preponderance of all the evidence in the file does not reasonably support the proposed discontinuance, the Commissioner shall order that payments continue until a hearing is held and a decision is rendered. Prior to a formal hearing, an injured worker may request reinstatement of benefits by providing additional new evidence to the Department that establishes that a preponderance of all evidence now supports the claim. If the Commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the discontinuance and the final decision, upon request of the employer, the Commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce a repayment order in any court of law having jurisdiction. (Added 1981, No. 204 (Adj. Sess.), § 6; amended 1991, No. 264 (Adj. Sess.), § 1; 1997, No. 19, § 3; 2005, No. 212 (Adj. Sess.), § 4, eff. May 29, 2006; 2009, No. 142 (Adj. Sess.), § 14, eff. June 1, 2010; 2013, No. 199 (Adj. Sess.), § 54; 2013, No. 199 (Adj. Sess.), § 54b, eff. July 1, 2018.)

§ 643b. Reinstatement; seniority and benefits protected

(a) For purposes of this section:

(1) "Employer" shall be defined as provided in section 601 of this title provided that this section shall only apply to employers who regularly employ at least 10 employees of whom at least 10 work more than 15 hours per week.

(2) "Recovery" means that the worker can reasonably be expected to perform safely the duties of his or her prior position or an alternative suitable position.

(b) The employer of a worker disabled by an injury compensable under this chapter shall reinstate the worker when his or her inability to work ceases provided recovery occurs within two years of the onset of the disability. A worker who recovers within two years of the onset of the disability shall be reinstated in the first available position suitable for the worker given the position the worker held at the time of the injury.

(c) Upon reinstatement a worker shall regain seniority and any unused annual leave, personal leave, sick leave and compensatory time he or she was entitled to prior to the interruption in employment, less any leave and compensatory time used during the period of interruption.

(d) The provisions of this section shall not apply if:

(1) the worker had been given notice, or had given notice, prior to sustaining the injury that employment would terminate;

(2) employment would have terminated of its own terms prior to any reinstatement the worker would otherwise be entitled to under this section;

(3) the worker fails to keep the employer informed of:

(A) his or her continuing interest in reinstatement;

(B) his or her recovery;

(C) any change of his or her mailing address.

(e) A worker aggrieved by an employer's failure to comply with the provisions of this section may bring an action in the superior court in the county in which the worker or the employer resides for damages, including punitive damages, for noncompliance and may apply for such equitable relief as may be just and proper under the circumstances. A copy of the complaint shall be filed with the commissioner. The court shall award reasonable attorney fees to the plaintiff if he or she prevails. (Added 1987, No. 105, § 1.)

§ 643c. Commissioner to provide notice; monitoring

The commissioner shall notify the employer and worker of the provisions of section 643b of this title as soon as a claim is filed if, in the commissioner's opinion, it appears that they will be affected by the requirement for reinstatement. The commissioner shall also request that such workers and employers supply, on a voluntary basis, information concerning requests for reinstatement, reinstatement of disabled workers and the extent to which recourse is being sought under that section. (Added 1987, No. 105, § 2.)

§ 644. Permanent total disability

(a) In case of the following injuries, the disability caused thereby shall be deemed total and permanent:

(1) The total and permanent loss of sight in both eyes;

(2) The loss of both feet at or above the ankle;

(3) The loss of both hands at or above the wrist;

(4) The loss of one hand and one foot;

(5) An injury to the spine resulting in permanent and complete paralysis of both legs or both arms or of one leg and of one arm; and

(6) An injury to the skull resulting in severe traumatic brain injury causing permanent and severe cognitive, physical, or psychiatric disabilities.

(b) The enumeration in subsection (a) of this section is not exclusive, and, in order to determine disability under this section, the Commissioner shall consider other specific characteristics of the claimant, including the claimant's age, experience, training, education, and mental capacity. (Amended 1977, No. 182 (Adj. Sess.), § 10, eff. May 3, 1978; 1999, No. 97 (Adj. Sess.), § 3; 2013, No. 96 (Adj. Sess.), § 137.)

§ 645. Amount payable

(a) In case of an injury enumerated in section 644 of this title, the employer shall pay to the injured employee 662/3 percent of the employee's average weekly wages, computed as provided in section 650 of this title and subject to the maximum and minimum weekly compensation rates, for the duration of the employee's permanent total disability, but in no event shall the employee receive benefits for less than 330 weeks. Benefits under this section shall continue beyond 330 weeks if the injury results in the loss of actual earnings or earning capacity after the injured employee is as far restored as the permanent character of the injuries will permit and results in the employee having no reasonable prospect of finding regular employment.

(b) The amount of compensation payable under this section shall not include the payment of compensation under sections 640, 642 and 646. However, the payment of compensation under this section shall not occur until after the termination of compensation under sections 642 or 646 or both. (Amended 1959, No. 191, § 3; 1963, No. 191, § 4; 1965, No. 67, § 3; 1967, No. 122, § 7; 1977, No. 182 (Adj. Sess.), § 11, eff. May 3, 1978; 1981, No. 204 (Adj. Sess.), § 7.)

§ 646. Temporary partial disability benefits

Where the disability for work resulting from an injury is partial, during the disability and beginning on the eighth day thereof, the employer shall pay the injured employee a weekly compensation equal to two-thirds of the difference between his or her average weekly wage before the injury and the average weekly wage which he or she is able to earn thereafter. (Amended 1963, No. 191, § 5; 1965, No. 67, § 4; 1967, No. 122, § 8; 1981, No. 204 (Adj. Sess.), § 8; 1991, No. 264 (Adj. Sess.), § 2.)

§ 647. Period of payment

Payments shall not continue after such temporary partial disability ends. (Amended 1977, No. 182 (Adj. Sess.), § 12, eff. May 3, 1978.)

§ 648. Permanent partial disability benefits

(a) Where the injury results in a partial impairment which is permanent and which does not result in permanent total disability, compensation shall be paid during the period of total disability, as provided in sections 642 and 643 of this title, and at the termination of total disability, the employer shall pay to the injured employee 662/3 percent of the average weekly wage, computed as provided in section 650 of this title, subject to the maximum and minimum weekly compensation rates, for a period determined by multiplying the employee's percentage of impairment of the whole person by 330 weeks. The percentage of impairment to the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided in subsection (b) of this section.

(b) Any determination of the existence and degree of permanent partial impairment shall be made only in accordance with the whole person determinations as set out in the fifth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment. In order to utilize any subsequent edition of the American Medical Association Guides to the Evaluation of Permanent Impairment or any other appropriate guides to the evaluation of permanent impairment, the commissioner, in consultation with the department of labor advisory council, shall adopt a rule. The commissioner shall adopt a supplementary schedule for injuries that are not rated by the impairment guide authorized for use by the department to determine permanent disability.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, for the purposes of determining the payment period for any permanent partial impairment to the spine, the percentage of impairment shall be determined in accordance with rules adopted by the commissioner according to which an injury to the spine which is evaluated as a 60 percent impairment of the whole person shall provide 330 weeks of compensation.

(d) An impairment rating determined pursuant to this section shall be reduced by any previously determined permanent impairment for which compensation has been paid, but if the combination of the prior impairment rating and the rating determined pursuant to this section would result in the employee being considered permanently totally disabled, the prior rating shall not negate a finding of permanent total disability. (Amended 1959, No. 34, eff. March 12, 1959; 1963, No. 134, § 2, eff. June 6, 1963; 1977, No. 182 (Adj. Sess.), § 13, eff. May 3, 1978; 1993, No. 225 (Adj. Sess.), § 7, eff. April 1, 1995; 2007, No. 208 (Adj. Sess.), § 6.)

§ 649. Injuries not covered; burden of proof

Compensation shall not be allowed for an injury caused by an employee's wilful intention to injure himself, herself, or another or by or during his or her intoxication or by an employee's

failure to use a safety appliance provided for his or her use. The burden of proof shall be upon the employer if he or she claims the benefit of the provisions of this section.

§ 650. Payment; average wage; computation

(a) Average weekly wages shall be computed in such manner as is best calculated to give the average weekly earnings of the worker during the 26 weeks preceding an injury; but where, by reason of the shortness of the time during which the worker has been in the employment, or the casual nature of the employment, or the terms of the employment, it is impracticable to compute the rate of remuneration, average weekly wages of the injured worker may be based on the average weekly earnings during the 26 weeks previous to the injury earned by a person in the same grade employed at the same or similar work by the employer of the injured worker, or if there is no comparable employee, by a person in the same grade employed in the same class of employment and in the same district. If during the period of 26 weeks an injured employee has been absent from employment on account of sickness or suspension of work by the employer, then only the time during which the employee was able to work shall be used to determine the employee's average weekly wage. If the injured employee is employed in the concurrent service of more than one insured employer or self-insurer the total earnings from the several insured employers and self-insurers shall be combined in determining the employee's average weekly wages, but insurance liability shall be exclusively upon the employer in whose employ the injury occurred. The average weekly wage of a volunteer firefighter, volunteer rescue or ambulance worker, volunteer reserve police officer, or volunteer as set forth in 3 V.S.A. § 1101(b)(4), who is injured in the discharge of duties as a firefighter, rescue or ambulance worker, police officer, or State agency volunteer, shall be the employee's average weekly wage in the employee's regular employment or vocation but the provisions of section 642 of this title relative to maximum weekly compensation and weekly net income rates, shall apply. For the purpose of calculating permanent total or permanent partial disability compensation, the provisions relating to the maximum and minimum weekly compensation rate shall apply. In any event, if a worker at the time of the injury is regularly employed at a higher wage rate or in a higher grade of work than formerly during the 26 weeks preceding the injury and with larger regular wages, only the larger wages shall be taken into consideration in computing the worker's average weekly wages.

(b) In determining the compensation to be paid to any member of the National Guard or the Vermont State Guard, if that member is not regularly employed by some other person, it shall be assumed that the member is receiving income from a business or from other employment equivalent to wages in an amount one and one-half times the maximum compensation rate for total disability. If the wages received for the performance of duties as a member of the National Guard or Vermont State Guard exceed the wages received from a regular employer, that

member shall be entitled to a rate of compensation based on wages received as a member of the National Guard or Vermont State Guard.

(c) When temporary disability, either total or partial, does not occur in a continuous period but occurs in separate intervals each resulting from the original injury, compensation shall be adjusted for each recurrence of disability to reflect any increases in wages or benefits prevailing at that time. For the purpose of computation, the adjustments shall be based upon the compensation received by a person in the same grade employed in the same class of employment and in the same district. The provisions of this section shall apply to compensable accidents occurring on and after July 1, 1973.

(d) Compensation computed pursuant to this section shall be adjusted annually on July 1, so that such compensation continues to bear the same percentage relationship to the average weekly wage in the State as computed under this chapter as it did at the time of injury. Temporary total or temporary partial compensation shall first be adjusted on the first July 1 following the receipt of 26 weeks of benefits.

(e) If weekly compensation benefits or weekly accrued benefits are not paid within 21 days after becoming due and payable pursuant to an order of the Commissioner, or in cases in which the overdue benefit is not in dispute, 10 percent of the overdue amount shall be added and paid to the employee, in addition to interest and any other penalties. In the case of an initial claim, benefits are due and payable upon entering into an agreement pursuant to subsection 662(a) of this title, upon issuance of an order of the Commissioner pursuant to subsection 662(b) of this title, or if the employer has not denied the claim within 21 days after the claim is filed. Benefits are in dispute if the claimant has been provided actual written notice of the dispute within 21 days of the benefit being due and payable and the evidence reasonably supports the denial. Interest shall accrue and be paid on benefits that are found to be compensable during the period of nonpayment. The Commissioner shall promptly review requests for payment under this section and, consistent with subsection 678(d) of this title, shall allow for the recovery of reasonable attorney's fees associated with an employee's successful request for payment under this subsection.

(f) When benefits have been awarded or are not in dispute as provided in subsection (e) of this section, the employer shall establish a weekday on which payment shall be mailed or deposited and notify the claimant and the Department of that day. The employer shall ensure that each weekly payment is mailed or deposited on or before the day established. If the benefit payment is not mailed or deposited on the day established, the employer shall pay to the claimant a late fee of $10.00 or five percent of the benefit amount, whichever is greater, for each weekly payment that is made after the established day. For the purposes of this subsection, "paid" means the payment is mailed to the claimant's mailing address or, in the case of direct deposit,

transferred into the designated account. In the event of a dispute, proof of payment shall be established by affidavit. (Amended 1959, No. 29, § 2, eff. March 11, 1959; 1965, No. 173; 1969, No. 261 (Adj. Sess.), § 4, eff. April 7, 1970; 1973, No. 30, §§ 1, 2; 1981, No. 165 (Adj. Sess.), § 1; 1983, No. 121 (Adj. Sess.), § 2, eff. March 28, 1984; 1993, No. 225 (Adj. Sess.), § 8; 2003, No. 132 (Adj. Sess.), § 5, eff. May 26, 2004; 2005, No. 209 (Adj. Sess.), § 33; 2005, No. 212 (Adj. Sess.), § 5, eff. May 29, 2006; 2007, No. 208 (Adj. Sess.), § 12; 2009, No. 142 (Adj. Sess.), § 15.)

§ 651. Voluntary payments

Payments made by an employer or his or her insurer to an injured worker during the period of his or her disability, or to his or her dependents, which, by the provisions of this chapter, were not due and payable when made, may, subject to the approval of the commissioner, be deducted from the amount to be paid as compensation. (Amended 1977, No. 182 (Adj. Sess.), § 14, eff. May 3, 1978; 1981, No. 165 (Adj. Sess.), § 1.)

§ 652. Periodical payments; lump sum payments

(a) Upon application of either party, the commissioner may authorize compensation to be paid monthly or quarterly instead of weekly, having regard to the welfare of the employee and the convenience of the employer.

(b) Upon application of the employee, if the commissioner finds it to be in the best interest of the employee or the employee's dependants, the commissioner may order the payment of permanent disability benefits pursuant to section 644 or 648 of this title to be paid in a lump sum.

(c) Unless otherwise requested by the claimant, an order for a lump sum payment of permanent partial or permanent total disability benefits or a lump sum settlement of a disputed claim shall include a provision accounting for excludable expenses and prorating the remainder of the lump sum payment in the manner set forth by the Social Security Administration in order to protect the claimant's entitlement to Social Security benefits. (Amended 1999, No. 97 (Adj. Sess.), § 2; 2005, No. 212 (Adj. Sess.), § 7, eff. May 29, 2006.)

§ 653. Repealed. 1977, No. 182 (Adj. Sess.), § 22, eff. May 3, 1978.

§ 654. Trustee in case of lump payments; appointment; expense

Whenever, for any reason, the commissioner deems it expedient, any lump sum which is to be paid as provided in section 653 of this title shall be paid by the employer to some bank, banking institution or trust company to be appointed by the commissioner as trustee to administer or apply the same for the benefit of the persons entitled thereto in the manner provided by the commissioner. The payment of such money by the employer, evidenced by the receipt of the

trustee, shall operate as a satisfaction of the compensation. In the appointment of such trustee preference shall be given, in the discretion of the commissioner, to the choice of the employee or the dependents of the deceased employee. The expense of the administration of such trust shall be fixed by the commissioner and shall be a charge upon the compensation so deposited.

§ 655. Procedure in obtaining compensation; medical examination; video and audio recording

After an injury and during the period of disability, if so requested by his or her employer, or ordered by the Commissioner, the employee shall submit to examination, at reasonable times and within a two-hour driving radius of the residence of the injured employee, by a duly licensed physician or surgeon designated and paid by the employer. The Commissioner may in his or her discretion permit an examination outside the two-hour driving radius if it is necessary to obtain the services of a provider who specializes in the evaluation and treatment specific to the nature and extent of the employee's injury. The employee may make a video or audio recording of any examination performed by the insurer's physician or surgeon or have a licensed health care provider designated and paid by the employee present at the examination. The employer may make an audio recording of the examination. The right of the employee to record the examination shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability. If an employee refuses to submit to or in any way obstructs the examination, the employee's right to prosecute any proceeding under the provisions of this chapter shall be suspended until the refusal or obstruction ceases, and compensation shall not be payable for the period which the refusal or obstruction continues. (Amended 2009, No. 142 (Adj. Sess.), § 16; 2013, No. 199 (Adj. Sess.), § 62, eff. June 24, 2014.)

§ 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. (Added 2011, No. 50, § 4.)

§ 656. Notice of injury and claim for compensation

(a) A proceeding under the provisions of this chapter for compensation shall not be maintained unless a notice of the injury has been given to the employer as soon as practicable after the injury occurred, and unless a claim for compensation with respect to an injury has been made within six months after the date of the injury; or, in case of death, within six months after death, unless the claimant had made a claim for compensation prior to death.

(b) The date of injury, or in the case of occupational disease, the date of injurious exposure shall be the point in time when the injury or disease, and its relationship to the employment is reasonably discoverable and apparent. If that date occurs after the employee has ceased all employment, the employee shall be entitled to reasonable and necessary medical treatment necessitated by the injury and permanent partial or permanent total disability compensation based on the employee's average weekly wage at the time of the last work-related exposure.

(c) The notice and claim may be given or made by any person claiming to be entitled to compensation or by someone in the employee's behalf. If payments of compensation have been made voluntarily, the making of a claim within this period shall not be required. If the claim is denied after voluntary payments were made, the claimant shall commence proceedings under this chapter within six months from the date of denial. (Amended 1993, No. 225 (Adj. Sess.), § 9; 1999, No. 41, § 5.)

§ 657. After court judgment against employee

In case, through mistake of law or fact, a suit has been brought to recover damages in any court and final judgment is against the employee, the limitation in section 656 of this title shall not begin to run until six months after such suit has been finally determined.

§ 658. Form of notice and claim

The notice and claim required under the provisions of section 656 of this title shall be in writing. Such notice shall contain the name and address of the employee, shall state in ordinary language the time, place, nature and cause of the injury and shall be signed by the employee or by a person in his or her behalf, or, in the event of his or her death, by any one or more of his or her dependents or by a person in their behalf. The notice and the claim may be combined.

§ 659. Giving of notice and making of claim

A notice under the provisions of this chapter shall be given to the employer, or, if the employer is a partnership, then to any one of the partners. If the employer is a corporation, then the notice may be given to any agent of the corporation upon whom process may be served, or to any officer of the corporation, or any agent in charge of the business at the place where the injury occurred. Such notice shall be given by delivering it or by sending it by mail by registered letter addressed to the employer at his, her, or its last known residence or place of business. The foregoing provisions shall apply to the making of a claim.

§ 660. Sufficiency of notice of injury

(a) A notice given under the provisions of this chapter shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature, or cause of the injury, or otherwise, unless it is shown that the employer was in fact misled to the injury as a result of the inaccuracy. Want of or delay in giving notice, or in making a claim, shall not be a bar to proceedings under the provisions of this chapter, if it is shown that the employer, the employer's agent, or representative had knowledge of the accident or that the employer has not been prejudiced by the delay or want of notice. Proceedings to initiate a claim for a work-related injury pursuant to this chapter may not be commenced after three years from the date of injury. This section shall not be construed to limit subsequent claims for benefits stemming from a timely filed work-related injury claim.

(b) Notwithstanding subsection (a) of this section, a claim for occupational disease shall be made within two years of the date the occupational disease is reasonably discoverable and apparent. (Amended 1993, No. 225 (Adj. Sess.), § 10; 1999, No. 41, § 6; 2003, No. 132 (Adj. Sess.), § 6, eff. May 26, 2004.)

§ 660a. Electronic filing of reports of injury

(a) For the purposes of this section:

(1) "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in the standardized structured electronic format.

(2) "Implementation plan" means the written document prepared by an insurance carrier specifying a timetable for reporting by EDI.

(3) "Reporter" means the insurer who is responsible for reporting injuries to the department.

(b) When an insurance carrier uses electronic data interchange processes and technology, the level of record detail in the report shall be equivalent to that required in a written paper record.

(c) Each insurance carrier shall transmit data elements by electronic data interchange to the department by the dates specified in this section. An insurance carrier shall provide complete, valid, accurate data for the data as required by this section. Each electronic transmission of data shall include appropriate header and trailer records.

(d) In order to begin EDI reporting, an insurance carrier shall submit to the commissioner an implementation plan pursuant to rules adopted by the department.

(e) No later than July 1, 2004, all first reports of injury shall be filed by the insurance carrier electronically. The commissioner may grant an insurance carrier a variance if the insurance carrier documents to the satisfaction of the commissioner that compliance would cause the insurance carrier "undue hardship," which, for the purposes of this section, means significant difficulty or expense. (Added 2001, No. 105 (Adj. Sess.), § 1, eff. May 15, 2002.)

§ 661. Limitation of time as regards minors and persons with a mental condition or psychiatric disability

Limitation of time provided by this chapter shall not run as against any person who is incompetent or a minor dependent so long as such person has no guardian. (Amended 2013, No. 96 (Adj. Sess.), § 138.)

§ 662. Agreements; required payments in absence of

(a) If the employer and an injured employee or the dependents of a deceased employee enter into an agreement in regard to compensation payable under the provisions of this chapter, a memorandum thereof shall be filed with the commissioner. If approved by the commissioner, such agreement shall be enforceable and subject to modification as provided by sections 668 and 675 of this title. The commissioner shall approve such an agreement only when the terms

thereof conform to the provisions of this chapter. However, a compromise agreement may be approved by the commissioner when he or she is clearly of the opinion that the best interests of such employee or such dependents will be served thereby. A compromise settlement during pendency of an appeal to superior court or to supreme court shall be effective only with the approval of the commissioner in accordance with this section.

(b) In the absence of an agreement pursuant to subsection (a) of this section, the employer or insurance carrier shall notify the commissioner and the employee in writing that the claim is denied and the reasons therefor. Upon the employee's application for a hearing under section 663 of this title, within 60 days, the commissioner shall review the evidence upon which denial is based and if the evidence does not reasonably support the denial, the commissioner shall order that payments be made until a hearing is held and a decision is rendered. Payments pursuant to this subsection shall not be deemed an admission of liability by the employer nor shall such payments preclude subsequent agreement under subsection (a) of this section or prejudice the rights of either party to hearing or appeal under this chapter. If the commissioner's decision, after a hearing, is that the employee was not entitled to any or all benefits paid between the initial denial and the final decision, upon request of the employer, the commissioner may order that the employee repay all benefits to which the employee was not entitled. The employer may enforce such a repayment order in any court of law having jurisdiction of the amount involved. Nothing in this section shall require the commissioner to order payments pending a hearing if the commissioner concludes that the benefit at issue is not compensable regardless of the lack of evidence supporting the denial. For the purposes of this section, any written communication by an unrepresented claimant that questions the denial of any benefit shall be deemed to be an application for hearing under section 663 of this title.

(c) Whenever payment of a compensable claim is refused, on the basis that another employer or insurer is liable, the commissioner, after notice to interested parties and a review of the claim, but in no event later than 30 days, shall order that payments be made by one employer or insurer until a hearing is held and a decision is rendered. For the purposes of this review, the employer or insurer at the time of the most recent personal injury for which the employee claims benefits shall be presumed to be the liable employer or insurer and shall have the burden of proving another employer's or insurer's liability. Payments pursuant to this subsection shall not be deemed an admission or conclusive finding of an employer's or insurer's liability nor shall payments preclude subsequent agreement under subsection (a) of this section or prejudice the rights of either party to a hearing or appeal under this chapter.

(d) Where more than one employer or insurer may be liable for an employee's occupational disease, the employer in whose service the employee was last injuriously exposed to the hazard that caused the disease, and the insurance carrier, if any, on the risk when the employee was

last exposed, shall be liable if it can be proven that the service for the last employer causally contributed to the disease.

(e) In any dispute between employers and insurers arising under subsection (c) or (d) of this section, after payment to the claimant, the commissioner may order that the dispute be resolved through arbitration rather than the formal hearing process under sections 663 and 664 of this title. Qualifications for arbitrators and standards for the arbitration process shall be established by the commissioner by rule. If arbitration is ordered, the process shall proceed as follows:

(1) The parties shall select an arbitrator from a list provided by the commissioner.

(2) The arbitrator shall:

(A) Determine apportionment of the liability for the claim, including costs and attorney fees, among the respective employers or insurers, or both. The apportionment may be limited to one or more parties. If the parties do not agree, the costs of arbitration may be apportioned among the parties by the arbitrator.

(B) Issue a written decision which shall be final. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 1981, No. 204 (Adj. Sess.), § 9; 1983, No. 164 (Adj. Sess.), eff. April 20, 1984; 1993, No. 225 (Adj. Sess.), § 10a; 1999, No. 41, § 7; 1999, No. 97 (Adj. Sess.), § 4; 2005, No. 212 (Adj. Sess.), § 6, eff. May 29, 2006.)

§ 663. Hearings, where held; decision

(a) If the compensation is not fixed by agreement, either party may apply to the commissioner for hearing and award in the premises who shall set a time and place for hearing and give at least six days' notice thereof to the parties. The hearing shall be held at a place designated by the commissioner. No proposed findings of fact shall be required from the parties unless ordered by the commissioner. If ordered, the proposed findings of fact shall be submitted within 30 days after conclusion of the hearing.

(b) The decision may include abbreviated findings of fact or conclusions of law, or both, when appropriate. (Amended 1965, No. 194, § 10; 1977, No. 182 (Adj. Sess.), § 15, eff. May 3, 1978; 2007, No. 208 (Adj. Sess.), § 11.)

§ 663a. Workers' compensation dispute mediation

(a) The commissioner shall require mediation in certain workers' compensation disputes. In each case, after a request for formal hearing has been filed, in accordance with the rule, the commissioner may determine whether the disputed issue and the parties are appropriate for

mediation prior to a formal hearing and whether mediation would speed resolution of the dispute without the time and expense of a hearing. If the commissioner determines that mediation is appropriate, the commissioner shall order the parties to attend at least one mediation session prior to a scheduled hearing. Referring a case to mediation shall not cause a delay in setting a date for the formal hearing. The commissioner shall, by rule, determine the procedures by which cases are selected and scheduled for mediation.

(b) The costs of mediation shall be divided evenly between the claimant and the employer, unless the parties agree otherwise. The cost of the mediation, up to the amount set by rule, shall be a cost recoverable by the claimant pursuant to section 678 of this title.

(c) The commissioner shall select or make available a list of qualified individuals to act as mediators, which may include nonattorneys, provided they are experienced in workers' compensation, including former department employees and insurance adjusters. The mediators shall be compensated at rates set by rule of the commissioner.

(d) Prior to implementing this section, the commissioner shall consult with the department of labor advisory council established by section 1306 of this title, the worker compensation committees of the Vermont Bar Association and the Vermont Trial Lawyers Association, representatives of insurers who provide workers' compensation coverage in Vermont, and with other appropriate parties. (Added 2007, No. 208 (Adj. Sess.), § 10.)

§ 663b. Fraud

(a) Any claims of fraud submitted to the Department shall require action by the Commissioner to determine if further investigation is warranted. The Commissioner shall order the insurer to investigate specific allegations of claimant fraud and submit a written report to the Department. Once the insurer's report is received, the Commissioner shall afford the claimant an opportunity to respond in person or in writing within 30 days. The Commissioner may order additional information to be provided to the Department from the insurer or the claimant. The Department shall issue a determination on the fraud allegation, including penalties and any reimbursement as provided under section 708 of this title. The party may appeal the decision of the Commissioner as provided under 3 V.S.A. chapter 25.

(b) An employee found to have committed fraud in order to receive compensation under this chapter shall be ordered to repay all compensation fraudulently received in addition to other administrative penalties ordered by the Department. These payments shall not be charged to the employer for purposes of calculating its experience rating. (Added 2013, No. 199 (Adj. Sess.), § 63, eff. June 24, 2014.)

§ 664. Trial and award

Within 60 days after a hearing is held, the commissioner shall make an award supported by findings of fact and the applicable law and shall send a copy of the award to the parties. If the employee prevails at the hearing, the commissioner's findings shall include the date on which the employer's obligation to pay compensation under this chapter began. The award shall include interest at the statutory rate computed from that date on the total amount of unpaid compensation. (Amended 1997, No. 19, § 4.)

§ 665. Repealed. 1985, No. 194 (Adj. Sess.), § 6.

§ 666. Manner of giving notice of hearing

Notices of hearings under the provisions of this chapter shall be given to the employee, employer and to the insurance carrier. Such notice shall be given by delivering it or by sending it by mail, addressed to the employee, employer and to such insurance company at his, her, or its last known residence or place of business. The foregoing provisions shall apply alike to individuals, partnerships and corporations.

§ 667. Examination by independent medical examiners

(a) Whenever it appears that a dispute exists regarding the reasonableness and necessity of treatment for an injury, or regarding the claimant's ability to perform suitable work, including light duty work, or regarding any other medical issue, the commissioner may appoint an independent medical examiner to examine the employee and report to the commissioner. Whenever a dispute exists regarding the nature and extent of any permanent partial impairment which involves permanent partial disability ratings which differ by more than 10 percent, the commissioner shall appoint an independent medical examiner to examine the employee and report to the commissioner the examiner's opinion regarding the nature and extent of any permanent partial impairment. The opinion of the independent medical examiner as to degree of impairment shall be binding on the parties absent a showing of substantial error or omissions fraud or a gross departure from generally accepted medical practices. If a dispute involves permanent partial disability ratings which differ by 10 percent or less, the rating shall be determined by the commissioner.

(b) A pool of independent medical examiners shall be established to perform independent medical examinations. Representatives of management and labor from the governor's advisory council on workers' compensation, if available, otherwise other representatives of management and labor shall each submit a list of health care providers as proposed members of the pool. The commissioner shall select the common names from both lists. If, in the opinion of the commissioner, the number of independent medical examiners in the pool is not sufficient for any reason, or does not adequately represent a range of health care providers, the commissioner shall select additional health care providers or request additional names. All

health care providers in the pool shall receive training about the nature and purpose of workers' compensation and shall follow the guidelines developed by rule by the commissioner. Where a dispute involves a determination of the degree of permanent partial disability, the independent medical examiner shall use the most recent edition of the American Medical Association Guides to the Evaluation of Permanent Impairment or the supplement provided by the commissioner.

(c) The commissioner shall determine fees to be paid to independent medical examiners for examinations pursuant to subsection 640(d) of this title. The fee shall be paid by the employer in an amount and proportion determined by the commissioner.

(d) If a claimant fails or refuses to undergo an independent medical examination without good cause, the commissioner may assess all or a part of the cost of the examination or any missed appointments against the claimant or may suspend payment of compensation to which the claimant may be entitled, or both.

(e) The independent medical examination report shall be admitted into evidence in any superior court appellate proceedings concerning the claim. The use of an independent medical examiner under this section shall not limit the right of a claimant to obtain his or her medical examination and report on any disputed medical issue.

(f) If an independent medical examiner is appointed, all parties to the dispute shall immediately provide the examiner with copies of all relevant medical records in their possession and shall assist the examiner in obtaining any other medical records deemed relevant to the proceedings. (Amended 1963, No. 134, § 4, eff. June 6, 1963; 1993, No. 225 (Adj. Sess.), § 11.)

§ 668. Modification of awards

Upon the commissioner's own motion or upon the application of any party in interest upon the ground of a change in the conditions, or whenever doubts have arisen as to the jurisdiction of the commissioner at the time the petition was presented, the commissioner may at any time within six years of the date of award review any award by giving at least six days' notice thereof to the parties personally, or to the attorneys appearing in the cause. On such review, the commissioner may make an order ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this chapter. If it appears that the petition for hearing was presented without previous authority or that for other reason the commissioner did not have jurisdiction in the cause, the commissioner may make an order striking off the award, and shall state conclusions of fact and rulings of law and immediately send to the parties a copy of the award. Such a review shall not affect any money already paid. (Amended 1993, No. 225 (Adj. Sess.), § 13.)

§ 669. Finality of award

An award of the commissioner shall, in the absence of fraud, be conclusive between the parties except as provided in section 668 of this title, unless an appeal is taken therefrom as hereinafter provided.

§ 670. Appeals to superior court

Within 30 days after copies of an award have been sent as provided by this chapter, either party may appeal to the superior court of a county wherein a civil action between the parties would be triable. Either party shall be entitled to a trial by jury. (Amended 1963, No. 134, § 5, eff. June 6, 1963; 1971, No. 185 (Adj. Sess.), § 194, eff. March 29, 1972; 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)

§ 671. Jurisdiction; findings for new award

The jurisdiction of such court shall be limited to a review of questions of fact or questions of fact and law certified to it by the commissioner and upon completion of the case in superior court, either after trial or upon remand from the supreme court, the clerk shall certify the findings of the court to the commissioner who shall thereupon make a new order in accordance therewith and shall forthwith send to each of the parties a copy of such order. Such new order shall have all the force and effect of an award made pursuant to the provisions of sections 663, 664 and 665 of this title and shall supersede the award previously made by such commissioner. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)

§ 672. Appeals to the supreme court

If an appeal is not taken under the provisions of section 670 of this title within the time limited therefor, either party may transfer such cause to the supreme court. The jurisdiction of such court shall be limited to a review of questions of law certified to it by the commissioner. On such appeal or on an appeal taken as provided in sections 670 and 671 of this title and coming to the supreme court on appeal from superior court, the supreme court may render final judgment and award execution, or may remand the cause to the superior court or to the commissioner for further findings or for new order by him or her in accordance with the mandate of such court. Such court shall, by general rules, prescribe the procedure to be followed in case of such appeals. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)

§ 673. Appeal in case of fraud, accident, or mistake

On petition and proof and in its discretion, the supreme or superior court may grant leave to enter an appeal from an order of the commissioner of labor in cases where the petitioner has been prevented by fraud, accident or mistake from taking or entering an appeal within the time

allowed by law. On granting the same, the court shall order such petitioner to give sufficient security to prosecute such appeal to effect and pay such costs as are awarded against him or her. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006.)

§ 674. Service of petition

Such petition shall not be sustained unless served on the adverse party within 21 days from the date thereof and within two years after the last date upon which such appeal might have been entered in court.

§ 675. Enforcement of award

(a) If an award is made under the provisions of this chapter, including interim orders, issued pursuant to sections 643a and 662 of this title, or an agreement is approved by the commissioner, and the employer or insurance carrier fails to comply with the award or agreement, the employee, subject to the stay provisions of subsection (b) of this section, may proceed to collect all or any part of past due installments in any court of law having jurisdiction of the amount involved. If the employee prevails, interest, reasonable attorney fees and costs shall be allowed.

(b) Any award or order of the commissioner shall be of full effect from issuance unless stayed by the commissioner, any appeal notwithstanding. Any request for a stay shall be filed with the commissioner at the time of filing a notice of appeal. The commissioner, after allowing the prevailing party 10 days within which to be heard in writing on the request, shall respond within 15 days to the request for stay. The response of the commissioner shall detail his or her reasons for granting, denying or modifying the request and shall be a part of the record on appeal. No stay shall exist unless granted pursuant to this subsection.

(c) An employer who fails to make payment due to an employee under this chapter pursuant to an executed agreement under sections 642, 644, 646 or 648 of this title or pursuant to an interim order of the commissioner within 15 days after the payment is due shall also pay the employee interest on the unpaid compensation at the statutory rate. (Amended 1985, No. 194 (Adj. Sess.), § 7; 1997, No. 19, § 5.)

§ 676. Revision of decrees

Upon the filing with it of a certified copy of a decision of the commissioner ending, diminishing or increasing compensation previously awarded, a superior court which has rendered judgment as provided by this chapter shall revoke or modify its prior judgment so that it will conform to such decision. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)

§ 677. New hearings; when granted; procedure

The commissioner may grant a new hearing in a cause determined by him or her on the ground of newly discovered evidence when a petition, setting forth the substance of such evidence, verified by the oath of the petitioner, is presented. His or her decision in granting or denying such hearing shall be final and conclusive. If a party petitions the commissioner for a new hearing, he or she shall give the adverse party notice of such petition by a citation signed by the commissioner served like a summons at least 12 days before the date of such hearing. A new hearing shall not be granted on a petition unless the citation to the adverse party is served within six months after the date of the order of the commissioner.

§ 678. Costs; attorney's fees

(a) Necessary costs of proceedings under this chapter, including deposition expenses, subpoena fees, and expert witness fees, shall be assessed by the Commissioner against the employer or its workers' compensation carrier when the claimant prevails. The Commissioner may allow the claimant to recover reasonable attorney's fees when the claimant prevails. Costs shall not be taxed or allowed either party except as provided in this section.

(b) In appeals to the Superior or Supreme Court, if the claimant prevails, he or she shall be entitled to reasonable attorney's fees as approved by the Court, necessary costs, including deposition expenses, subpoena fees, and expert witness fees, and interest at the rate of 12 percent per annum on that portion of any award the payment of which is contested. Interest shall be computed from the date of the award of the Commissioner.

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

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

(e) An attorney representing a claimant shall submit a claim for attorney's fees and costs within 30 days following a decision in which the claimant prevails. (Amended 1961, No. 90; 1969, No. 237 (Adj. Sess.), eff. May 1, 1970; 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 1981, No.

165 (Adj. Sess.), § 1; 1981, No. 204 (Adj. Sess.), § 10; 1997, No. 140 (Adj. Sess.), § 1; 2007, No. 208 (Adj. Sess.), § 16, eff. June 11, 2008; 2013, No. 199 (Adj. Sess.), § 66, eff. June 24, 2014.)

§ 679. Fees of sheriffs and witnesses

Sheriffs and witnesses shall receive the same fees for the service of process and attendance before the commissioner as are paid sheriffs and witnesses in superior court. (Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.)

§ 680. Preferences

All rights of compensation granted by the provisions of this chapter shall have the same preference or priority against the assets of the employer or the property of any persons described in subsection 687(b) of this title as is allowed by section 1972 of Title 9. (Amended 1997, No. 19, § 6.)

§ 681. Claims not assignable

Claims for compensation under the provisions of this chapter shall not be assignable. Compensation and claims therefor shall be exempt from all claims of creditors, except as provided in section 682 of this title.

§ 682. Liens against compensation

Claims of physicians and hospitals for services rendered under the provisions of this chapter and claims of attorneys for services rendered an employee in prosecuting a claim under the provisions of this chapter shall be approved by the commissioner. When so approved they may be enforced against compensation awards in such manner as the commissioner may direct.

§§ 683-686. Repealed. 1999, No. 41, § 8(a)(2).

§ 687. Security for compensation

(a) Employers, not including State, county, or municipal bodies, shall secure compensation for their employees in one or more of the following ways:

(1) By insuring and keeping insured the payment of such compensation with any corporation or reciprocal or interinsurance exchange authorized to transact the business of workers' compensation insurance in this State;

(2) By obtaining and keeping in force guarantee insurance with any company authorized to do such guarantee business within the State;

(3) By establishing and maintaining to the satisfaction of the Commissioner the employer's financial responsibility necessary to secure payment by the employer of compensation according to the terms of this chapter. The Department of Financial Regulation shall provide technical assistance and a recommendation on each self-insurance application to the Commissioner. For purposes of this subdivision, the Commissioner shall, after consultation with the Commissioner of Financial Regulation, adopt rules and impose terms and conditions, including surety bonds, cash deposits, or reserves and excess risk insurance, as necessary to ensure the same security for compensation as provided under contract for workers' compensation or guarantee insurance. The fund shall be free from attachment or trustee process so long as any liability for the compensation exists.

(4) By participating to the satisfaction of the Commissioner of Labor in a nonprofit, self-insurance corporation approved by the Commissioner of Financial Regulation under this chapter.

(b) In the event an employer fails to secure workers' compensation as required by this section and an employee reasonably believes that he or she has received a personal injury by accident arising out of and in course of employment with that employer, then:

(1) If the employer is a corporation, the officers and majority stockholders of the corporation shall be personally liable for any benefits owed to the injured employee under this chapter.

(2) If the employer is a partnership, the partners shall be personally liable for any benefits owed to the injured employee under this chapter.

(3) If the employer is neither a corporation nor a partnership, the principals, executive officers or controlling parties of the business, or all of these, shall be personally liable for any benefits owed to the injured employee under this chapter.

(c) Upon filing a claim for benefits under this chapter or if the employee elects to bring a civil action pursuant to subsection 618(b) of this title, the employee may obtain a lien against the property of the employer or the personal property of any persons described in subsection (b) of this section.

(d) The remedies provided in this section shall be in addition to any other remedies and penalties available under law.

(e) All insurance carriers authorized to write workers' compensation insurance coverage in Vermont shall make available, at the written request of the employer, a workers' compensation insurance rate that contains a deductible provision that binds the employer to reimburse the workers' compensation insurer for at least the first $500.00 of benefits, medical or indemnity,

due to an injured employee. Claims shall be adjusted and paid by the insurer, and the employer shall reimburse the insurer for the amount of the deductible. (Amended 1971, No. 31, § 4, eff. March 31, 1971; 1981, No. 165 (Adj. Sess.), § 6; 1985, No. 194 (Adj. Sess.), § 10; 1989, No. 225 (Adj. Sess.), § 25(b); 1993, No. 225 (Adj. Sess.), §§ 14, 28a; 1995, No. 180 (Adj. Sess.), § 38(a); 1997, No. 19, § 7; 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006; 2007, No. 208 (Adj. Sess.), § 9; 2011, No. 78 (Adj. Sess.), § 2, eff. April 2, 2012.)

§ 687a. Self-insurance by associations

(a) Any association which has been in existence in this State for five or more continuous years may establish and maintain a nonprofit corporation to secure workers' compensation insurance for employees of participating member employers and for employees of the association. The Commissioner of Financial Regulation shall assist with the establishment of a nonprofit corporation organized for the purpose of providing compensation under this chapter.

(b) No association electing to provide workers' compensation benefits under this chapter shall commence business for the purpose of distributing, sharing, or pooling any workers' compensation risk until a plan for the operation of the corporation and all contracts, agreements, and any other documents underlying or implementing the plan, and all amendments to those documents, have been approved by the Commissioner of Financial Regulation.

(c) The Commissioner of Financial Regulation shall promptly adopt interim rules to assist in the formation of the nonprofit corporations and to expedite approval of any plan of operation. The Commissioner shall also adopt rules relating to the administration and operation of the nonprofit corporations in order to provide for the fiscal integrity of agreements and to provide that trade, market, and claim practices engaged in by the nonprofit corporations are equitable, fair, and consistent. In adopting these rules, the Commissioner shall recognize that the nonprofit corporations are not for profit; that they are undertaking a service to the association's participating employers to control excessive workers' compensation insurance premiums; and that they shall not be considered insurance companies or insurers under the laws of this State. The rules shall be modeled after the rules now in effect for intermunicipal insurance agreements authorized by 24 V.S.A. chapter 121, subchapter 6, and for captive insurance companies chartered under 8 V.S.A. chapter 141.

(d) A nonprofit corporation established under this section:

(1) shall have as its purposes: reducing the risk of its members; safety inspections; distributing, sharing, and pooling risks; acquiring insurance, excess loss insurance or reinsurance; and processing, paying, and defending claims of employees of employers who are members of the association;

(2) shall have the same persons serve as directors who serve as directors of the association;

(3) shall have the same name as the association with the additional words: "Workers' Compensation Self-Insurance Corporation"; and

(4) may enter into agreements for obtaining or effecting insurance by self-insurance, for obtaining or effecting workers' compensation insurance from any insurer authorized to transact business in this State as an admitted or surplus lines carrier, or for obtaining and effecting insurance secured in accordance with any other method provided by law, or by combination of the provisions of this section for obtaining and effecting insurance. Agreements made pursuant to this subsection shall provide for pooling of self-insurance reserves, risks, claims and losses and administrative services and expenses associated with the agreement among participating employers.

(e) Any contributions made to a nonprofit corporation established under this section for the purpose of distributing, sharing or pooling risks, shall be made on an actuarially sound basis, and the nonprofit corporation shall have its books, records, and financial affairs audited annually. A copy of the annual audit shall be provided to the board of directors of the association or its governing body, to each participating employer and to the Commissioner of Financial Regulation. (Added 1993, No. 225 (Adj. Sess.), § 31; amended 1995, No. 180 (Adj. Sess.), § 38(a); 2011, No. 78 (Adj. Sess.), § 2, eff. April 2, 2012.)

§ 688. Administrative penalties; insurance company's license suspended

(a) The Commissioner, after notice and opportunity for a hearing, may assess administrative penalties of not more than $5,000.00 against any employer, insurance company, or their agents that the Commissioner finds has refused or neglected to comply with the reasonable rules and regulations of the Commissioner or any orders issued by the Commissioner, or to adjust and pay compensation and medical bills in accordance with the provisions of this chapter.

(b) The notice and opportunity for a hearing under this section shall be in accordance with 3 V.S.A. chapter 25. The Commissioner shall adopt rules regarding the amount and imposition of penalties.

(c) In addition to assessing administrative penalties, the Commissioner may refer to the Commissioner of Financial Regulation any insurance company authorized to transact workers' compensation insurance in this State which refuses or neglects to comply with the reasonable rules and regulations of the Commissioner or which neglects or refuses to properly and promptly adjust and pay compensation and medical bills in accordance with the provisions of this chapter. If, after hearing, the Commissioner of Financial Regulation finds that the insurance company has failed to comply with the rules and regulations or orders issued by the

Commissioner of Labor or has failed to properly and promptly pay compensation and medical bills as provided by this chapter, the Commissioner of Financial Regulation may take appropriate action against the insurance company as provided in Title 8. (Amended 1989, No. 225 (Adj. Sess.), § 25(b); 1993, No. 225 (Adj. Sess.), § 15; 1995, No. 180 (Adj. Sess.), § 38(a); 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006; 2011, No. 78 (Adj. Sess.), § 2, eff. April 2, 2012.)

§ 689. Employer compelled to insure

If an employer who secures the payment of compensation under the provisions of subdivision 687(3) of this title neglects or refuses to comply with the reasonable rules and regulations of the commissioner or neglects and refuses to promptly adjust and pay all compensation and medical bills as required by law, the commissioner may cite in the employer. If on hearing it is found that such neglect or refusal is wilful, the commissioner may revoke the permission granted to such employer to secure the payment of compensation under such subdivision and compel the employer to take out insurance in an insurance company authorized to transact compensation insurance in the state in addition to penalties assessed under section 688 of this title. (Amended 1993, No. 225 (Adj. Sess.), § 16.)

§ 690. Certificate, form; copy of policy

(a) An employer subject to the provisions of this chapter who has workers' compensation insurance coverage pursuant to section 687 or 689 of this title shall file with the commissioner a certificate of the insurance in a form prescribed by the commissioner. The certificate shall include the policy number, effective date, date of expiration, operations covered and such other information the commissioner requests. The certificate shall be signed by a duly authorized representative of the insurance or guarantee company that issued the insurance coverage. Upon request, the insurance or guarantee company shall file with the commissioner a copy of the contract or policy of insurance issued.

(b)(1) In addition to any other authority provided to the commissioner pursuant to this chapter, the commissioner may issue a written request to an employer subject to the provisions of this chapter to provide a workers' compensation compliance statement on a form provided by the commissioner. For the purposes of this subsection, an employer includes subcontractors and independent contractors. The form shall require all the following information sorted by job site:

(A) The number of employees employed during the entire current workers' compensation policy term or the previous year if no policy was in effect or partially in effect prior to the request and the effective dates of the term of any policies in effect.

(B) The total number of hours for which compensation was paid.

(C) A list of all subcontractors and 1099 workers and their function on the job site for the period in question.

(D) The name of the workers' compensation insurance carrier, the policy number, and the agent, if any.

(E) As an attachment, the insurance policy declaration pages, including how much payroll the policy is covering and a designation of the hours that provide the basis of the appropriate National Council on Compensation Insurance classification code.

(2) Any employer who fails to comply with this subsection or falsifies information on the compliance statement may be assessed an administrative penalty of not more than $5,000.00 for each week during which the noncompliance or falsification occurred and any costs and attorney fees required to enforce this subsection. The commissioner may also seek injunctive relief in Washington superior court.

(3) A compliance statement shall be a public record, and the commissioner shall provide a copy of a compliance statement to any person on request. An insurance company provided with a compliance statement may investigate the information in the statement. Based on evidence that an employer is not in compliance with this chapter, the commissioner shall request a compliance statement or an amended compliance statement from the employer, investigate further, and take appropriate enforcement action.

(4) In the event the commissioner receives a request for an employer to provide a compliance statement but finds no evidence of noncompliance with this chapter, the commissioner shall provide timely notification of the findings to the requesting party. (Amended 2007, No. 57, § 1; 2009, No. 54, § 80, eff. June 1, 2009.)

§ 691. Posting of notice of compliance

An employer who has complied with the provisions of this chapter relating to securing the payment of compensation to his or her employees and their dependents shall post and maintain, in a conspicuous place in and about each of his or her places of business, typewritten or printed notices in form prescribed by the commissioner stating that fact.

§ 691a. Posting of safety records

(a) In support of the State's fundamental interest in ensuring the well-being of employees and employers, it is the intent of the General Assembly to improve the safety experience in the workplace.

(b) An employer subject to the provisions of this chapter shall post a notice in the employer's place of business to advise employees of where they may review the employer's record of workplace safety, including workplace injury and illness data, in accordance with rules adopted by the Commissioner. The employer's record of workplace safety, including workplace injury and illness data, shall be available for review by employees at the employer's place of business and the Commissioner, but shall not otherwise be public information. The posting shall be in a format approved by the Commissioner. The posting may be in a format provided by the Commissioner. (Added 2013, No. 199 (Adj. Sess.), § 55.)

§ 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.

(b) Stop-work orders. If an employer fails to comply with the provisions of section 687 of this title after investigation by the Commissioner, the Commissioner shall issue an emergency order to that employer to stop work until the employer has secured workers' compensation insurance. If the Commissioner determines that issuing a stop-work order would immediately threaten the safety or health of the public, the Commissioner may permit work to continue until the immediate threat to public safety or health is removed. The Commissioner shall document the reasons for permitting work to continue, and the document shall be available to the public. In addition, the employer shall be assessed an administrative penalty of not more than $250.00 for every day that the employer fails to secure workers' compensation coverage after the Commissioner issues an order to obtain insurance and may also be assessed an administrative penalty of not more than $250.00 for each employee for every day that the employer fails to secure workers' compensation coverage as required in section 687 of this title. When a stop-work order is issued, the Commissioner shall post a notice at a conspicuous place on the work site of the employer informing the employees that their employer failed to comply with the provisions of section 687 of this title and that work at the work site has been ordered to cease until workers' compensation insurance is secured. The stop-work order shall be rescinded as soon as the Commissioner determines that the employer is in compliance with section 687 of this title. An employer against whom a stop-work order has been issued is prohibited from contracting, directly or indirectly, with the State or any of its subdivisions for a period of up to three years following the date of the issuance of the stop-work order, as determined by the Commissioner in consultation with the Commissioner of Buildings and General Services or the Secretary of Transportation, as appropriate. Either the Secretary or the

Commissioner, as appropriate, shall be consulted in any contest of the prohibition of the employer from contracting with the State or its subdivisions.

(c) Penalty for violation of stop-work order. In addition to any other penalties, an employer who violates a stop-work order described in subsection (b) of this section is subject to:

(1) A civil penalty of not more than $5,000.00 for the first violation and a civil penalty of not more than $10,000.00 for a second or subsequent violation; or

(2) A criminal fine of not more than $10,000.00 or imprisonment for not more than 180 days, or both. (Amended 1977, No. 182 (Adj. Sess.), § 17, eff. May 3, 1978; 1985, No. 194 (Adj. Sess.), § 8; 1993, No. 225 (Adj. Sess.), § 17; 1997, No. 19, §§ 8, 9; 2007, No. 57, § 2; 2009, No. 142 (Adj. Sess.), § 3; 2011, No. 50, § 5, eff. May 26, 2011.)

§ 693. The insurance contract

Every policy of insurance and every guarantee contract covering the liability of an employer for compensation shall cover the entire liability of such employer to his or her employees covered by such policy or contract and also shall contain a provision setting forth the right of the employees to enforce, in their own names, the liability of the insurance carrier in whole or in part for the payment of such compensation, either by filing a separate claim at any time or by making at any time the insurance carrier a party to the original claim. However, the payment in whole or in part of such compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

§ 694. Knowledge of employer to affect insurance carrier

Such policies and contracts shall contain a provision that, as between the employee and the insurance carrier, notice to or knowledge of the occurrence of an injury on the part of the employer shall be deemed notice or knowledge, as the case may be on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this chapter, be jurisdiction of the insurance carrier; and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation under the provisions of this chapter.

§ 695. Insolvency of employer not to release insurance carrier

Such policies and contracts shall contain a provision to the effect that the insolvency or bankruptcy of the employer and his or her discharge therein shall not relieve the insurance carrier from the payment of compensation for injuries or death sustained by an employee during the life of such a policy or contract.

§ 696. Cancellation of insurance contracts

A policy or contract shall not be cancelled within the time specified in the policy or contract for its expiration, until at least 45 days after a notice of intention to cancel the policy or contract, on a date specified in the notice, has been filed in the office of the Commissioner and provided to the employer. The notice shall be filed with the Commissioner in accordance with rules adopted by the Commissioner and provided to the employer by certified mail. The cancellation shall not affect the liability of an insurance carrier on account of an injury occurring prior to cancellation. (Amended 1989, No. 171 (Adj. Sess.), § 9, eff. Sept. 1, 1990; 2007, No. 57, § 3; 2013, No. 199 (Adj. Sess.), § 56.)

§ 697. Notice of intent not to renew policy

An insurance carrier who does not intend to renew a workers' compensation insurance policy or guarantee contract covering the liability of an employer under the provisions of this chapter shall give notice of its intention to the Commissioner and the covered employer at least 45 days prior to the expiration date stated in the policy or contract. The notice shall be given to the employer by certified mail. An insurance carrier who fails to give notice shall continue the policy or contract in force beyond its expiration date for 45 days from the day the notice is received by the Commissioner and the employer. However, if, on or before the expiration of the existing insurance or guarantee contract the insurance carrier has, by delivery of a renewal contract or otherwise, offered to continue the insurance, or if the employer notifies the insurance carrier in writing that the employer does not wish the insurance continued beyond the expiration date, or if the employer complies with the provisions of section 687 of this title, then the policy will expire upon notice to the Commissioner. (Amended 1981, No. 165 (Adj. Sess.), § 1; 1989, No. 171 (Adj. Sess.), § 10, eff. Sept. 1, 1990; 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006; 2007, No. 57, § 4; 2013, No. 199 (Adj. Sess.), § 57.)

§ 698. Insurance by state and municipalities

The state and municipalities which are liable to their employees for compensation under the provisions of this chapter may insure with an authorized insurance carrier.

§ 699. Employees not to pay for insurance

An agreement by an employee to pay any portion of the cost of insurance of any kind maintained or carried by an employer for the purpose of securing compensation under the provisions of this chapter shall be void. An employer who makes a deduction for such purpose from the wages or salary of an employee entitled to the benefits of this chapter shall be fined not more than $500.00.

§ 700. Examination of policy

At the request of a holder of a policy of workers' compensation insurance, the Commissioner of Financial Regulation shall examine the policy to determine whether the proper assignment has been made as to classification, rates and advance premium charged. (Amended 1981, No. 165 (Adj. Sess.), § 1; 1989, No. 225 (Adj. Sess.), § 25(b); 1995, No. 180 (Adj. Sess.), § 38(a); 2011, No. 78 (Adj. Sess.), § 2, eff. April 2, 2012.)

§ 701. Reports of accidents by employers

Every employer liable to pay compensation under the provisions of this chapter shall keep a record of all injuries, fatal or otherwise, sustained by his or her employees in the course of their employment and shall report such an injury causing an absence of one day or more, or necessitating medical attendance, to the commissioner in writing upon forms to be procured from him or her for such purpose within 72 hours, Sundays and legal holidays excluded, after the occurrence of such an injury. At the termination of the disability of such injured employee, such employer shall make a final report upon forms to be procured as herein provided. If such disability extends beyond a period of 60 days, at the expiration of each 60 days' period, such employer shall make a supplemental report to the commissioner that such injured employee is still disabled and, at the termination of such disability, shall file a final report as above provided.

§ 702. Contents; penalty

Such reports shall state the name and nature of the business of the employer, the location of the place where the accident occurred, the name, age, sex, wages and occupation of the injured employee and shall state the date and hour of the accident causing the injury, its nature and cause and such other information as may be required by the commissioner. An employer who refuses or neglects to make such reports may be assessed an administrative penalty of not more than $100.00 per violation after notice and opportunity for hearing under section 688 of this title. (Amended 1993, No. 225 (Adj. Sess.), § 18.)

§ 703. Reports of payments made by employers

Within 60 days after disability, such employer or other party liable to pay the compensation provided for by this chapter shall file with the commissioner a statement showing the total payments made or to be made for compensation and for medical services for such injured employee.

§ 704. Reports, penalty

An employer as defined in section 616 of this title, upon written request of the commissioner, sent by certified mail, shall file on forms provided by the commissioner such statistical

information regarding employments, accidents arising out of or in the course of employment, and safety in employment, as the commissioner may require. Such report shall be required not more than once in any calendar year and shall be on uniform forms applicable to all employers from whom such information is required. An employer who refuses or neglects to file the statistical report within 30 days after a request by the commissioner, may be assessed an administrative penalty of not more than $1,000.00. (Amended 1971, No. 158 (Adj. Sess.), § 3; 1993, No. 225 (Adj. Sess.), § 19.)

§ 705. Registration, penalty

The employers mentioned in section 704 of this title shall register with the department of labor, on forms provided by it, when commencing or ceasing business operations in the state and no fee shall be required by the state for that registration. An employer who refuses or neglects to register as required by this section may be assessed an administrative penalty of not more than $50.00. (Amended 1993, No. 225 (Adj. Sess.), § 20; 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006.)

§ 706. Construction

Employer, as used in sections 704 and 705 of this title shall not be construed to include persons operating farms for agricultural purposes.

§ 707. Repealed. 2003, No. 122 (Adj. Sess.), § 294(o).

§ 708. Penalty for false representation

(a) Action by the Commissioner of Labor. A person who willfully makes a false statement or representation, for the purpose of obtaining any benefit or payment under the provisions of this chapter, either for herself or himself or for any other person, after notice and opportunity for hearing, may be assessed an administrative penalty of not more than $20,000.00, and shall forfeit all or a portion of any right to compensation under the provisions of this chapter, as determined to be appropriate by the Commissioner after a determination by the Commissioner that the person has willfully made a false statement or representation of a material fact. In addition, an employer found to have violated this section is prohibited from contracting, directly or indirectly, with the State or any of its subdivisions for up to three years following the date the employer was found to have made a false statement or misrepresentation of a material fact, as determined by the Commissioner in consultation with the Commissioner of Buildings and General Services or the Secretary of Transportation, as appropriate. Either the Secretary or the Commissioner, as appropriate, shall be consulted in any contest relating to the prohibition of the employer from contracting with the State or its subdivisions.

(b) When the Department of Labor has sufficient reason to believe that an employer has made a false statement or representation for the purpose of obtaining a lower workers' compensation premium, the Department shall refer the alleged violation to the Commissioner of Financial Regulation for the Commissioner's consideration of enforcement pursuant to 8 V.S.A. § 3661(c).

(c) Any penalty assessed or order issued under this chapter or 8 V.S.A. § 3661 shall continue in effect against any successor employer that has one or more of the same principals or corporate officers as the employer against which the penalties were assessed or order issued and is engaged in the same or similar business.

(d) Notwithstanding the assessment of an administrative penalty under this section, a person may be prosecuted under 13 V.S.A. § 2024. (Amended 1993, No. 225 (Adj. Sess.), § 21; 1995, No. 180 (Adj. Sess.), § 38(a); 2007, No. 57, § 5; 2009, No. 42, § 11; 2009, No. 54, § 79, eff. June 1, 2009; 2009, No. 142 (Adj. Sess.), § 5; 2011, No. 78 (Adj. Sess.), § 2, eff. April 2, 2012.)

§ 709. Rules of construction

In construing the provisions of this chapter, the rule of law that statutes in derogation of the common law are to be strictly construed shall not be applied. The provisions of this chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

§ 710. Unlawful discrimination

(a) No person, firm, or corporation shall refuse to employ any applicant for employment because such applicant asserted a claim for workers' compensation benefits under this chapter or under the law of any state or of the United States. Nothing in this section shall require a person to employ an applicant who does not meet the qualifications of the position sought.

(b) No person shall discharge or discriminate against an employee from employment because such employee asserted or attempted to assert a claim for benefits under this chapter or under the law of any state or under the United States.

(c) The Department shall not include in any publication or public report the name or contact information of any individual who has alleged that an employer has made a false statement or misclassified any employees, unless it is required by law or necessary to enable enforcement of this chapter.

(d) An employer shall not retaliate or take any other negative action against an individual because the employer knows or suspects that the individual has filed a complaint with the

Department or other authority, or reported a violation of this chapter, or cooperated in an investigation of misclassification, discrimination, or other violation of this chapter.

(e) The Attorney General or a State's Attorney may enforce the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458-2461 as though discrimination under this section were an unfair act in commerce.

(f) The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this subchapter. (Added 1985, No. 194 (Adj. Sess.), § 9; amended 2009, No. 142 (Adj. Sess.), § 8, eff. June 1, 2010; 2013, No. 31, § 9.)

§ 711. Workers' Compensation Administration Fund

(a) A Workers' Compensation Administration Fund is created pursuant to 32 V.S.A. chapter 7, subchapter 5 to be expended by the Commissioner for the administration of the workers' compensation and occupational disease programs. The Fund shall consist of contributions from employers made at a rate of 1.75 percent of the direct calendar year premium for workers' compensation insurance, one percent of self-insured workers' compensation losses, and one percent of workers' compensation losses of corporations approved under this chapter. Disbursements from the Fund shall be on warrants drawn by the Commissioner of Finance and Management in anticipation of receipts authorized by this section.

(b) Annually, the General Assembly shall establish the rate of contribution for the direct calendar year premium for workers' compensation insurance. The rate shall equal the amount approved in the appropriations process for the program and the Department's projection of salary and benefit increases for that fiscal year, less the amount collected in the prior calendar year under subsection (a) of this section from self-insured workers' compensation losses and from corporations approved under this chapter, adjusted by any balance in the fund from the prior fiscal year, divided by the total direct calendar year premium for workers' compensation insurance for the prior year. (Added 1993, No. 225 (Adj. Sess.), § 22; amended 1995, No. 186 (Adj. Sess.), § 3, eff. May 22, 1996; 1997, No. 59, § 34, eff. June 30, 1997; 1997, No. 155 (Adj. Sess.), § 5; 2001, No. 143 (Adj. Sess.), § 3; 2003, No. 70 (Adj. Sess.), § 1, eff. April 1, 2004; 2007, No. 76, § 22; 2007, No. 153 (Adj. Sess.), § 6; 2009, No. 47, § 10; 2009, No. 134 (Adj. Sess.), § 28; 2011, No. 33, § 5.)