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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2010**

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION

Introduced By: Senators P Fogarty, Ciccone, Ruggerio, and Lanzi

Date Introduced: January 27, 2010

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 28-29-2 of the General Laws in Chapter 28-29 entitled "Workers'  
2    Compensation - General Provisions" is hereby amended to read as follows:

3           **28-29-2. Definitions.** -- In chapters 29 -- 38 of this title, unless the context otherwise  
4    requires:

5           (1) "Department" means the department of labor and training.

6           (2) "Director" means the director of labor and training or his or her designee unless  
7    specifically stated otherwise.

8           (3) (i) "Earnings capacity" means the weekly straight time earnings which an employee  
9    could receive if the employee accepted an actual offer of suitable alternative employment.  
10   Earnings capacity can also be established by the court based on evidence of ability to earn,  
11   including, but not limited to, a determination of the degree of functional impairment and/or  
12   disability, that an employee is capable of employment. The court may, in its discretion, take into  
13   consideration the performance of the employee's duty to actively seek employment in scheduling  
14   the implementation of the reduction. The employer need not identify particular employment  
15   before the court can direct an earnings capacity adjustment. In the event that an employee returns  
16   to light duty employment while partially disabled, an earnings capacity shall not be set based  
17   upon actual wages earned until the employee has successfully worked at light duty for a period of  
18   at least thirteen (13) weeks.

19           (ii) As used under the provisions of this title, "functional impairment" means an

1 anatomical or functional abnormality existing after the date of maximum medical improvement as  
2 determined by a medically or scientifically demonstrable finding and based upon the ~~Fifth (5th)~~  
3 Sixth (6<sup>th</sup>) edition of the American Medical Association's Guide to the Evaluation of Permanent  
4 Impairment or comparable publications of the American Medical Association.

5 (iii) In the event that an employee returns to employment at an average weekly wage  
6 equal to the employee's pre-injury earnings exclusive of overtime, the employee will be presumed  
7 to have regained his/her earning capacity.

8 (4) "Employee" means any person who has entered into the employment of or works  
9 under contract of service or apprenticeship with any employer, except that in the case of a city or  
10 town other than the city of Providence it shall only mean that class or those classes of employees  
11 as may be designated by a city, town, or regional school district in a manner provided in this  
12 chapter to receive compensation under chapters 29 -- 38 of this title. Any person employed by the  
13 state of Rhode Island, except for sworn employees of the Rhode Island State Police, or by the  
14 Rhode Island Airport Corporation who is otherwise entitled to the benefits of chapter 19 of title  
15 45 shall be subject to the provisions of chapters 29 -- 38 of this title for all case management  
16 procedures and dispute resolution for all benefits. The term "employee" does not include any  
17 individual who is a shareholder or director in a corporation, general or limited partners in a  
18 general partnership, a registered limited liability partnership, a limited partnership, or partners in  
19 a registered limited liability limited partnership, or any individual who is a member in a limited  
20 liability company. These exclusions do not apply to shareholders, directors and members who  
21 have entered into the employment of or who work under a contract of service or apprenticeship  
22 within a corporation or a limited liability company. The term "employee" also does not include a  
23 sole proprietor, independent contractor, or a person whose employment is of a casual nature, and  
24 who is employed other than for the purpose of the employer's trade or business, or a person  
25 whose services are voluntary or who performs charitable acts, nor shall it include the members of  
26 the regularly organized fire and police departments of any town or city; provided, however, that it  
27 shall include the members of the police and aircraft rescue and firefighting (ARFF) units of the  
28 Rhode Island Airport Corporation. Whenever a contractor has contracted with the state, a city,  
29 town, or regional school district any person employed by that contractor in work under contract  
30 shall not be deemed an employee of the state, city, town, or regional school district as the case  
31 may be. Any person who on or after January 1, 1999, was an employee and became a corporate  
32 officer shall remain an employee, for purposes of these chapters, unless and until coverage under  
33 this act is waived pursuant to subsection 28-29-8(b) or section 28-29-17. Any person who is  
34 appointed a corporate officer between January 1, 1999 and December 31, 2001, and was not

1 previously an employee of the corporation, will not be considered an employee, for purposes of  
2 these chapters, unless that corporate officer has filed a notice pursuant to subsection 28-29-19(b).  
3 In the case of a person whose services are voluntary or who performs charitable acts, any benefit  
4 received, in the form of monetary remuneration or otherwise, shall be reportable to the  
5 appropriate taxation authority but shall not be deemed to be wages earned under contract of hire  
6 for purposes of qualifying for benefits under chapters 29 -- 38 of this title. Any reference to an  
7 employee who had been injured shall, where the employee is dead, include a reference to his or  
8 her dependents as defined in this section, or to his or her legal representatives, or, where he or she  
9 is a minor or incompetent, to his or her conservator or guardian. A "seasonal occupation" means  
10 those occupations in which work is performed on a seasonal basis of not more than sixteen (16)  
11 weeks.

12 (5) "Employer" includes any person, partnership, corporation, or voluntary association,  
13 and the legal representative of a deceased employer; it includes the state, and the city of  
14 Providence. It also includes each city, town, and regional school district in the state that votes or  
15 accepts the provisions of chapters 29 -- 38 of this title in the manner provided in this chapter.

16 (6) "General or special employer":

17 (i) "General employer" includes but is not limited to temporary help companies and  
18 employee leasing companies and means a person who for consideration and as the regular course  
19 of its business supplies an employee with or without vehicle to another person.

20 (ii) "Special employer" means a person who contracts for services with a general  
21 employer for the use of an employee, a vehicle, or both.

22 (iii) Whenever there is a general employer and special employer wherein the general  
23 employer supplies to the special employer an employee and the general employer pays or is  
24 obligated to pay the wages or salaries of the supplied employee, then, notwithstanding the fact  
25 that direction and control is in the special employer and not the general employer, the general  
26 employer, if it is subject to the provisions of the Workers' Compensation Act or has accepted that  
27 Act, shall be deemed to be the employer as set forth in subdivision (5) of this section and both the  
28 general and special employer shall be the employer for purposes of sections 28-29-17 and 28-29-  
29 18.

30 (iv) Effective January 1, 2003, whenever a general employer enters into a contract or  
31 arrangement with a special employer to supply an employee or employees for work, the special  
32 employer shall require an insurer generated insurance coverage certification, on a form prescribed  
33 by the department, demonstrating Rhode Island workers' compensation and employer's liability  
34 coverage evidencing that the general employer carries workers' compensation insurance with that

1 insurer with no indebtedness for its employees for the term of the contract or arrangement. In the  
2 event that the special employer fails to obtain and maintain at policy renewal and thereafter this  
3 insurer generated insurance coverage certification demonstrating Rhode Island workers'  
4 compensation and employer's liability coverage from the general employer, the special employer  
5 is deemed to be the employer pursuant to the provisions of this section. Upon the cancellation or  
6 failure to renew, the insurer having written the workers' compensation and employer's liability  
7 policy shall notify the certificate holders and the department of the cancellation or failure to  
8 renew and upon notice, the certificate holders shall be deemed to be the employer for the term of  
9 the contract or arrangement unless or until a new certification is obtained.

10 (7) (i) "Injury" means and refers to personal injury to an employee arising out of and in  
11 the course of his or her employment, connected and referable to the employment.

12 (ii) An injury to an employee while voluntarily participating in a private, group, or  
13 employer-sponsored carpool, vanpool, commuter bus service, or other rideshare program, having  
14 as its sole purpose the mass transportation of employees to and from work shall not be deemed to  
15 have arisen out of and in the course of employment. Nothing in the foregoing provision shall be  
16 held to deny benefits under chapters 29 -- 38 and chapter 47 of this title to employees such as  
17 drivers, mechanics, and others who receive remuneration for their participation in the rideshare  
18 program. Provided, that the foregoing provision shall not bar the right of an employee to recover  
19 against an employer and/or driver for tortious misconduct.

20 (8) "Maximum medical improvement" means a point in time when any medically  
21 determinable physical or mental impairment as a result of injury has become stable and when no  
22 further treatment is reasonably expected to materially improve the condition. Neither the need for  
23 future medical maintenance nor the possibility of improvement or deterioration resulting from the  
24 passage of time and not from the ordinary course of the disabling condition, nor the continuation  
25 of a pre-existing condition precludes a finding of maximum medical improvement. A finding of  
26 maximum medical improvement by the workers' compensation court may be reviewed only  
27 where it is established that an employee's condition has substantially deteriorated or improved.

28 (9) "Physician" means medical doctor, surgeon, dentist, licensed psychologist,  
29 chiropractor, osteopath, podiatrist, or optometrist, as the case may be.

30 (10) "Suitable alternative employment" means employment or an actual offer of  
31 employment which the employee is physically able to perform and will not exacerbate the  
32 employee's health condition and which bears a reasonable relationship to the employee's  
33 qualifications, background, education, and training. The employee's age alone shall not be  
34 considered in determining the suitability of the alternative employment.

1 (11) "Independent contractor" means a person who has filed a notice of designation as  
2 independent contractor with the director pursuant to section 28-29-17.1 or as otherwise found by  
3 the workers' compensation court.

4 SECTION 2. Sections 28-33-8, 28-33-18, 28-33-18.3, 28-33-19 and 28-33-34.1 of the  
5 General Laws in Chapter 28-33 entitled "Workers' Compensation - Benefits" are hereby amended  
6 to read as follows:

7 **28-33-8. Employee's choice of physician, dentist, or hospital -- Payment of charges --**

8 **Physician reporting schedule. --** (a) (1) An injured employee shall have freedom of choice to  
9 obtain health care, diagnosis, and treatment from any qualified health care provider initially. The  
10 initial health care provider of record may, without prior approval, refer the injured employee to  
11 any qualified specialist for independent consultation or assessment, or specified treatment. If the  
12 insurer or self-insured employer has a preferred provider network approved and kept on record by  
13 the medical advisory board, any change by the employee from the initial health care provider of  
14 record shall only be to a health care provider listed in the approved preferred provider network;  
15 provided, however, that any contract proffered or maintained which restricts or limits the health  
16 care provider's ability to make referrals pursuant to the provisions of this section, restricts the  
17 injured employee's first choice of health care provider, substitutes or overrules the treatment  
18 protocols maintained by the medical advisory board or attempts to evade or limit the jurisdiction  
19 of the workers' compensation court shall be void as against public policy. If the employee seeks  
20 to change to a health care provider not in the approved preferred provider network, the employee  
21 must obtain the approval of the insurer or self-insured employer. Nothing contained in this  
22 section shall prevent the treatment, care, or rehabilitation of an employee by more than one  
23 physician, dentist, or hospital. The employee's first visit to any facility providing emergency care  
24 or to a physician or medical facility under contract with or agreement with the employer or  
25 insurer to provide priority care shall not constitute the employee's initial choice to obtain health  
26 care, diagnosis or treatment.

27 (2) In addition to the treatment of qualified health care providers, the employee shall  
28 have the freedom to obtain a rehabilitation evaluation by a rehabilitation counselor certified by  
29 the director pursuant to section 28-33-41 in cases where the employee has received compensation  
30 for a period of more than three (3) months, and the employer shall pay the reasonable fees  
31 incurred by the rehabilitation counselor for the initial assessment.

32 (b) Within three (3) days of an initial visit following an injury, the health care provider  
33 shall provide to the insurer or self-insured employer, and the employee and his or her attorney a  
34 notification of compensable injury form to be approved by the administrator of the medical

1 advisory board. Within three (3) days of the injured employee's release or discharge, return to  
2 work, and/or recovery from an injury covered by chapters 29 -- 38 of this title, the health care  
3 provider shall provide a notice of release to the insurer or self-insured employer and the employee  
4 and his or her attorney on a form approved by the division. A twenty dollar (\$20.00) fee may be  
5 charged by the health care provider to the insurer or self-insured employer for the notification of  
6 compensable injury forms or notice of release forms or for affidavits filed pursuant to subsection  
7 (c) of this section, but only if filed in a timely manner. No claim for care or treatment by a  
8 physician, dentist, or hospital chosen by an employee shall be valid and enforceable as against his  
9 or her employer, the employer's insurer, or the employee, unless the physician, dentist, or hospital  
10 gives written notice of the employee's choice to the employer/insurance carrier within fifteen (15)  
11 days after the beginning of the services or treatment. The health care provider shall in writing  
12 present to the employer or insurance carrier a final itemized bill for all unpaid services or  
13 treatment within three (3) months after the conclusion of the treatment. The employee shall not be  
14 personally liable to pay any physician, dentist, or hospital bills in cases where the physician,  
15 dentist, or hospital has forfeited the right to be paid by the employer or insurance carrier because  
16 of noncompliance with this section.

17 (c) (1) ~~Every six (6) weeks,~~ At six (6) weeks from the date of injury, then every twelve  
18 (12) weeks thereafter until maximum medical improvement, any qualified physician or other  
19 health care professional providing medical care or treatment to any person for an injury covered  
20 by chapters 29 -- 38 of this title shall file an itemized bill and an affidavit with the insurer, the  
21 employee and his or her attorney, and the medical advisory board. A ten percent (10%) discount  
22 may be taken on the itemized bill affidavits not filed in a timely manner and received by the  
23 insurer one week or more late. The affidavit shall be on a form designed and provided by the  
24 administrator of the medical advisory board and shall state:

25 ~~(i) The nature of the injury being treated;~~

26 ~~(ii)~~ (i) The type of medical treatment provided to date, including type and frequency of  
27 treatment(s);

28 ~~(iii)~~ (ii) Anticipated further treatment including type, frequency, and duration of  
29 treatment(s), whether or not maximum medical improvement has been reached ~~or when it is~~  
30 ~~expected to be reached,~~ and the anticipated date of discharge;

31 ~~(iv)~~ (iii) Whether the employee can return to the former position of employment or is  
32 capable of other work, specifying work restrictions and work capabilities ~~and the degree of~~  
33 ~~functional impairment and/or disability~~ of the employee;

34 ~~(v) Any ownership interest in any ancillary facility to which the patient has been referred~~

1 ~~for treatment of a compensable injury.~~

2 (2) The affidavit shall be admissible as an exhibit of the workers' compensation court  
3 with or without the appearance of the affiant.

4 (d) "Itemized bill", as referred to in this section, means a statement of charges, on a form  
5 HCFA 1500 or other form suitable to the insurer, which includes, but is not limited to, an  
6 enumeration of specific types of care provided, facilities or equipment used, services rendered,  
7 and appliances or medicines prescribed, for purposes of identifying the treatment given the  
8 employee with respect to his or her injury.

9 (e) (1) The treating physician shall furnish to the employee, or to his or her legal  
10 representative, a copy of his or her medical report within ten (10) days of the examination date.

11 (2) The treating physician shall notify the employer, and the employee and his or her  
12 attorney immediately when an employee is able to return to full or modified work.

13 (3) There shall be no charge for a health record when that health record is necessary to  
14 support any appeal or claim under the Workers' Compensation Act section 23-17-19.1(16). The  
15 treating physician shall furnish to the employee, or to his or her legal representative, a medical  
16 report, within ten (10) days of the request, stating the diagnosis, disability, loss of use, end result  
17 and/or causal relationship of the employee's condition associated with the work related injury.  
18 The physician shall be entitled to charge for these services only as enunciated in the State of  
19 Rhode Island workers compensation medical fee schedule.

20 (f) (1) Compensation for medical expenses and other services under section 28-33-5, 28-  
21 33-7 or 28-33-8 is due and payable within twenty-one (21) days from the date a request is made  
22 for payment of these expenses by the provider of the medical services. In the event payment is not  
23 made within twenty-one (21) days from the date a request is made for payment, the provider of  
24 medical services may add, and the insurer or self-insurer shall pay, interest at the per annum rate  
25 as provided in section 9-21-10 on the amount due. The employee or the medical provider may file  
26 a petition with the administrator of the workers' compensation court which petition shall follow  
27 the procedure as authorized in chapter 35 of this title.

28 (2) The twenty-one (21) day period in subdivision (1) of this subsection shall begin on  
29 the date the insurer receives a request with appropriate documentation required to determine  
30 whether the claim is compensable and the payment requested is due.

31 **28-33-18. Weekly compensation for partial incapacity.** -- (a) While the incapacity for  
32 work resulting from the injury is partial, the employer shall pay the injured employee a weekly  
33 compensation equal to seventy-five percent (75%) of the difference between his or her spendable  
34 average weekly base wages, earnings, or salary before the injury as computed pursuant to the

1 provisions of section 28-38-20, and his or her spendable weekly wages, earnings, salary, or  
2 earnings capacity after that, but not more than the maximum weekly compensation rate for total  
3 incapacity as set forth in section 28-33-17. The provisions of this section are subject to the  
4 provisions of section 28-33-18.2.

5 (b) For all injuries occurring on or after September 1, 1990, where an employee's  
6 condition has reached maximum medical improvement and the incapacity for work resulting from  
7 the injury is partial, while the incapacity for work resulting from the injury is partial, the  
8 employer shall pay the injured employee a weekly compensation equal to seventy percent (70%)  
9 of the weekly compensation rate as set forth in subsection (a) of this section. The court may, in its  
10 discretion, take into consideration the performance of the employee's duty to actively seek  
11 employment in scheduling the implementation of the reduction. The provisions of this subsection  
12 are subject to the provisions of section 28-33-18.2.

13 (c) (1) Earnings capacity determined from degree of functional impairment pursuant to  
14 section 28-29-2(3) shall be determined as a percentage of the whole person based on the ~~Fifth~~  
15 ~~(5<sup>th</sup>)~~ Sixth (6<sup>th</sup>) edition of the American Medical Association Guides To The Value Of Permanent  
16 Impairment. Earnings capacity shall be calculated from the percentage of impairment as follows:

17 (i) For impairment of five percent (5%) or less, earnings capacity shall be calculated so  
18 as to extinguish one hundred percent (100%) of weekly benefits.

19 (ii) For impairment of twenty-five percent (25%) or less, but greater than five percent  
20 (5%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less  
21 the percent of impairment of weekly benefits.

22 (iii) For impairment of fifty percent (50%) or less, but greater than twenty-five percent  
23 (25%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less  
24 one point two five (1.25) times the percent of impairment of weekly benefits.

25 (iv) For impairment of sixty-five percent (65%) or less, but greater than fifty percent  
26 (50%), earnings capacity shall be calculated so as to extinguish one hundred percent (100%) less  
27 one point five (1.5) times the percent of impairment of weekly benefits.

28 (2) An earnings capacity adjustment under this section shall be applicable only when the  
29 employee's condition has reached maximum medical improvement under section 28-29-2(3)(ii)  
30 and benefits are subject to adjustment pursuant to subsection (b) of this section.

31 (d) In the event partial compensation is paid, in no case shall the period covered by the  
32 compensation be greater than three hundred and twelve (312) weeks. In the event that  
33 compensation for partial disability is paid under this section for a period of three hundred and  
34 twelve (312) weeks, the employee's right to continuing weekly compensation benefits shall be



1 determined pursuant to the terms of section 28-33-18.3. At least twenty-six (26) weeks prior to  
2 the expiration of the period, the employer or insurer shall notify the employee and the director of  
3 its intention to terminate benefits at the expiration of three hundred and twelve (312) weeks and  
4 advise the employee of the right to apply for a continuation of benefits under the terms of section  
5 28-33-18.3. In the event that the employer or insurer fails to notify the employee and the director  
6 as prescribed, the employer or insurer shall continue to pay benefits to the employee for a period  
7 equal to twenty-six (26) weeks after the date the notice is served on the employee and the  
8 director.

9 **28-33-18.3. Continuation of benefits -- Partial incapacity.** -- (a) (1) For all injuries  
10 occurring on or after September 1, 1990, in those cases where the employee has received a notice  
11 of intention to terminate partial incapacity benefits pursuant to section 28-33-18, the employee or  
12 his or her duly authorized representative may file with the workers' compensation court a petition  
13 for continuation of benefits on forms prescribed by the workers' compensation court. In any  
14 proceeding before the workers' compensation court on a petition for continuation of partial  
15 incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence  
16 that his or her partial incapacity poses a material hindrance to obtaining employment suitable to  
17 his or her limitation, partial incapacity benefits shall continue. For injuries on and after July 1,  
18 ~~2010~~ [2012](#), "material hindrance" is defined to include only compensable injuries causing a greater  
19 than sixty-five percent (65%) degree of functional impairment and/or disability. Any period of  
20 time for which the employee has received benefits for total incapacity shall not be included in the  
21 calculation of the three hundred and twelve (312) week period.

22 (2) The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1,  
23 ~~2010~~ [2012](#).

24 (b) (1) Where any employee's incapacity is partial and has extended for more than three  
25 hundred and twelve (312) weeks and the employee has proved an entitlement to continued  
26 benefits under subsection (a) of this section, payments made to these incapacitated employees  
27 shall be increased annually on the tenth (10th) day of May thereafter so long as the employee  
28 remains incapacitated. The increase shall be by an amount equal to the total percentage increase  
29 in the annual consumer price index, United States city average for urban wage earners and  
30 clerical workers, as formulated and computed by the Bureau of Labor Statistics of the United  
31 States Department of Labor for the period of March 1 to February 28 each year.

32 (2) "Index" as used in this section refers to the consumer price index, United States city  
33 average for urban wage earners and clerical workers, as that index was formulated and computed  
34 by the Bureau of Labor Statistics of the United States Department of Labor.

1 (3) The annual increase shall be based upon the percentage increase, if any, in the  
2 consumer price index for the month of a given year, over the index for February, the previous  
3 year. Thereafter, increases shall be made on May 10 annually, based upon the percentage  
4 increase, if any, in the consumer price index for the period of March 1 to February 28.

5 (4) The computations in this section shall be made by the director of labor and training  
6 and promulgated to insurers and employers making payments required by this section. Increases  
7 shall be paid by insurers and employers without further order of the court. If payment payable  
8 under this section is not mailed within fourteen (14) days after the employer or insurer has been  
9 notified by publication in a newspaper of general circulation in the state it becomes due, there  
10 shall be added to the unpaid payment an amount equal to twenty percent (20%) of it, to be paid at  
11 the same time as but in addition to the payment.

12 (5) This section applies only to payment of weekly indemnity benefits to employees as  
13 described in subdivision (1) of this subsection, and does not apply to specific compensation  
14 payments for loss of use or disfigurement or payment of dependency benefits or any other  
15 benefits payable under the Workers' Compensation Act.

16 (c) No petitions for commutation shall be allowed or entertained in those cases where an  
17 employee is receiving benefits pursuant to this section.

18 **28-33-19. Additional compensation for specific injuries.** -- (a) (1) In case of the  
19 following specified injuries there shall be paid in addition to all other compensation provided for  
20 in chapters 29 to 38 of this title a weekly payment equal to one-half (1/2) of the average weekly  
21 earnings of the injured employee, but in no case more than ninety dollars (\$90.00) nor less than  
22 forty-five dollars (\$45.00) per week. In case of the following specified injuries that occur on or  
23 after January 1, 2012, there shall be paid in addition to all other compensation provided for in  
24 chapters 29 to 38 of this title a weekly payment equal to one-half (1/2) of the average weekly  
25 earnings of the injured employee, but in no case more than one hundred eighty dollars (\$180) nor  
26 less than ninety dollars (\$90.00) per week. Payment made under this section shall be made in a  
27 one time payment unless the parties otherwise agree. Payment shall be mailed within fourteen  
28 (14) days of the entry of a decree, order, or agreement of the parties:

29 (i) For the loss by severance of both hands at or above the wrist, or for the loss of the  
30 arm at or above the elbow or for the loss of the leg at or above the knee, or both feet at or above  
31 the ankle, or of one hand and one foot, or the entire and irrecoverable loss of the sight of both  
32 eyes, or the reduction to one-tenth (1/10) or less of normal vision with glasses, for a period of  
33 three hundred twelve (312) weeks; provided, that for the purpose of this chapter the Snellen chart  
34 reading 20/200 shall equal one-tenth (1/10) of normal vision or a reduction of ninety percent

1 (90%) of the vision. Additionally, any loss of visual performance including, but not limited to,  
2 loss of binocular vision, other than direct visual acuity may be considered in evaluating eye loss;

3 (ii) For the loss by severance of either arm at or above the elbow, or of either leg at or  
4 above the knee, for a period of three hundred twelve (312) weeks;

5 (iii) For the loss by severance of either hand at or above the wrist for a period of two  
6 hundred forty-four (244) weeks;

7 (iv) For the entire and irrecoverable loss of sight of either eye, or the reduction to one-  
8 tenth (1/10) or less of normal vision with glasses, or for loss of binocular vision for a period of  
9 one hundred sixty (160) weeks;

10 (v) For the loss by severance of either foot at or above the ankle, for a period of two  
11 hundred five (205) weeks;

12 (vi) For the loss by severance of the entire distal phalange of either thumb for a period of  
13 thirty-five (35) weeks; and for the loss by severance at or above the second joint of either thumb,  
14 for a period of seventy-five (75) weeks;

15 (vii) For the loss by severance of one phalange of either index finger, for a period of  
16 twenty-five (25) weeks; for the loss by severance of at least two (2) phalanges of either index  
17 finger, for a period of thirty-two (32) weeks; for the loss by severance of at least three (3)  
18 phalanges of either index finger, for a period of forty-six (46) weeks;

19 (viii) For the loss by severance of one phalange of the second finger of either hand, for a  
20 period of sixteen (16) weeks; for the loss by severance of two (2) phalanges of the second finger  
21 of either hand, for a period of twenty-two (22) weeks; for the loss by severance of three (3)  
22 phalanges of the second finger on either hand, for a period of thirty (30) weeks;

23 (ix) For the loss by severance of one phalange of the third finger of either hand, for a  
24 period of twelve (12) weeks; for the loss by severance of two (2) phalanges of the third finger of  
25 either hand, for a period of eighteen (18) weeks; for the loss by severance of three (3) phalanges  
26 of a third finger of either hand, for a period of twenty-five (25) weeks;

27 (x) For the loss by severance of one phalange of the fourth finger of either hand, for a  
28 period of ten (10) weeks; for the loss by severance of two (2) phalanges of the fourth finger of  
29 either hand, for a period of fourteen (14) weeks; for the loss by severance of three (3) phalanges  
30 of a fourth finger of either hand, for a period of twenty (20) weeks;

31 (xi) For the loss by severance of one phalange of the big toe on either foot, for a period  
32 of twenty (20) weeks; for the loss by severance of two (2) phalanges of the big toe of either foot,  
33 for a period of thirty-eight (38) weeks; for the loss by severance at or above the distal joint of any  
34 other toe than the big toe, for a period of ten (10) weeks for each such toe;

1 (xii) ~~For the complete loss of hearing of either ear sixty (60) weeks; for the complete loss~~  
2 ~~of hearing of both ears two hundred (200) weeks; provided, that the loss shall be due to external~~  
3 ~~trauma.~~

4 For partial loss by severance for any of the injuries specified in paragraphs (1)(i) through  
5 (1)(xi) of this subsection, proportionate benefits shall be paid for the period of time that the  
6 partial loss by severance bears to the total loss by severance.

7 (2) Where any bodily member or portion of it has been rendered permanently stiff or  
8 useless, compensation in accordance with the above schedule shall be paid as if the member or  
9 portion of it had been completely severed; provided, that if the stiffness or uselessness is less than  
10 total, then compensation shall be paid for that period of weeks in proportion to the applicable  
11 period where the member or portion of it has been completely severed as the instant percentage of  
12 stiffness or uselessness bears to the total stiffness or total uselessness of the bodily members or  
13 portion of them.

14 (3) In case of the following specified injuries there shall be paid in addition to all other  
15 compensation provided for in chapters 29 - 38 under this title a weekly payment equal to one-half  
16 (1/2) of the average weekly earnings of the injured employee, but in no case more than ninety  
17 dollars (\$90.00) nor less than forty-five dollars (\$45.00) per week. Payment under this subsection  
18 shall be made in a one time payment unless the parties otherwise agree. Payment shall be mailed  
19 within fourteen (14) days of the entry of a decree, order, or agreement of the parties:

20 ~~(i) For partial loss by severance for any of the injuries specified in paragraphs (1)(i) —~~  
21 ~~(1)(xii) of this subsection, proportionate benefits shall be paid for the period of time that the~~  
22 ~~partial loss by severance bears to the total loss by severance.~~

23 ~~(ii)~~(i) For permanent disfigurement of the body the number of weeks may not exceed  
24 five hundred (500) weeks, which sum shall be payable in a one time payment within fourteen (14)  
25 days of the entry of a decree, order, or agreement of the parties in addition to all other sums under  
26 this section wherever it is applicable.

27 (4) (i) Loss of hearing due to industrial noise is recognized as an occupational disease for  
28 purposes of chapters 29 - 38 of this title and occupational deafness is defined to be a loss of  
29 hearing in one or both ears due to prolonged exposure to harmful noise in employment. Harmful  
30 noise means sound capable of producing occupational deafness.

31 (ii) Hearing loss shall be evaluated pursuant to protocols established by the workers'  
32 compensation medical advisory board. All treatment consistent with this subsection shall be  
33 consistent with the protocols established by the workers' compensation medical advisory board  
34 subject to section 28-33-5.

1 (iii) If the employer has conducted baseline screenings within one (1) year of exposure to  
2 harmful noise to evaluate the extent of an employee's pre-existing hearing loss, the causative  
3 factor shall be apportioned based on the employee's pre-existing hearing loss and subsequent  
4 occupational hearing loss, and the compensation payable to the employee shall only be that  
5 portion of the compensation related to the present work-related exposure.

6 (iv) There shall be payable as permanent partial disability for total occupational deafness  
7 of one ear, seventy-five (75) weeks of compensation; for total occupational deafness of both ears,  
8 two hundred forty-four (244) weeks of compensation; for partial occupational deafness in one or  
9 both ears, compensation shall be paid for any periods that are proportionate to the relation which  
10 the hearing loss bears to the amount provided in this subdivision for total loss of hearing in one or  
11 both ears, as the case may be. For the complete loss of hearing for either ear due to external  
12 trauma or by other mechanism, acuity loss shall be paid pursuant to this subsection. ~~Acuity~~  
13 ~~hearing loss related to a single event, usually trauma (e.g., in association with a basal skull~~  
14 ~~fracture) or by other mechanism, shall be paid pursuant to this subsection.~~

15 (v) No benefits shall be granted for tinnitus, psychogenic hearing loss, congenital  
16 hearing loss, recruitment or hearing loss above three thousand (3,000) hertz.

17 (vi) The provisions of this subsection and the amendments insofar as applicable to  
18 hearing loss shall be operative as to any occupational hearing loss that occurs on or after  
19 September 1, 2003, except for acuity hearing loss related to a single event which shall become  
20 effective upon passage.

21 (vii) If previous hearing loss, whether occupational or not, is established by an  
22 audiometric examination or other competent evidence, whether or not the employee was exposed  
23 to assessable noise exposure within one year preceding the test, the employer is not liable for the  
24 previous loss, nor is the employer liable for a loss for which compensation has previously been  
25 paid or awarded. The employer is liable only for the difference between the percent of  
26 occupational hearing loss determined as of the date of the audiometric examination conducted by  
27 a certified audiometric technician using an audiometer which meets the specifications established  
28 by the American National Standards Institute (ANSI 3.6-1969, ri973) used to determine  
29 occupational hearing loss and the percentage of loss established by the baseline audiometric  
30 examination. An amount paid to an employee for occupational hearing loss by any other  
31 employer shall be credited against compensation payable by the subject employer for the hearing  
32 loss. The employee shall not receive in the aggregate greater compensation from all employers  
33 for occupational hearing loss than that provided in this section for total occupational hearing loss.  
34 A payment shall not be paid to an employee unless the employee has worked in excessive noise

1 exposure employment for a total period of at least one hundred eighty (180) days for the  
2 employer for whom compensation is claimed.

3 (viii) No claim for occupational deafness may be filed until six (6) months separation  
4 from the type of noisy work for the last employer in whose employment the employee was at any  
5 time during the employment exposed to harmful noise.

6 (ix) The total compensation due for hearing loss is recovered from the employer who last  
7 employed the employee in whose employment the employee was last exposed to harmful noise  
8 and the insurance carrier, if any, on the risk when the employee was last so exposed, and if the  
9 occupational hearing loss was contracted while the employee was in the employment of a prior  
10 employer, and there was no baseline testing by the last employer, the employer and insurance  
11 carrier which is made liable for the total compensation as provided by this section may petition  
12 the worker's compensation court for an apportionment of the compensation among the several  
13 employers which since the contraction of the hearing loss have employed the employee in a noisy  
14 environment.

15 (b) Where payments are required to be made under more than one clause of this section,  
16 payments shall be made in a one time payment unless the parties otherwise agree. Payment shall  
17 be mailed within fourteen (14) days of the entry of a decree, order, or agreement of the parties.

18 (c) Payments pursuant to this section, except paragraph (a)(3)(ii) of this section, shall be  
19 made only after an employee's condition as relates to loss of use has reached maximum medical  
20 improvement as defined in section 28-29-2(8) and as found pursuant to section 28-33-18(b).

21 **28-33-34.1. Schedule of medical review.** -- (a) On or about twenty-six (26) weeks from  
22 the date of a compensable injury, any person obtaining incapacity benefits ~~shall~~ may be examined  
23 and their diagnosis and treatment reviewed by a comprehensive independent health care review  
24 team or an impartial medical examiner. The comprehensive independent health care review team  
25 or impartial medical examiner shall be selected through a mechanism to be established by the  
26 administrator of the medical advisory board. The results of the examination and review shall be  
27 provided to the employee and the insurer or self-insured employer within fourteen (14) days of  
28 the examination and a copy shall be filed with the medical advisory board. The comprehensive  
29 independent health care review team and/or impartial medical examiner shall review the treating  
30 physician's findings and diagnosis and make its own findings of the extent and nature of the  
31 claimed disability, the degree of functional impairment and/or disability, the expectation of  
32 further medical improvement, any further medical care, treatment, and/or rehabilitation services  
33 that may be required to reach maximum medical improvement, type(s) of work that can be  
34 performed within existing physical capacity, the degree of disability expected at maximum

1 medical improvement, whether the employee can return to the former position of employment,  
2 and compliance of the treating physician with protocols and standards of medical care established  
3 by the medical advisory board. The report shall be admissible as the court's exhibit. A party may  
4 be permitted to cross-examine the author(s) of the report with leave of the court.

5 (b) On or about thirteen (13) weeks after any examination under this section or section  
6 28-33-35, a comprehensive independent health care review team or impartial medical examiner  
7 shall perform a similar review. The same comprehensive independent health care review team or  
8 impartial medical examiner may not perform more than two (2) consecutive reviews on a  
9 particular employee.

10 ~~(c) The medical reviews required by this section may be satisfied by summary review if:~~

11 ~~(1) The employee is receiving benefits for total incapacity, and the employee's condition~~  
12 ~~is so severe or permanent that examination and review is clearly inappropriate or unnecessary;~~

13 ~~(2) The employee's return to work or a suspension of benefits for other reasons is~~  
14 ~~imminent;~~

15 ~~(3) The employee is under and following a rehabilitation program approved by the~~  
16 ~~director of labor and training;~~

17 ~~(4) The employee's condition has been previously reviewed by the attending physician,~~  
18 ~~comprehensive independent health care review team, or impartial medical examiner, or in an~~  
19 ~~approved rehabilitation program report, and was then determined to be and remains stable and at~~  
20 ~~maximum medical improvement, and the employee has had an earnings capacity adjustment~~  
21 ~~appropriate to his or her present level of earnings capacity; or~~

22 ~~(5) The employee is receiving weekly compensation benefits from a self insured~~  
23 ~~employer that has filed and received approval of a request for exemption from the provisions of~~  
24 ~~this section.~~

25 ~~(d)~~(c) Failure to appear for examination under this section shall be grounds for  
26 suspension or termination of benefits unless justified by good cause. Residence outside the state  
27 does not, by itself, constitute good cause for failure to appear.

28 SECTION 3. Section 28-36-12 of the General Laws in Chapter 28-36 entitled "Workers'  
29 Compensation - Insurance" is hereby amended to read as follows:

30 **28-36-12. Notice of issuance, cancellation, or failure to renew policies.** -- (a) Every  
31 insurance company having written a policy insuring against liability for personal injuries to  
32 employees shall notify the director of the issuance of the policy within five (5) days of the  
33 effective date of this policy in a manner determined by the director. Upon the cancellation of the  
34 policy or failure to renew it, every insurance company having written the policy shall

1 immediately notify the director of the cancellation or failure to renew. The director shall have  
2 discretion to assess an administrative penalty of not more than two hundred fifty dollars (\$250)  
3 per offense against any insurance company that fails to notify the director as required in this  
4 section. The director, in his or her discretion, may bring a civil action to collect all assessed civil  
5 penalties. The workers' compensation court shall have jurisdiction to enforce compliance with  
6 any order of the director made pursuant to this section. Additionally, any insurance company that  
7 willfully fails to notify the director as required in this section shall be subject to prosecution for a  
8 misdemeanor and upon conviction may be punished by a fine of not more than two hundred fifty  
9 dollars (\$250) for each offense. All criminal actions for any violation of this section shall be  
10 prosecuted by the attorney general at the request of the director.

11 (b) Cancellation of the policy or non-renewal shall not be deemed effective until written  
12 notice of the cancellation or non-renewal is received by the director.

13 (c) All penalties and fines collected pursuant to this section shall be deposited in the  
14 general fund.

15 (d) Except for workers' compensation insurance coverage verification, all information  
16 required to be provided to the director under chapter 36 of title 28 shall be considered confidential  
17 under section 38-2-2(4)(B) of the general laws.

18 SECTION 4. Section 28-41-6 of the General Laws in Chapter 28-41 entitled "Temporary  
19 Disability Insurance - Benefits" is hereby amended to read as follows:

20 **28-41-6. Effect on waiting period credit and benefits of receipt of workers'**  
21 **compensation payments.** -- (a) No individual shall be entitled to receive waiting period credit  
22 benefits or dependents' allowances with respect to which benefits are paid or payable to that  
23 individual under any workers' compensation law of this state, any other state, or the federal  
24 government, on account of any disability caused by accident or illness. In the event that workers'  
25 compensation benefits are subsequently awarded to an individual, whether on a weekly basis or  
26 as a lump sum, for a week or weeks with respect to which that individual has received waiting  
27 period credit, benefits, or dependents' allowances, under chapters 39 - 41 of this title, the director,  
28 for the temporary disability insurance fund, shall be subrogated to that individual's rights in that  
29 award to the extent of the amount of benefits and/or dependents' allowances paid to him or her  
30 under those chapters.

31 (b) (1) Whenever an employer or his or her insurance carrier has been notified that an  
32 individual has filed a claim for unemployment due to sickness for any week or weeks under  
33 chapters 39 -- 41 of this title for which week or weeks that individual is or may be eligible for  
34 benefits under chapters 29 -- 38 of this title, that notice shall constitute a lien upon any pending



1 award, order, or settlement to that individual under chapters 29 - 38 of this title.

2 (2) The employer or his insurance carrier shall be required to reimburse the director, for  
3 the temporary disability insurance fund, the amount of benefits and/or dependents' allowances  
4 received by the individual under chapters 39 - 41 of this title, for any week or weeks for which  
5 that award, order, or settlement is made.

6 (c) Whenever an individual becomes entitled to or is awarded workers' compensation  
7 benefits for the same week or weeks with respect to which he has received benefits and/or  
8 dependents' allowances under chapters 39 - 41 of this title, and notice of that receipt has been  
9 given to the division of workers' compensation of the department of labor and training and/or the  
10 workers' compensation court, the division or court is required to and shall incorporate in the  
11 award, order, or approval of settlement, an order requiring the employer or his or her insurance  
12 carrier to reimburse the director, for the temporary disability insurance fund, the amount of any  
13 disability benefits and/or dependents' allowances which may have been paid to the employee for  
14 unemployment due to sickness for those weeks under chapters 39 - 41 of this title. Nothing herein  
15 shall be construed to deny benefits under this chapter to individuals who receive a lump sum  
16 settlement pursuant to section 28-33-25 and subsequently apply for benefits under this chapter as  
17 long as the sickness or illness is materially different from the one for which the individual was  
18 paid workers' compensation, is not affected by said injury and/or the medical condition did not  
19 result from the injury for which the employee was paid workers' compensation benefits.

20 (d) If, through inadvertence, error, or mistake, an individual has received benefit  
21 payments and/or dependents' allowances for any week or weeks under chapters 39 - 41 of this  
22 title, and has also received payments for the same week or weeks under any workers'  
23 compensation law of this state, any other state, or of the federal government, he or she shall, in  
24 the discretion of the director of the department of labor and training, be liable to have that sum  
25 deducted from any benefits payable to him or her under chapters 39 - 41 of this title, or shall be  
26 liable to repay to the director, for the temporary disability insurance fund, a sum equal to that  
27 amount received, and that sum shall be collectible in the manner provided in section 28-40-12 for  
28 the collection of past due contributions.

29 (e) Notwithstanding any other provision of this section, no individual who, prior to  
30 September 1, 1969, has sustained an injury by reason of which he or she may be eligible for  
31 benefits under chapters 29-38 of this title shall be deprived of any rights which he or she may  
32 have under chapters 39 - 41 of this title.

33 SECTION 5. Sections 28-53-2 and 28-53-7 of the General Laws in Chapter 28-53  
34 entitled "Rhode Island Uninsured Employers Fund" are hereby amended to read as follows:

1           **28-53-2. Establishment -- Sources -- Administration.** -- (a) There shall be established  
2 within the department of labor and training a special restricted receipt account to be known as the  
3 Rhode Island uninsured employers fund. The fund shall be capitalized from excise taxes assessed  
4 against uninsured employers pursuant to the provisions of section 28-53-9 of this chapter and  
5 from general revenues appropriated by the legislature. Beginning in state fiscal year ending ~~June~~  
6 ~~30, 2010~~, June 30, 2012, the legislature may appropriate up to two million dollars (\$2,000,000) in  
7 general revenue funds annually for deposit into the Rhode Island uninsured employers fund.

8           (b) All moneys in the fund shall be mingled and undivided. The fund shall be  
9 administered by the director of the department of labor and training or his or her designee, but in  
10 no case shall the director incur any liability beyond the amounts paid into and earned by the fund.

11           (c) All amounts owed to the uninsured employers fund from illegally uninsured  
12 employers are intended to be excise taxes and as such, all ambiguities and uncertainties are to be  
13 resolved in favor of a determination that such assessments are excise taxes.

14           **28-53-7. Payments to employees of uninsured employers.** -- (a) Where it is determined  
15 that the employee was injured in the course of employment while working for an employer who  
16 fails to maintain a policy of workers' compensation insurance as required by Rhode Island general  
17 laws section 28-36-1, et seq., the uninsured employers fund shall pay the benefits to which the  
18 injured employee would be entitled pursuant to chapters 29 to 38 of this title subject to the  
19 limitations set forth herein.

20           (b) The workers' compensation court shall hear all petitions for payment from the fund  
21 pursuant to Rhode Island general laws section 28-30-1, et seq., provided, however, that the  
22 uninsured employers fund and the employer shall be named as parties to any petition seeking  
23 payment of benefits from the fund.

24           (c) Where an employee is deemed to be entitled to benefits from the uninsured  
25 employers fund, the fund shall pay benefits for disability and medical expenses as provided  
26 pursuant to chapters 29 to 38 of this title except that the employee shall not be entitled to receive  
27 benefits for loss of function and disfigurement pursuant to the provisions of Rhode Island general  
28 laws section 28-33-19.

29           (d) The fund shall pay cost, counsel and witness fees as provided in Rhode Island  
30 general laws section 28-35-32 to any employee who successfully prosecutes any petitions for  
31 compensation, petitions for medical expenses, petitions to amend a pretrial order or memorandum  
32 of agreement and all other employee petitions and to employees who successfully defend, in  
33 whole or in part, proceedings seeking to reduce or terminate any and all workers' compensation  
34 benefits; provided, however, that the attorney's fees awarded to counsel who represent the

1 employee in petitions for lump sum commutation filed pursuant to Rhode Island general laws  
2 section 28-33-25 or in the settlement of disputed cases pursuant to Rhode Island general laws  
3 section 28-33-25.1 shall be limited to the maximum amount paid to counsel who serve as court  
4 appointed attorneys in workers' compensation proceedings as established by rule or order of the  
5 Rhode Island supreme court.

6 (e) In the event that the uninsured employer makes payment of any monies to the  
7 employee to compensate the employee for lost wages or medical expenses, the fund shall be  
8 entitled to a credit for all such monies received by or on behalf of the employee against any future  
9 benefits payable directly to the employee.

10 (f) This section shall apply to injuries that occur on or after ~~January 1, 2011~~ [January 1,](#)  
11 [2012](#).

12 SECTION 6. Section 45-21-31 of the General Laws in Chapter 45-21 entitled  
13 "Retirement of Municipal Employees" is hereby amended to read as follows:

14 **45-21-31. Offset of workers' compensation or personal injury recovery.** -- Any  
15 amounts paid or payable under the provisions of any workers' compensation law, [exclusive of](#)  
16 [Medicare set aside allocation, specific compensation benefits or any benefits due pursuant to the](#)  
17 [terms of a collective bargaining agreement](#) or as the result of any action for damages for personal  
18 injuries against the municipality by which the member was employed, on account of death or  
19 disability of a member occurring while in the performance of duty, are offset against and payable  
20 in lieu of any benefits payable out of funds provided by the municipality under the provisions of  
21 this chapter on account of the death or disability of the member. If the value of the total  
22 commuted benefits under any workers' compensation law or action is less than the actuarial  
23 reserve on the benefits otherwise payable from funds provided by the municipality under this  
24 chapter, the value of the commuted payments is deducted from the actuarial reserve, and the  
25 benefits that may be provided by the actuarial reserve so reduced are payable under the provisions  
26 of this chapter.

27 SECTION 7. This act shall take effect upon passage with paragraph 28-29-2(3)(ii) and  
28 section 28-33-18 applicable to all injuries sustained on or after January 1, 2011.

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO LABOR AND LABOR RELATIONS – WORKERS' COMPENSATION

\*\*\*

1           This act would make changes in the medical review procedure for claimants receiving  
2 workers' compensation benefits.

3           This act would take effect upon passage with paragraph 28-29-2(3)(ii) and section 28-33-  
4 18 applicable to all injuries sustained on or after January 1, 2011.

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LC00665/SUB A/3  
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