

2018 -- S 2924

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION

Introduced By: Senator P Fogarty

Date Introduced: May 17, 2018

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-29-19 and 28-29-30 of the General Laws in Chapter 28-29
2 entitled "Workers' Compensation - General Provisions" are hereby amended to read as follows:

3 **28-29-19. Waiver of claim of common law rights.**

4 (a) Any employee, or corporate officer, or manager, managing member or member of a
5 limited liability company, or the parent or guardian of any minor employee, who has given notice
6 to the employer that he or she claimed his or her right of action at common law may waive that
7 claim by filing a notice in writing with the director and the employer or his or her agent which
8 shall take effect five (5) days after the filing with the director.

9 (b) Any corporate officer, or manager, managing member or member of a limited liability
10 company who has given notice to the employer and its workers' compensation insurance carrier
11 that they claimed their right of action at common law may waive that claim by filing a notice in
12 writing with the director and the employer or their agent and its workers' compensation insurance
13 carrier which shall take effect five (5) days after the filing with the director. The insurance carrier
14 shall keep a copy of the notice consistent with the state archivist record retention schedule for the
15 department of labor and training.

16 ~~(b)~~(c) Any person who is appointed a corporate officer between January 1, 1999 and
17 December 31, 2001 and was not previously an employee of the corporation may elect to become
18 subject to chapters 29 -- 38 of this title upon filing a notice in writing with the director and his or
19 her employer and its workers' compensation insurance carrier which notice takes effect five (5)

1 days after the filing of his or her notice.

2 **28-29-30. Advisory council.**

3 (a) There is created a workers' compensation advisory council consisting of ~~sixteen (16)~~
4 seventeen (17) members as follows:

5 (1) The chief judge of the workers' compensation court and ~~one~~ two (2) additional ~~judge~~
6 judges of the workers' compensation court and one member of the Bar who primarily represents
7 injured workers before the workers' compensation court, both to be selected by the chief judge;

8 (2) The director of business regulation;

9 (3) The director of administration;

10 (4) Three (3) representatives from labor appointed by the governor, one of whom shall be
11 an injured worker;

12 (5) Three (3) representatives from business appointed by the governor, ~~one of whom shall~~
13 ~~be a self-insured employer, and~~ one of whom shall represent cities and towns;

14 (6) One representative from the general public appointed by the governor;

15 (7) The chairperson of the senate labor committee or his or her designee;

16 (8) The chairperson of the house labor committee or his or her designee;

17 (9) The director of labor and training; and

18 (10) The chief executive officer of the workers' compensation insurance fund or his or her
19 designee.

20 (b) It shall be the duty of the council to advise the governor and the general assembly, on
21 an annual basis, on the administration of the workers' compensation system.

22 SECTION 2. Section 28-30-4 of the General Laws in Chapter 28-30 entitled "Workers'
23 Compensation Court" is hereby amended to read as follows:

24 **28-30-4. Workers' compensation administrator -- Appointment -- Powers and**
25 **duties.**

26 (a) There shall be a workers' compensation administrator who shall be appointed by the
27 chief judge of the workers' compensation court with the advice and consent of the senate. The
28 chief judge of the workers' compensation court, with the advice and consent of the senate, shall
29 appoint a workers' compensation administrator to serve for a period of five (5) years, and
30 thereafter until his or her successor is appointed and qualified.

31 (b) The administrator shall:

32 (1) Supervise the preparation of an annual budget for the workers' compensation court;

33 (2) Formulate procedures governing the administration of workers' compensation court
34 services;

1 (3) Make recommendations to the workers' compensation court for improvement in court
2 services;

3 (4) Collect necessary statistics and prepare the annual report of the work of the workers'
4 compensation court;

5 (5) Provide supervision and consultation to the staff of the workers' compensation court
6 concerning administration of court services, training and supervision of personnel, and fiscal
7 management;

8 (6) Perform any other duties that the workers' compensation court specifies.

9 [\(7\) Have the power to act as a notary public as provided in § 42-30-14.](#)

10 SECTION 3. The title of Chapter 28-53 of the General Laws entitled "Rhode Island
11 Uninsured Employers Fund" is hereby amended to read as follows:

12 ~~CHAPTER 28-53~~

13 ~~Rhode Island Uninsured Employers Fund~~

14 [CHAPTER 28-53](#)

15 [RHODE ISLAND UNINSURED PROTECTION FUND](#)

16 SECTION 4. Sections 28-53-1, 28-53-2, 28-53-3, 28-53-7, 28-53-8 and 28-53-9 of the
17 General Laws in Chapter 28-53 entitled "Rhode Island Uninsured Employers Fund" are hereby
18 amended to read as follows:

19 **28-53-1. Preamble and legislative findings.**

20 WHEREAS, The system of workers' compensation in the state of Rhode Island was once
21 in a state of acute crisis until legislative intervention and oversight produced what is now a
22 nationally recognized model of a well-managed economical program that provides injured
23 workers with appropriate compensation, health care and rehabilitative services without unduly
24 burdening employers, insurers and the citizens of Rhode Island; and

25 WHEREAS, Legislative and policy changes have corrected the abuses and misuse of the
26 workers' compensation system while assisting injured workers, restoring fiscal stability, and
27 eliminating waste and unnecessary costs; and

28 WHEREAS, Professionals providing services covered under the provisions of the
29 Workers' Compensation Act have taken into account, in the performance of their service, the
30 important public policy benefit of a sound and properly functioning workers' compensation
31 system in this state, and have tirelessly committed themselves to protect and ~~maintained~~ [maintain](#)
32 the integrity of this system; and

33 WHEREAS, Abuse and misuse of the workers' compensation system by non-complying
34 employers has been reduced through the state's mandatory requirement that employers subject to

1 the law either self-insure or maintain a policy of workers' compensation insurance to ensure that
2 legitimately injured workers receive all the rights and benefits provided in the Workers'
3 Compensation Act; and

4 WHEREAS, Substantive efforts have already been undertaken by the general assembly,
5 the workers' compensation court and the department of labor and training to eliminate the illegal,
6 irresponsible and unscrupulous behavior of employers who openly and deliberately operate
7 businesses in Rhode Island without workers' compensation insurance for their employees; and

8 WHEREAS, The actions of non-complying employers are illegal and deprive not only
9 injured employees of the workers' compensation benefits to which they are entitled but also cause
10 greater social and financial costs to all citizens of Rhode Island including employers and health
11 care providers who incur uncompensated expenses in treating the victims of the uninsured
12 employer; and

13 WHEREAS, Additional reform is required to provide ~~appropriate compensation, health~~
14 ~~care and rehabilitative services~~ payments to employees who are injured while in the service of
15 uninsured employers and to eliminate the flagrant abuse of the system by illegally uninsured
16 employers by requiring them to accept their legal responsibility to pay the appropriate benefits to
17 their insured employees; now, therefore be it

18 RESOLVED, That it is declared to be the intent of the legislature that an uninsured
19 ~~employers~~ protection fund be created to ensure that injured workers who are employed by
20 illegally uninsured employers are not deprived of ~~workers' compensation benefits~~ payments. The
21 fund shall have enforcement mechanisms as are necessary to induce illegally uninsured
22 employers to acknowledge their malfeasance, provide legally mandated ~~benefits~~ payments for
23 injured workers; and to assure that all participants in the system recognize their obligation to
24 conduct themselves in a manner consistent with the overall integrity of the compensation system.
25 All amounts owed to the uninsured ~~employers~~ protection fund from illegally uninsured employers
26 are intended to be excise taxes and as such, all ambiguities and uncertainties are to be resolved in
27 favor of a determination that such assessments are excise taxes.

28 **28-53-2. Establishment -- Sources -- Administration.**

29 (a)(1) There shall be established within the department of labor and training a special
30 restricted receipt account to be known as the Rhode Island uninsured ~~employers~~ protection fund.
31 The department shall maintain the fund for the exclusive purpose of making payments to an
32 injured employee otherwise entitled to benefits pursuant to chapters 29 through 38 of title 28, or
33 in the case of death of the injured employee, to person(s) presumed wholly dependent for support
34 upon the deceased employee, as defined in § 28-33-13, and any costs specifically associated

1 [therewith, where the employer required to secure payment of such compensation failed to insure](#)
2 [or self-insure its liability at the time the injury took place as determined by the director and the](#)
3 [workers' compensation court.](#)

4 (2) The fund shall be capitalized from excise taxes assessed against uninsured employers
5 pursuant to the provisions of § 28-53-9 and from general revenues appropriated by the legislature.
6 Beginning in state fiscal year ending ~~June 30, 2018~~ [June 30, 2019](#), the legislature may appropriate
7 up to two million dollars (\$2,000,000) in general revenue funds annually for deposit into the
8 Rhode Island uninsured employers fund.

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

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

15 **28-53-3. Powers and duties of the fund.**

16 The fund shall:

17 (a) Be ~~obligated~~ [authorized](#) to pay covered claims as determined by the director ~~or~~ [and](#)
18 the workers' compensation court pursuant to the provisions of this section [and promulgate all](#)
19 [rules and regulations necessary to effectuate the provisions and overall purpose of this chapter.](#)
20 [The rules and regulations shall be promulgated in accordance with the administrative procedures](#)
21 [act, chapter 35 of title 42, and shall include, but not be limited to, the filing of claim forms and](#)
22 [other documentation supporting the claim, and proof of dependency, if relevant. All claims must](#)
23 [contain a release necessary to allow the director to investigate the claim;](#)

24 (b) Investigate claims brought against the fund and adjust, compromise, settle and pay
25 covered claims to the extent of the fund's allocation;

26 (c) Establish procedures for managing the assets of the fund;

27 (d) Sue or be sued; and

28 (e) Perform any and all acts necessary to effectuate the humanitarian purposes of this
29 chapter.

30 **28-53-7. Payments to employees of uninsured employers.**

31 (a) Where it is determined that the employee was injured in the course of employment
32 while working for an employer who fails to maintain a policy of workers' compensation insurance
33 as required by § 28-36-1 et seq., [in accordance with the provisions of this chapter](#), the uninsured
34 ~~employers protection~~ fund ~~shall~~ [is authorized to](#) pay the benefits to which the injured employee

1 would be entitled pursuant to chapters 29 to 38 of this title subject to the limitations set forth
2 herein.

3 (b) The workers' compensation court shall hear all petitions for payment from the fund
4 pursuant to § 28-30-1 et seq.; provided, however, that the uninsured ~~employers~~ protection fund
5 and the employer shall be named as parties to any petition seeking payment of benefits from the
6 fund.

7 (c) Where an employee is deemed to be entitled to benefits from the uninsured ~~employers~~
8 protection fund, the fund shall pay benefits for ~~disability and medical expenses~~ incapacity as
9 provided pursuant to chapters 29 to 38 of this title except that the employee shall not be entitled
10 to receive benefits for medical expenses pursuant to the provisions of § 28-33-5 or loss of
11 function and disfigurement pursuant to the provisions of § 28-33-19.

12 (d) The fund shall pay costs, counsel, and witness fees, as provided in § 28-35-32, to any
13 employee who successfully prosecutes any petitions for ~~compensation; petitions for medical~~
14 ~~expenses~~ payment; petitions to amend a pretrial order ~~or memorandum of agreement~~; and all
15 other employee petitions; and to employees who successfully defend, in whole or in part,
16 proceedings seeking to reduce or terminate any and all ~~workers' compensation benefits~~ payments;
17 provided, however, that the attorney's fees awarded to counsel who represent the employee in
18 petitions for lump-sum commutation filed pursuant to § 28-33-25, or in the settlement of disputed
19 cases pursuant to § 28-33-25.1, shall be limited to the maximum amount paid to counsel who
20 serve as court-appointed attorneys in workers' compensation proceedings as established by rule or
21 order of the Rhode Island supreme court. Any payment ordered by the court shall not be subject
22 to liens set forth in § 28-33-27(b). Any payment ordered by the court or due under this section
23 shall not be subject to liens set forth in § 28-33-27(b), nor shall such payments be assignable or
24 subject to assignment in any way.

25 (e) In the event that the uninsured employer makes payment of any monies to the
26 employee to compensate the employee for lost wages or medical expenses, the fund shall be
27 entitled to a credit for all such monies received by, or on behalf of, the employee against any
28 future benefits payable directly to the employee The fund shall be entitled to full reimbursement
29 from the uninsured employer for any and all payments made to employee as well as all costs,
30 counsel and witness fees paid out by the fund in connection with any claim and/or petition plus
31 any and all costs and attorney fees associated with collection and reimbursement of the fund.

32 (f) This section shall apply to injuries that occur on or after ~~July 1, 2018~~ February 1,
33 2019.

34 **28-53-8. Limitations on payments to injured employees.**

1 (a) Where the director determines by experience or other appropriate accounting and
2 actuarial methods that the reserves in the fund are insufficient to pay all claims presented or
3 pending, the director shall petition the workers' compensation court for an order to make
4 appropriate, proportionate reductions in the payments being made to injured employees by the
5 fund or to suspend all payments to injured employees until such time as the reserves maintained
6 by the fund are sufficient to resume the payment of benefits. The matter shall be heard by the
7 chief judge. If the court determines that the monies held by the fund are insufficient to fully ~~pay~~
8 ~~all-claims~~ make payments as they fall due, the court shall issue an order directing that a
9 proportionate reduction be made in the payments made to those employees receiving ~~benefits~~
10 payments from the fund. In considering the fund's request for relief, the court shall give due
11 weight to the policy of the workers' compensation act that ~~benefits~~ payments are to be paid
12 weekly and that the unwarranted reduction or interruption in the employee's weekly
13 ~~compensation benefit~~ payment will impose financial hardship upon the injured worker.

14 (b) The chief judge shall hear the director's petition within twenty-one (21) days of the
15 date the matter is filed with the court. The petition shall set forth the names and addresses of each
16 employee who may be affected by the reduction in benefits and the court shall provide notice to
17 each employee. The attorney general shall appear on behalf of the employees receiving benefits
18 from the fund and shall take such action as he or she feels is necessary to protect the rights of the
19 injured employees.

20 (c) In the event that the court determines that a reduction or suspension of payments is
21 necessary to maintain the fiscal integrity of the fund, the court shall schedule a mandatory review
22 date to determine whether the financial status of the fund warrants a continuation of the order
23 reducing such payments and shall reinstitute payments only upon finding that the reserves
24 maintained by the fund are sufficient to pay all future claims as they fall due.

25 (d) Payments under this chapter shall not be awarded to any injured employee or
26 dependent if the award would directly or indirectly inure to the benefit of the uninsured employer.

27 (e) No payment shall be awarded when the director or the court, in its discretion,
28 determines that unjust enrichment to or on behalf of the illegally uninsured employer would
29 result.

30 (f) No interest shall be included in or added to payments under this chapter.

31 (g) No payments will be awarded under this chapter to an injured employee, or in the
32 case of death of the injured employee, to person(s) presumed wholly dependent for support upon
33 the deceased employee, as defined in § 28-33-13, in a total amount in excess of fifty thousand
34 dollars (\$50,000) plus any attorneys' fees awarded in connection with petitions for payment from

1 [the fund.](#)

2 [\(h\) Applications for payment under this chapter shall be filed with the director within the](#)
3 [time limits set forth in § 28-35-57.](#)

4 **28-53-9. Penalties, taxes and assessments against non-complying employers.**

5 (a) Where it is determined that an employer has failed to maintain a policy of workers'
6 compensation insurance as required by Rhode Island general laws § 28-36-1 et seq. and that while
7 the employer was uninsured in violation of the statute, an employee suffered a compensable
8 injury, the uninsured ~~employers~~ [protection](#) fund shall commence the payment of weekly ~~benefits~~
9 ~~and medical expenses necessary to cure, relieve or rehabilitate the employee from the effects of~~
10 ~~the work-related injury~~ [payment](#) to the employee as set forth herein, subject to fund availability.
11 ~~The~~ [On behalf of the](#) fund, [the director](#) shall acquire a lien against the goods and chattels of the
12 uninsured employer to the extent of any payments made by it to the injured employee. The lien(s)
13 shall arise and attach as of the date on which the fund makes payment to the injured employee
14 without further action by the fund or the court. The lien shall have priority over all subsequently
15 perfected liens and security interests.

16 (b) Prior to the lien being filed with the office of the secretary of state, the employer shall
17 be notified by certified mail, return receipt requested that a lien will be filed against all goods
18 situated in the state if the outstanding tax is not paid within seven (7) business days of receipt of
19 the notice.

20 (c) The liens shall become perfected at the time when a notice of lien is filed pursuant to
21 the filing provisions of Rhode Island general laws § 6A-9-501. The notice of lien shall include the
22 following:

23 (1) The name of the debtor, as governed by Rhode Island general laws § 6A-9-503;

24 (2) The name of the director of the department of labor and training as the party claiming
25 the lien; and

26 (3) A description of the property so encumbered as governed by the Rhode Island general
27 laws § 6A-9-504.

28 (d) The director shall be entitled to effectively file the lien and to amend the lien quarterly
29 as additional payments are made or terminate it as necessary.

30 (e) No filing fee shall be charged for the filing of a lien authorized by this section.

31 (f) Where the employer is a corporation, the president, vice president, secretary and
32 treasurer of the corporation shall be severally personally liable, jointly with a corporation for any
33 payments made to the injured employee by the fund, and the fund shall acquire a lien against the
34 goods and chattels of said president, vice president, secretary and treasurer to the extent of any

1 payments so made.

2 (g) Where the employer is a limited liability company, the managers and managing
3 members shall be severally personally liable, jointly with the limited liability company for any
4 payments made to the injured employee by the fund and the fund shall acquire a lien against the
5 goods and chattels of said manager and managing member to the extent of any payments so
6 made.

7 (h) The liens and excise taxes levied against the non-complying party pursuant to this
8 section shall be in addition to any and all other fines, penalties and assessments, to which the
9 party would otherwise be liable in particular the penalties mandated by Rhode Island general laws
10 § 28-36-15.

11 SECTION 5. This act shall take effect upon passage.

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

1 This act would: (1) Allow all corporate and limited liability officers to waive their
2 previously claimed common law right of action; (2) Enlarge the advisory council from sixteen
3 (16) to seventeen (17) members; (3) Empower the administrator to act as a notary public; (4)
4 Rename the uninsured employees fund as the uninsured protection fund; (5) Impose certain
5 limitations on payments to injured employees; and (6) Authorize the fund to promulgate rules and
6 regulations necessary to effectuate the provisions and overall purpose of the uninsured protection
7 fund.

8 This act would take effect upon passage.

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