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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:

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


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

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

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

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

(1) The chief judge of the workers’ compensation court and one two (2) additional judges judges of the workers’ compensation court and one member of the Bar who primarily represents injured workers before the workers’ compensation court, both to be selected by the chief judge;
(2) The director of business regulation;
(3) The director of administration;
(4) Three (3) representatives from labor appointed by the governor, one of whom shall be an injured worker;
(5) Three (3) representatives from business appointed by the governor, one of whom shall be a self-insured employer, and one of whom shall represent cities and towns;
(6) One representative from the general public appointed by the governor;
(7) The chairperson of the senate labor committee or his or her designee;
(8) The chairperson of the house labor committee or his or her designee;
(9) The director of labor and training; and
(10) The chief executive officer of the workers’ compensation insurance fund or his or her designee.

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

SECTION 2. Section 28-30-4 of the General Laws in Chapter 28-30 entitled “Workers’ Compensation Court” is hereby amended to read as follows:

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

(b) The administrator shall:

(1) Supervise the preparation of an annual budget for the workers' compensation court;
(2) Formulate procedures governing the administration of workers' compensation court services;
(3) Make recommendations to the workers’ compensation court for improvement in court services;

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

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

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

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

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

CHAPTER 28-53
Rhode Island Uninsured Employers Fund

CHAPTER 28-53
RHODE ISLAND UNINSURED PROTECTION FUND


28-53-1. Preamble and legislative findings.

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

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

WHEREAS, Professionals providing services covered under the provisions of the Workers' Compensation Act have taken into account, in the performance of their service, the important public policy benefit of a sound and properly functioning workers' compensation system in this state, and have tirelessly committed themselves to protect and maintain the integrity of this system; and

WHEREAS, Abuse and misuse of the workers' compensation system by non-complying employers has been reduced through the state's mandatory requirement that employers subject to
the law either self-insure or maintain a policy of workers' compensation insurance to ensure that
legitimately injured workers receive all the rights and benefits provided in the Workers'
Compensation Act; and

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

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

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

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

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

(a)(1) There shall be established within the department of labor and training a special
restricted receipt account to be known as the Rhode Island uninsured employers protection fund.
The department shall maintain the fund for the exclusive purpose of making payments to an
injured employee otherwise entitled to benefits pursuant to chapters 29 through 38 of title 28, or
in the case of death of the injured employee, to person(s) presumed wholly dependent for support
upon the deceased employee, as defined in § 28-33-13, and any costs specifically associated
therewith, where the employer required to secure payment of such compensation failed to insure or self-insure its liability at the time the injury took place as determined by the director and the workers' compensation court.

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

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

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

28-53.3, Powers and duties of the fund.

The fund shall:

(a) Be obligated authorized to pay covered claims as determined by the director as and the workers' compensation court pursuant to the provisions of this section and promulgate all rules and regulations necessary to effectuate the provisions and overall purpose of this chapter.

The rules and regulations shall be promulgated in accordance with the administrative procedures act, chapter 35 of title 42, and shall include, but not be limited to, the filing of claim forms and other documentation supporting the claim, and proof of dependency, if relevant. All claims must contain a release necessary to allow the director to investigate the claim;

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

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

(d) Sue or be sued; and

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


(a) Where it is determined that the employee was injured in the course of employment while working for an employer who fails to maintain a policy of workers' compensation insurance as required by § 28-36-1 et seq., in accordance with the provisions of this chapter, the uninsured employers protection fund shall is authorized to pay the benefits to which the injured employee
would be entitled pursuant to chapters 29 to 38 of this title subject to the limitations set forth herein.

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

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

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

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

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

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

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

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

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

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

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

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

(g) No payments will be awarded under this chapter to an injured employee, or in the
case of death of the injured employee, to person(s) presumed wholly dependent for support upon
the deceased employee, as defined in § 28:33-13, in a total amount in excess of fifty thousand
dollars ($50,000) plus any attorneys' fees awarded in connection with petitions for payment from
Applications for payment under this chapter shall be filed with the director within the
time limits set forth in § 28-35-57.


(a) Where it is determined that an employer has failed to maintain a policy of workers'
compensation insurance as required by Rhode Island general laws § 28-36-1 et seq. and that while
the employer was uninsured in violation of the statute, an employee suffered a compensable
injury, the uninsured employers protection fund shall commence the payment of weekly benefits
and medical expenses necessary to cure, relieve or rehabilitate the employee from the effects of
the work-related injury payment to the employee as set forth herein, subject to fund availability.

The on behalf of the fund, the director shall acquire a lien against the goods and chattels of the
uninsured employer to the extent of any payments made by it to the injured employee. The lien(s)
shall arise and attach as of the date on which the fund makes payment to the injured employee
without further action by the fund or the court. The lien shall have priority over all subsequently
perfected liens and security interests.

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

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

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

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

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

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

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

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

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

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

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

BY THE LEGISLATIVE COUNCIL

OF

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RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION

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

This act would take effect upon passage.

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