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LC02531/SUB A  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2005**

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - WORKERS' COMPENSATION -  
BENEFITS

Introduced By: Representative Norman L. Landroche

Date Introduced: March 01, 2005

Referred To: House Labor

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 28-29-2 and 28-29-17 of the General Laws in Chapter 28-29  
2 entitled "Workers' Compensation - General Provisions" are 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.

1 (ii) As used under the provisions of this title, "functional impairment" means an  
2 anatomical or functional abnormality existing after the date of maximum medical improvement as  
3 determined by a medically or scientifically demonstrable finding and based upon the most recent  
4 edition of the American Medical Association's Guide to the Evaluation of Permanent Impairment  
5 or comparable publications of the American Medical Association.

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

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

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

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

15 (6) "General or special employer":

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

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

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

29 (iv) Effective January 1, 2003, whenever a general employer enters into a contract or  
30 arrangement with a special employer to supply an employee or employees for work, the special  
31 employer shall require [an insurer generated insurance coverage certification, on a form prescribed](#)  
32 [by the department, demonstrating Rhode Island workers' compensation and employers' liability](#)  
33 [coverage](#) ~~written—documentation~~ evidencing that the general employer carries workers'  
34 compensation insurance [with that insurer](#) with no indebtedness for its employees for the term of

1 the contract or arrangement. In the event that the special employer fails to obtain and maintain at  
2 policy renewal and thereafter this insurer generated insurance coverage certification  
3 demonstrating Rhode Island workers' compensation and employers' liability coverage ~~the written~~  
4 ~~documentation~~ from the general employer, the special employer is deemed to be the employer  
5 pursuant to the provisions of this section. Upon the cancellation or failure to renew, the insurer  
6 having written the workers' compensation and employers' liability policy shall notify the  
7 certificate holders and the department of the cancellation or failure to renew and upon notice, the  
8 certificate holders shall be deemed to be the employer for the term of the contract or arrangement  
9 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 **28-29-17. Waiver of common law rights -- Notice of claim of common law right. --**

5 ~~An employee~~ Employees or corporate ~~officer~~ officers of an employer, or ~~manager~~ managers,  
6 managing members or members of a limited liability company subject to or who ~~has~~ have elected  
7 to become subject to the provisions of chapters 29 -- 38 of this title as provided in section 28-29-8  
8 shall be held to have waived his or her right of action at common law to recover damages for  
9 personal injuries if he or she has not given his or her employer at the time of the contract of hire  
10 or appointment notice in writing that he or she claims that right and within ten (10) days after that  
11 has filed a copy of the notice with the director, or, if the contract of hire or appointment was made  
12 before the employer became subject to or elected to become subject to the provisions of those  
13 chapters, ~~if~~ the employee, or corporate officer or manager, managing member or member of a  
14 limited liability company ~~shall not~~ must have given ~~the~~ notice and filed it with the director within  
15 ten (10) days after the filing by the employer who is subject to or who has elected to become  
16 subject to the provisions of those chapters of the written statement as provided. That waiver shall  
17 continue in force for the term of one year, and after that, without further act on his or her part, for  
18 successive terms of one year each, unless the employee, or corporate officer, or manager,  
19 managing member or member of a limited liability company, at least sixty (60) days prior to the  
20 expiration of the first or any succeeding year files with the director a notice in writing to the  
21 effect that he or she desires to claim his or her right of action at common law and within ten (10)  
22 days thereafter gives notice of this to his or her employer.

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

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

26 **duties.** -- (a) There shall be a workers' compensation administrator who shall be appointed by the  
27 governor with the advice and consent of the senate. Upon May 6, 1982, and every twelfth year  
28 thereafter in the month of January, the governor, with the advice and consent of the senate, shall  
29 appoint a workers' compensation administrator to serve for a period of twelve (12) 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 SECTION 3. Section 28-30-19 of the General Laws in Chapter 28-30 entitled "Workers'  
10 Compensation Court" is hereby repealed.

11 ~~28-30-19. Annual report to general assembly. --- The workers' compensation court shall~~  
12 ~~annually report in the month of March to the general assembly on its activities of the previous~~  
13 ~~year.~~

14 SECTION 4. Sections 28-33-17.3 and 28-33-18.3 of the General Laws in Chapter 28-33  
15 entitled "Workers' Compensation - Benefits" are hereby amended to read as follows:

16 **28-33-17.3. Fraud and abuse.** -- (a) (1) The workers' compensation court is authorized  
17 and directed to impose sanctions and penalties necessary to maintain the integrity of and to  
18 maintain the high standards of professional conduct in the workers' compensation system. All  
19 pleadings related to proceedings under chapters 29 -- 38 of this title shall be considered an  
20 attestation by counsel that valid grounds exist for the position taken and that the pleading is not  
21 interposed for delay.

22 (2) If any judge determines that any proceedings have been brought, prosecuted, or  
23 defended by an employer, insurer, or their counsel without reasonable grounds, then:

24 (i) The whole cost of the proceedings shall be assessed upon the employer, insurer, or  
25 counsel, whoever is responsible; and

26 (ii) If a subsequent order requires that additional compensation be paid, a penalty of  
27 double the amount of retroactive benefits ordered shall be paid to the employee and the penalty  
28 shall not be included in any formula utilized to establish premium rates for workers'  
29 compensation insurance.

30 (3) If any judge determines that any proceedings have been brought or defended by an  
31 employee or his or her counsel without reasonable grounds, the whole cost of the proceedings  
32 shall be assessed against the employee or counsel, whoever is responsible.

33 (4) The court shall determine whether an action or defense is frivolous or conduct giving  
34 rise to the action or defense was unreasonable. Where the amount at issue is less than the actual

1 attorneys' fees of the parties combined, the court shall exercise particular vigilance. Nothing in  
2 this subsection, however, is intended to discourage prompt payment in full of all amounts  
3 required to be paid.

4 (5) The appropriate body with professional disciplinary authority over the attorney shall  
5 be notified of the action.

6 (b) (1) It is unlawful to do any of the following:

7 (i) Make or cause to be made any knowingly false or fraudulent material statement or  
8 material representation for the purpose of obtaining or denying any compensation;

9 (ii) Present or cause to be presented any knowingly false or fraudulent written or oral  
10 material statement in support of, or in opposition to, any claim for compensation or petition  
11 regarding the continuation, termination, or modification of benefits;

12 (iii) Knowingly assist, aid and abet, solicit, or conspire with any person who engages in  
13 an unlawful act under this section;

14 (iv) Make or cause to be made any knowingly false or fraudulent statements with regard  
15 to entitlement to benefits with the intent to discourage an injured worker from claiming benefits  
16 or pursuing a claim;

17 (v) Willfully misrepresent or fail to disclose any material fact in order to obtain workers'  
18 compensation insurance at less than the proper rate for the insurance including, but not limited to,  
19 intentionally misleading or failing to disclose information to an insurer regarding the appropriate  
20 rate classification of an employee;

21 (vi) Willfully fail to provide a lower rate adjustment favorable to an employer as  
22 required by an approved experience rating plan or regulations promulgated by the insurance  
23 commissioners;

24 (vii) Willfully fail to report or provide false or misleading information regarding  
25 ownership changes as required by an approved experience rating plan or regulations promulgated  
26 by the insurance commissioner; or

27 (viii) Knowingly assist, aid and abet, solicit or conspire to coerce an employee to  
28 willfully misrepresent an employee's status as a shareholder, director or officer ~~president, one~~  
29 ~~vice president, secretary and/or treasurer~~ of a corporation, or as a member or manager of a limited  
30 liability company, or as a partner, in a general or partnership, limited partnership or a registered  
31 limited liability partnership, or as an independent contractor for the purpose of avoiding the  
32 inclusion of that or other employees in a workers' compensation insurance application, renewal or  
33 both.

34 (2) For the purposes of this section, "Statement" includes, but is not limited to, any

1 endorsement of a benefit check, application for insurance coverage, oral or written statement,  
2 proof of injury, bill for services, diagnosis, prescription, hospital or provider records, x-rays, test  
3 results, or other documentation offered as proof of, or in the absence of, a loss, injury, or expense.

4 (3) If it is determined that any person concealed or knowingly failed to disclose that  
5 which is required by law to be revealed, knowingly gave or used perjured testimony or false  
6 evidence, knowingly made a false statement of fact, participated in the creation or presentation of  
7 evidence which he or she knows to be false, or otherwise engaged in conduct in violation of  
8 subdivision (1) of this subsection, that person shall be subject in criminal proceedings to a fine  
9 and/or penalty not exceeding fifty thousand dollars (\$50,000), or double the value of the fraud,  
10 whichever is greater, or by imprisonment up to five (5) years in state prison or both.

11 (4) There shall be a general amnesty until July 1, 1992 for any person receiving  
12 compensation under chapters 29 -- 38 of this title, to the extent compensation has been voluntarily  
13 reduced or relinquished by the employee prior to that date.

14 (c) The director of labor and training shall establish a form, in consultation with the  
15 attorney general, to be sent to all workers who are presently receiving benefits and those for  
16 whom first reports of injury are filed in the future which shall give the employee notice that the  
17 endorsement of a benefit check sent pursuant to section 28-35-39 is the employee's affirmation  
18 that he or she is qualified to receive benefits under the Workers' Compensation Act. The insurers  
19 and self-insured employers are directed to send the form to all workers receiving benefits.

20 (d) Any employer, or in any case where the employer is a corporation, the president, vice  
21 president, secretary, ~~and~~ treasurer, and other officers of the corporation, or in any case where the  
22 employer is a limited liability company, the managers, and the managing members or in any case  
23 where the employer is a general partnership, or a registered limited liability partnership, or in the  
24 case where the employer is a limited ~~liability~~ partnership or a registered limited liability limited  
25 partnership, the partners, that ~~is~~ are found to have violated this section or section 28-36-15, shall  
26 be guilty of a felony for failure to secure and maintain compensation, and upon conviction, shall  
27 be subject to imprisonment of up to two (2) years, a fine not exceeding ten thousand dollars  
28 (\$10,000), or both. In any case where the employer is a corporation, the president, vice president,  
29 secretary, ~~and~~ treasurer, ~~and other officials~~ of the corporation, shall be severally liable for the fine  
30 or subject to imprisonment, or both. In any case where the employer is a limited liability  
31 company, the managers ~~and managing members~~ shall be severally liable for the fine or subject to  
32 imprisonment, or both. In any case where the employer is a partnership, or a ~~general partnership,~~  
33 or a ~~registered~~ limited ~~liability~~ partnership, the partners shall be severally liable for the fine or  
34 subject to imprisonment. In the case where the employer is a limited partnership or a registered



1 limited liability limited partnership, the general partners shall be severally liable for the fine or  
2 subject to imprisonment, or both.

3 **28-33-18.3. Continuation of benefits -- Partial incapacity.** -- (a) (1) For all injuries  
4 occurring on or after September 1, 1990, in those cases where the employee has received a notice  
5 of intention to terminate partial incapacity benefits pursuant to section 28-33-18, the employee or  
6 his or her duly authorized representative may file with the workers' compensation court a petition  
7 for continuation of benefits on forms prescribed by the workers' compensation court. In any  
8 proceeding before the workers' compensation court on a petition for continuation of partial  
9 incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence  
10 that his or her partial incapacity poses a material hindrance to obtaining employment suitable to  
11 his or her limitation, partial incapacity benefits shall continue. For injuries on and after July 1,  
12 ~~2003~~ 2005, "material hindrance" is defined to include only compensable injuries causing a greater  
13 than sixty-five percent (65%) degree of functional impairment and/or disability. Any period of  
14 time for which the employee has received benefits for total incapacity shall not be included in the  
15 calculation of the three hundred and twelve (312) week period.

16 (2) The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1,  
17 ~~2003~~ 2005.

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

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

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

33 (4) The computations in this section shall be made by the director of labor and training  
34 and promulgated to insurers and employers making payments required by this section. Increases

1 shall be paid by insurers and employers without further order of the court. If payment payable  
2 under this section is not mailed within fourteen (14) days after the employer or insurer has been  
3 notified by publication in a newspaper of general circulation in the state it becomes due, there  
4 shall be added to the unpaid payment an amount equal to twenty percent (20%) of it, to be paid at  
5 the same time as but in addition to the payment.

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

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

12 SECTION 5. Section 28-36-15 of the General Laws in Chapter 28-36 entitled "Workers'  
13 Compensation - Insurance" is hereby amended to read as follows:

14 **28-36-15. Penalty for failure to secure compensation -- Personal liability of**

15 **corporate officers.** -- (a) Any employer required to secure the payment of compensation under  
16 chapters 29 -- 38 of this title who knowingly fails to secure that compensation shall be guilty of a  
17 felony and shall be subject to imprisonment for up to two (2) years. In addition to the foregoing,  
18 the employer shall be subject to a civil penalty punished by a fine of not less than five hundred  
19 dollars (\$500) and not more than one thousand dollars (\$1,000) for each day of noncompliance  
20 with the requirements of this title. The director shall institute any and all reasonable measures to  
21 comprehensively monitor, investigate, and otherwise discover all employer noncompliance with  
22 this section and shall establish rules and regulations governing these measures. Each day shall  
23 constitute a separate and distinct offense for calculation of the penalty. Where that employer is a  
24 corporation ~~or a limited liability company or general or limited partnership,~~ the president, vice  
25 president, secretary, ~~and~~ treasurer, and other officers of the corporation, ~~or member or manager of~~  
26 ~~a limited liability company or general or limited partner in a registered limited liability~~  
27 ~~partnership~~ shall be ~~also~~ severally liable for the fine, penalty or imprisonment as provided in this  
28 section for the failure of that corporation to secure the payment of compensation. The president,  
29 vice president, secretary, ~~and~~ treasurer, and other officers of the corporation ~~or member or~~  
30 ~~manager or general or limited partner~~ shall also be severally personally liable, jointly with the  
31 corporation or company or partnership, for any compensation or other benefit which may accrue  
32 under those chapters in respect to any injury which may occur to any employee of that  
33 corporation while it fails to secure the payment of compensation as required by those chapters.  
34 ~~All criminal actions for any violation of this section shall be prosecuted by the attorney general.~~

~~The attorney general shall prosecute actions to enforce the payment of penalties and fines at the request of the director. The workers' compensation court shall have jurisdiction over all civil actions filed pursuant to this section.~~

(b) Where the employer is a limited liability company, the managers and managing members who knowingly fail to secure the payment of compensation under chapters 29--38 of this title shall be guilty of a felony and shall be subject to imprisonment for up to two (2) years. The managers and managing members shall be also be severally liable for the fine, penalty or imprisonment as provided in this section for the failure of that company to secure the payment of compensation. The managers and managing members shall be severally personally liable, jointly with the company, for any compensation or other benefit which may accrue under those chapters in respect to any injury which may occur to any employee of that company while it fails to secure the payment of compensation as required by those chapters.

(c) Where the employer is a partnership or a registered limited liability partnership, the partners who knowingly fail to secure the payment of compensation under chapters 29--38 of this title shall be guilty of a felony and shall be subject to imprisonment for up to two (2) years. The partners shall also be severally liable for the fine, penalty, or imprisonment as provided in this section for the failure of that partnership to secure the payment of compensation. The partners shall be severally personally liable, jointly with the partnership, for any compensation or other benefit which may accrue under those chapters in respect to any injury which may occur to any employee of that partnership while it fails to secure the payment as required by those chapters.

(d) Where the employer is a limited partnership or a registered limited liability limited partnership, the general partners who knowingly fail to secure the payment of compensation under chapters 29--38 of this title shall be guilty of a felony and shall be subject to imprisonment for up to two (2) years. The general partners shall also be severally liable for the fine, penalty or imprisonment as provided in this section for the failure of that limited partnership to secure the payment of compensation. The general partners shall be severally personally liable, jointly with the limited partnership, for any compensation or other benefit which may accrue under those chapters in respect to any injury which may occur to any employee of that partnership while it fails to secure the payment of compensation as required by those chapters.

(e) All criminal actions for any violation of this section shall be prosecuted by the attorney general. The attorney general shall prosecute actions to enforce the payment of penalties and fines at the request of the director. The workers' compensation court shall have jurisdiction over all civil actions filed pursuant to this section.

~~(b)~~ (f) (1) As soon as practicable after the director receives notice of noncompliance

1 under this section, the director shall determine whether cause exists for the imposition of a civil  
2 penalty. Unless the director determines that the noncompliance was unintentional or the result of  
3 a clerical error and subject to the administrative proceedings under subsection ~~(e)~~ (g) of this  
4 section, the director shall commence an action in the workers' compensation court to assess a civil  
5 penalty against the employer as set forth in subsection (a) of this section and shall refer the matter  
6 to the attorney general for prosecution of criminal charges.

7 (2) The director shall bring a civil action in the workers' compensation court to collect all  
8 payments and penalties ordered and not paid. All civil actions for any violations of this chapter or  
9 of any of the rules or regulations promulgated by the director, or for the collection of payments in  
10 accordance with section 28-37-13, 28-33-17.3(a)(2) or 28-33-17.3(a)(3) or civil penalties under  
11 this chapter, shall be prosecuted by any qualified member of the Rhode Island bar whom the  
12 director may designate, in the name of the director, and the director is exempt from giving surety  
13 for costs in any proceedings.

14 ~~(e)~~ (g) 1. In the case of unintentional noncompliance or noncompliance resulting from  
15 clerical error where the uninsured period is less than one year from the date of discovery and  
16 there were no employees injured during the uninsured period and the employer has not been  
17 subject to any other findings of noncompliance with these chapters, the director shall assess an  
18 administrative penalty of not less than the estimated annual workers' compensation insurance  
19 premium for that employer and not more than triple that amount. Any party has the right to appeal  
20 the orders of the director. Such appeal shall be to the workers' compensation court in the first  
21 instance and thereafter from the workers' compensation court to the Rhode Island supreme court  
22 in accordance with section 28-35-30.

23 ~~(e)~~ 2. The director shall collect all payments under this chapter under the rules and  
24 regulations that may be set forth by the director. All fines collected pursuant to this section shall  
25 be deposited to a restricted receipt account to be administered by the director of the department of  
26 labor and training in his or her sole discretion to carry out chapters 29 -- 38 of this title.

27 ~~(e)~~ ~~(f)~~ 3. In that the operation of a commercial enterprise without the required workers'  
28 compensation insurance is a crime and creates a clear and present danger of irreparable harm to  
29 employees who are injured while the employer is uninsured, the director shall suspend the  
30 operation of the business immediately and until workers' compensation and employers' liability  
31 insurance is secured consistent with these chapters. The director shall lift the suspension upon  
32 receipt of satisfactory proof of insurance and evidence sufficient to satisfy the director that the  
33 employer is in full compliance with these chapters. Any party has the right to appeal the  
34 suspension to the workers' compensation court where the matter shall proceed pursuant to the

1 workers' compensation court rules of procedure.

2 ~~(2)~~ 4. In the event that the employer shall fail to comply with the director's order of  
3 suspension, the director may apply immediately to the workers' compensation court for an order  
4 directing the employer to comply with the director's prior orders.

5 ~~(3)~~ 5. Actions filed with the workers' compensation court pursuant to this section shall  
6 not be subject to a pretrial conference in accordance with section 28-35-20 but shall be assigned  
7 consistent with the workers' compensation court rules of procedure.

8 ~~(4)~~ 6. Interest shall accrue on unpaid penalties during the pendency of any appeal at the  
9 rate per annum provided in section 9-21-10.

10 SECTION 6. Section 28-37-13 of the General Laws in Chapter 28-37 entitled "Workers'  
11 Compensation Administrative Fund" is hereby amended to read as follows:

12 **28-37-13. Payments into fund by insurers and employers.** -- (a) For the privilege of  
13 writing or renewing workers' compensation insurance or employer's liability insurance in this  
14 state, every mutual association or stock company so authorized, to be referred to as "insurers",  
15 and for the privilege of being authorized, to make payments of workers' compensation directly to  
16 its employees, and every employer so authorized, to be referred to as "certified employers", shall  
17 annually make the following payments to the workers' compensation administrative fund:

18 (1) In the case of an insurer, an amount measured by ~~four and one quarter percent~~  
19 ~~(4.25%), or such other~~ the percentage of return as certified by the director pursuant to subsection  
20 (c) of this section of the gross premiums received for workers' compensation insurance or  
21 employer's liability insurance written or renewed by it during the preceding calendar year on risks  
22 within this state, but not less than ~~fifty~~ one hundred dollars ~~(\$50.00)~~ (\$100); and

23 (2) In the case of a certified employer, an amount measured by ~~four and one quarter~~  
24 ~~percent (4.25%), or any other~~ the percentage of return as certified by the director pursuant to  
25 subsection (c) of this section of the premium which the employer would have had to pay to obtain  
26 workers' compensation insurance or employer's liability insurance for the preceding calendar  
27 year, but not less than ~~fifty~~ one hundred dollars ~~(\$50.00)~~ (\$100), which amount shall be  
28 determined by the director.

29 (b) Every certified employer and every insurer shall also pay into the workers'  
30 compensation administrative fund the sum of seven thousand five hundred dollars (\$7,500) for  
31 every case of injury causing death in which there is no person entitled to compensation.

32 (c) The director is ~~authorized~~ obligated to determine on or before July 15 of each year,  
33 ~~except for the period ending June 30, 2000, when such determination shall be made on or before~~  
34 ~~November 15 by experience or by other means~~, after taking into account projected expenditures

1 for the current fiscal year and for the next fiscal year, what percentage of return, referred to as the  
2 "assessment", is needed to provide sufficient funds, in conjunction with appropriations from the  
3 general fund, if any, to fulfill the purposes enumerated in section 28-37-1(b) and shall certify this  
4 assessment to the governor and the general assembly. This assessment may be separately  
5 determined for insurers and for certified employers. The payments, due within sixty (60) days of  
6 notice each year pursuant to sections 28-37-15 and 28-37-16, shall be made based upon the  
7 certified assessment. ~~If the certified assessment in any given year is less than the certified  
8 assessment for the prior year, the percentage of reduction shall be applied to reduce pro rata  
9 employer payments and in accordance with this, the director shall require the insurance carriers as  
10 described in subdivision (a)(1) of this section to reduce their premiums by a like percentage of  
11 premiums paid. If an insured subsequently cancels his or her policy or otherwise allows his or her  
12 policy to terminate, or the insured's policy is terminated, the insurance company shall make a pro  
13 rata cash refund not later than sixty (60) days after the reduction has been determined. The  
14 insurance company shall immediately certify to the director that the premium reductions have  
15 been made.~~

16 (d) (1) In recognition of the continued utilization of the workers' compensation system  
17 by insurers who have discontinued writing workers' compensation policies in the state, if any  
18 insurance company, deemed by the director of the department of business regulation to have been  
19 licensed on January 1, 1991 to write workers' compensation policies, discontinues the issuance of  
20 workers' compensation policies, ~~this company~~ the insurer shall be and remain obligated to pay the  
21 workers' compensation administrative fund assessment for a period of six (6) years after that.

22 (2) In calculating the amount due by these insurance companies on the due date, as  
23 defined in subsection (c) of this section, of the year after which it discontinues writing policies in  
24 this state (the base year) the director of labor and training will calculate an amount equal to the  
25 assessment in effect on the last date the insurer issued workers' compensation policies multiplied  
26 by the gross premiums received for workers' compensation insurance or employers' liability  
27 insurance written or renewed by it during the base year on risks within this state, but not less than  
28 fifty one hundred dollars ~~(\$50.00)~~ (\$100) each year.

29 (3) The basis for the calculation of the assessment in each succeeding year shall be a  
30 reduction of the base year assessment by increments of sixteen and two-thirds percent (16 2/3%)  
31 per each succeeding year.

32 (e) All penalties collected for any violation under chapters 29 -- 38 of this title shall be  
33 paid into this fund.

34 (f) Any employer, insurer, self-insurer, or group self-insurer who has not paid

1 assessments or who is not current with payment of assessments into this fund shall not be  
2 permitted to place a claim against the fund. Reimbursement to any employer, insurer, self-insurer,  
3 or group self-insurer who is not current with payment of assessments into this fund shall be  
4 suspended immediately as of the first date of arrearage.

5 (g) To be eligible to use any of the services funded by the workers' compensation  
6 administrative fund an employer, insurer, self-insurer, or group self-insurer shall pay a fee of one  
7 thousand dollars (\$1,000) per claim, per month into the fund until the arrearage is paid in full in  
8 addition to any other interests or penalties.

9 SECTION 7. Section 42-16.1-12 of the General Laws in Chapter 42-16.1 entitled  
10 "Department of Labor and Training" is hereby amended to read as follows:

11 ~~42-16.1-12. Fraud prevention unit --- Appointment --- Duties --- Qualifications ---~~

12 ~~Annual report~~ **Fraud prevention unit -- Appointment -- Duties – Qualifications.** -- (a) The  
13 director of the department of labor and training shall maintain within the workers' compensation  
14 unit of the department of labor and training, a workers' compensation fraud prevention unit whose  
15 members shall be in the unclassified service and whose responsibility it shall be to formulate an  
16 integrated state plan to reduce and prevent fraud arising out of claims made pursuant to the  
17 workers' compensation laws of this state and to conduct investigations as authorized by the  
18 director. The plan shall include a fraud prevention telephone hotline. ~~The workers' compensation~~  
19 ~~fraud prevention unit shall submit an annual report to the director, the attorney general, the chief~~  
20 ~~judge of the workers' compensation court and the general assembly fiscal advisory staff, on or~~  
21 ~~before February 15 of each year, describing its activities and setting forth its findings,~~  
22 ~~conclusions, and recommendations.~~

23 (b) To carry out the purposes of this section, the director, is authorized to employ any  
24 persons that may be required, including an assistant attorney general position within the  
25 department of attorney general to assist the unit in any hearing, investigation, action or  
26 proceeding taken or done in carrying out the purposes of this section. The director is further  
27 authorized and directed to employ any investigative or other services that he or she deems  
28 reasonable and prudent to accomplish these purposes.

29 (c) The unit shall be funded by the workers' compensation administrative fund  
30 established in section 28-37-1, and any other funds or balances that the director deems  
31 appropriate.

1           SECTION 8. This act shall take effect upon passage except section 28-29-2(6) (iv) which  
2 shall take effect on January 1, 2006.

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LC02531/SUB A  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO LABOR AND LABOR RELATIONS - WORKERS' COMPENSATION -  
BENEFITS

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1           This act would redefine the term "employee" under the Workers' Compensation Act so  
2 that it does not include an individual who is a shareholder or director of a corporation, general or  
3 limited liability partners in a general partnership, a registered limited liability limited partnership  
4 or any individual who is a member in a limited liability company.

5           This act would take effect upon passage except section 28-29-2(6) (iv) which would take  
6 effect on January 1, 2006.

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LC02531/SUB  
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