

**2014 -- S 3053 SUBSTITUTE A AS AMENDED**

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LC005819/SUB A  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2014**

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - WORKERS' COMPENSATION -  
GENERAL PROVISIONS

Introduced By: Senators P Fogarty, Goodwin, Ruggerio, Ciccone, and Doyle

Date Introduced: May 29, 2014

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

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

3           **28-29-30. Advisory council.** -- (a) There is created a workers' compensation advisory  
4    council consisting of ~~fifteen (15)~~ sixteen (16) members as follows:

5           (1) The chief judge of the workers' compensation court and one additional judge of the  
6    workers' compensation court and one member of the Bar who primarily represents injured  
7    workers before the workers' compensation court, both ~~the~~ 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  
11    be an injured worker;

12          (5) Three (3) representatives from business appointed by the governor, one of whom  
13    shall 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; ~~and~~

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

1 her designee.

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

4 SECTION 2. Sections 28-33-8, 28-33-17 and 28-33-18.3 of the General Laws in Chapter  
5 28-33 entitled "Workers' Compensation - Benefits" are hereby amended to read as follows:

6 **28-33-8. Employee's choice of physician, dentist, or hospital -- Payment of charges --**

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

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

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

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

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

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

27 (ii) Anticipated further treatment, including type, frequency, and duration of treatment(s),  
28 whether or not maximum medical improvement has been reached, and the anticipated date of  
29 discharge;

30 (iii) Whether the employee can return to the former position of employment, or is capable  
31 of other work, specifying work restrictions and work capabilities of the employee;

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

34 (d) "Itemized bill", as referred to in this section, means a completed statement of

1 charges, on a form [CMS HCFA 1500, UB 92/94](#) or other form suitable to the insurer, ~~which~~ [that](#)  
2 includes, but is not limited to, an enumeration of specific types of care provided; facilities or  
3 equipment used; services rendered; and appliances or medicines prescribed, for purposes of  
4 identifying the treatment given the employee with respect to his or her injury.

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

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

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

16 (f) (1) Compensation for medical expenses and other services under § 28-33-5, 28-33-  
17 7 or 28-33-8 is due and payable within twenty-one (21) days from the date a request is payment is  
18 not made within twenty-one (21) days from the date a request is made for payment, the provider  
19 of medical services may add, and the insurer or self-insurer shall pay, interest at the per annum  
20 rate as provided in § 9-21-10 on the amount due. The employee or the medical provider may file  
21 a petition with the administrator of the workers' compensation court which petition shall follow  
22 the procedure as authorized in chapter 35 of this title.

23 (2) The twenty-one ~~(21)~~ day [\(21\)](#) period in subdivision (1) of this subsection [and in § 28-](#)  
24 [35-12](#) shall begin on the date the insurer receives a request with appropriate documentation  
25 required to determine whether the claim is compensable and the payment requested is due.

26 **28-33-17. Weekly compensation for total incapacity -- Permanent total disability --**  
27 **Dependents' allowances. --**

(a) (1) While the incapacity for work resulting from the injury is  
28 total, the employer shall pay the injured employee a weekly compensation equal to seventy-five  
29 percent (75%) of his or her average weekly spendable base wages, earnings, or salary, as  
30 computed pursuant to the provisions of § 28-33-20. The amount may not exceed more than sixty  
31 percent (60%) of the state average weekly wage of individuals in covered employment under the  
32 provisions of the Rhode Island ~~E~~mployment ~~S~~ecurity ~~A~~ct as computed and established by the  
33 Rhode Island department of labor and training, annually, on or before May 31 of each year, under  
34 the provisions of § 28-44-6(a). Effective September 1, 1974, the maximum rate for weekly

1 compensation for total disability shall not exceed sixty-six and two-thirds percent (66<sup>2</sup>/<sub>3</sub>%) of the  
2 state average weekly wage, as computed and established under the provisions of § 28-44-6(a).  
3 Effective September 1, 1975, the maximum rate for weekly compensation for total disability shall  
4 not exceed one hundred percent (100%) of the state average weekly wage, as computed and  
5 established under the provisions of § 28-44-6(a). Effective September 1, 2007, the maximum rate  
6 for weekly compensation for total disability shall not exceed one hundred fifteen percent (115%)  
7 of the state average weekly wage, as computed and established under the provisions of § 28-44-  
8 6(a). Effective October 1, 2016, the maximum rate for weekly compensation for total disability  
9 shall not exceed one hundred twenty percent (120%) of the state average weekly wage as  
10 computed and established under the provisions of § 28-44-6(a), and effective October 1, 2017, the  
11 maximum rate for weekly compensation for total disability shall not exceed one hundred twenty -  
12 five percent (125%) of the state average weekly wage, as computed and established under the  
13 provisions of § 28-44-6(a). If the maximum weekly benefit rate is not an exact multiple of one  
14 dollar (\$1.00), then the rate shall be raised to the next higher multiple of one dollar (\$1.00).

15 (2) The average weekly wage computed and established under § 28-44-6(a) is applicable  
16 to injured employees whose injury occurred on or after September 1, 2000, and shall be  
17 applicable for the full period during which compensation is payable.

18 (3) (i) "Spendable earnings" means the employee's gross, average weekly wages,  
19 earnings, or salary, including any gratuities reported as income, reduced by an amount determined  
20 to reflect amounts ~~which~~ that would be withheld from the wages, earnings, or salary under federal  
21 and state income tax laws, and under the Federal Insurance Contributions Act (FICA), 26  
22 U.S.C. 3101 et seq., relating to ~~s~~Social ~~s~~Security and Medicare taxes. In all cases, it is to be  
23 assumed that the amount withheld would be determined on the basis of expected liability of the  
24 employee for tax for the taxable year in which the payments are made without regard to any  
25 itemized deductions but taking into account the maximum number of personal exemptions  
26 allowable.

27 (ii) Each year, the director shall publish tables of the average weekly wage and seventy-  
28 five percent (75%) of spendable earnings that are to be in effect on May 10. These tables shall be  
29 conclusive for the purposes of converting an average weekly wage into seventy-five percent  
30 (75%) of spendable earnings. In calculating spendable earnings, the director shall have discretion  
31 to exempt funds assigned to third parties by order of the family court pursuant to § 8-10-3 and  
32 funds designated for payment of liens pursuant to § 28-33-27 upon submission of supporting  
33 evidence.

34 (b) (1) In the following cases, it shall, for the purpose of this section, be that the injury

1 resulted in permanent total disability:

2 (i) The total and irrecoverable loss of sight in both eyes or the reduction to one-tenth  
3 (1/10th) or less of normal vision with glasses;

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

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

6 (iv) The loss of one hand and one foot;

7 (v) An injury to the spine resulting in permanent and complete paralysis of the legs or  
8 arms; and

9 (vi) An injury to the skull resulting in incurable imbecility or insanity.

10 (2) In all other cases, total disability shall be determined only if, as a result of the injury,  
11 the employee is physically unable to earn any wages in any employment; provided, that in cases  
12 where manifest injustice would otherwise result, total disability shall be determined when an  
13 employee proves, taking into account the employee's age, education, background, abilities, and  
14 training, that he or she is unable, on account of his or her compensable injury, to perform his or  
15 her regular job and is unable to perform any alternative employment. The court may deny total  
16 disability under this subsection without requiring the employer to identify particular alternative  
17 employment.

18 (c) (1) Where the employee has persons conclusively presumed to be dependent upon  
19 him or her, or in fact so dependent, the sum of fifteen dollars (\$15.00) shall be added to the  
20 weekly compensation payable for total incapacity for each person wholly dependent on the  
21 employee, except that the sum of forty dollars (\$40.00) shall be added for those receiving benefits  
22 under § 28-33-12, but in no case shall the aggregate of those amounts exceed eighty percent  
23 (80%) of the average weekly wage of the employee, except that there shall be no limit for those  
24 receiving benefits under § 28-33-12.

25 (2) The dependency allowance shall be in addition to the compensation benefits for total  
26 disability otherwise payable under the provisions of this section. The dependency allowance shall  
27 be increased if the number of persons dependent upon the employee increases during the time that  
28 weekly compensation benefits are being received.

29 (3) For the purposes of this section, the following persons shall be conclusively presumed  
30 to be wholly dependent for support upon an employee:

31 (i) A wife upon a husband with whom she is living at the time of his injury, but only  
32 while she is not working for wages during her spouse's total disability.

33 (ii) A husband upon a wife with whom he is living at the time of her injury, but only  
34 while he is not working for wages during his spouse's total disability.

1 (iii) Children under the age of eighteen (18) years, or over that age but physically or  
2 mentally incapacitated from earning, if living with the employee, or, if the employee is bound or  
3 ordered by law, decree, or order of court, or by any other lawful requirement, to support the  
4 children, although living apart from them. Provided, that the payment of dependency benefits to a  
5 dependent child over the age of eighteen (18) years shall continue as long as that child is  
6 satisfactorily enrolled as a full-time student in an educational institution or an educational facility  
7 duly accredited or approved by the appropriate state educational authorities at the time of  
8 enrollment. Those payments shall not be continued beyond the age of twenty-three (23) years.  
9 "Children," within the meaning of this paragraph, also includes any children of the injured  
10 employee conceived but not born at the time of the employee's injury, and the compensation  
11 provided for in this section shall be payable on account of any such children from the date of their  
12 birth.

13 (d) "Dependents," as provided in this section, does not include the spouse of the injured  
14 employee except as provided in paragraphs (c)(3)(i) and (ii) of this section. In all other cases  
15 questions of dependency shall be determined in accordance with the facts as the facts may be at  
16 the time of the injury.

17 (e) The court, or any of its judges, may, in its or his or her discretion, order the insurer or  
18 self-insurer to make payment of the nine dollars (\$9.00) or fifteen dollars (\$15.00) for those  
19 receiving benefits under § 28-33-12 directly to the dependent.

20 (f) (1) Where any employee's incapacity is total and has extended beyond fifty-two (52)  
21 weeks, regardless of the date of injury, payments made to all totally incapacitated employees shall  
22 be increased as of May 10, 1991, and annually on the tenth of May after that as long as the  
23 employee remains totally incapacitated. The increase shall be by an amount equal to the total  
24 percentage increase in annual ~~e~~Consumer ~~p~~Price ~~i~~Index, United States ~~e~~City ~~a~~Average for ~~u~~Urban  
25 ~~w~~Wage ~~e~~Earners and ~~e~~Clerical ~~w~~Workers, as formulated and computed by the ~~b~~Bureau of ~~l~~Labor  
26 ~~s~~Statistics of the United States Department of Labor for the period of March 1 to February 28  
27 each year.

28 (2) If the employee is subsequently found to be only partially incapacitated, the weekly  
29 compensation benefit paid to the employee shall be equal to the payment in effect prior to his or  
30 her most recent cost of living adjustment.

31 (3) "Index" as used in this section refers to the consumer price index, United States ~~e~~City  
32 ~~a~~Average for ~~u~~Urban ~~w~~Wage ~~e~~Earners and ~~e~~Clerical ~~w~~Workers, as that index is formulated and  
33 computed by the Bureau of Labor Statistics of the United States Department of Labor.

34 (4) The May 10, 1991, increase shall be based upon the total percentage increase, if any,

1 in the annual consumer price index for the period of March 1, 1990 to February 28, 1991.  
2 Thereafter, increases shall be made on May 10 annually, based upon the percentage increase, if  
3 any, in the index for the period March 1 to February 28.

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

11 (6) This section applies only to payment of weekly indemnity benefits to employees as  
12 described in subdivision (1) of this subsection, and does not apply to specific compensation  
13 payments for loss of use or disfigurement or payment of dependency benefits or any other  
14 benefits payable under the ~~W~~workers' ~~C~~ompensation ~~A~~ct.

15 (7) Notwithstanding any other provision of the general law or public laws to the contrary,  
16 any employee of the state of Rhode Island who is receiving workers' compensation benefits for  
17 total incapacity, as a result of brain injury due to a violent assault, on or before July 19, 2005,  
18 shall be entitled to receive the health insurance benefit he or she was entitled to at the time of the  
19 injury for the duration of the total incapacity or until said employee and his or her spouse are both  
20 eligible for Medicare.

21 **28-33-18.3. Continuation of benefits -- Partial incapacity.** -- (a) (1) For all injuries  
22 occurring on or after September 1, 1990, in those cases where the employee has received a notice  
23 of intention to terminate partial incapacity benefits pursuant to § 28-33-18, the employee, or his  
24 or her duly authorized representative, may file with the workers' compensation court a petition for  
25 continuation of benefits on forms prescribed by the workers' compensation court. In any  
26 proceeding before the workers' compensation court on a petition for continuation of partial  
27 incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence  
28 that his or her partial incapacity poses a material hindrance to obtaining employment suitable to  
29 his or her limitation, partial incapacity benefits shall continue. For injuries on and after July 1,  
30 ~~2016~~ 2018, "material hindrance" is defined to include only compensable injuries causing a greater  
31 than sixty-five percent (65%) degree of functional impairment and/or disability. Any period of  
32 time for which the employee has received benefits for total incapacity shall not be included in the  
33 calculation of the three hundred and twelve- ~~(312)~~ week (312) period.

34 (2) The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1,



1 ~~2016~~ 2018.

2 (b) (1) Where any employee's incapacity is partial and has extended for more than three  
3 hundred and twelve (312) weeks and the employee has proved an entitlement to continued  
4 benefits under subsection (a) of this section, payments made to these incapacitated employees  
5 shall be increased annually on the tenth (10th) day of May thereafter so long as the employee  
6 remains incapacitated. The increase shall be by an amount equal to the total percentage increase  
7 in the annual ~~e~~C~~onsumer~~ ~~p~~P~~rice~~ ~~i~~I~~ndex~~, United States ~~e~~C~~ity~~ ~~a~~A~~verage~~ for ~~u~~U~~rban~~ ~~w~~W~~age~~  
8 ~~e~~E~~arners~~ and ~~e~~C~~lerical~~ ~~w~~W~~orkers~~, as formulated and computed by the Bureau of Labor Statistics  
9 of the United States Department of Labor for the period of March 1 to February 28 each year.

10 (2) "Index" as used in this section refers to the ~~e~~C~~onsumer~~ ~~p~~P~~rice~~ ~~i~~I~~ndex~~, United States  
11 ~~e~~C~~ity~~ ~~a~~A~~verage~~ for ~~u~~U~~rban~~ ~~w~~W~~age~~ ~~e~~E~~arners~~ and ~~e~~C~~lerical~~ ~~w~~W~~orkers~~, as that index was  
12 formulated and computed by the Bureau of Labor Statistics of the United States Department of  
13 Labor.

14 (3) The annual increase shall be based upon the percentage increase, if any, in the  
15 ~~e~~C~~onsumer~~ ~~p~~P~~rice~~ ~~i~~I~~ndex~~ for the month of a given year, over the index for February, the previous  
16 year. Thereafter, increases shall be made on May 10 annually, based upon the percentage  
17 increase, if any, in the ~~e~~C~~onsumer~~ ~~p~~P~~rice~~ ~~i~~I~~ndex~~ for the period of March 1 to February 28.

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

25 (5) This section applies only to payment of weekly indemnity benefits to employees as  
26 described in subdivision (1) of this subsection, and does not apply to specific compensation  
27 payments for loss of use or disfigurement or payment of dependency benefits or any other  
28 benefits payable under the ~~W~~w~~orkers'~~ ~~C~~c~~ompensation~~ ~~A~~a~~ct~~.

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

31 SECTION 3. Section 28-35-12 of the General Laws in Chapter 28-35 entitled "Workers'  
32 Compensation - Procedure" is hereby amended to read as follows:

33 **28-35-12. Petition for determination of controversy -- Contents and filing.** -- (a) In  
34 all disputes between an employer and employee in regard to compensation or any other obligation

1 established under chapters 29 - 38 of this title, and when death has resulted from the injury and  
2 the dependents of the deceased employee entitled to compensation are, or its apportionment  
3 among them is, in dispute, any person in interest, or his or her duly authorized representative,  
4 may file with ~~the administrator of~~ the workers' compensation court a petition, prescribed by the  
5 court, setting forth the names and residences of the parties; the facts relating to employment at  
6 the time of injury; the cause, extent, and character of the injury; the amount of wages, earnings,  
7 or salary received at the time of the injury; and the knowledge of the employer of notice of the  
8 occurrence of the injury; and any other facts that may be necessary and proper for the  
9 information of the court; and shall state the matter in dispute and the claims of the petitioner with  
10 reference to it; provided, that no petition shall be filed within twenty-one (21) days of the date of  
11 the injury and no petition regarding any other obligation established under chapters 29 - 38 of this  
12 title shall be filed until twenty-one (21) days after written demand for payment upon the employer  
13 or insurer or written notice to the employer or insurer of failure to fulfill the obligation, except  
14 that any petition alleging the non-payment or late payment of weekly compensation benefits,  
15 attorneys' fees, and costs, may be filed after fourteen (14) days from the date the payment is due  
16 as set forth in §§ 28-35-42, 28-35-43, and 28-35-20(c). All demands seeking payment of bills for  
17 medical services rendered shall include reference to a claim number or a legible copy of the  
18 agreement, order, and/or decree, if appropriate, establishing liability. Medical bills for services  
19 ordered paid by decree or pretrial order shall be paid within fourteen (14) days of the entry of the  
20 decree or order. In the event that the bills are not paid within the fourteen- ~~(14)~~ day (14) period, a  
21 petition may be filed to enforce said order or decree without any additional written notice to the  
22 employer or insurer.

23 (b) (1) If one or more claims are filed for an injury and there are two (2) or more insurers,  
24 any one of which may be held to be liable to pay compensation, and the judge determines that the  
25 injured employee would be entitled to receive compensation but for the existence of a controversy  
26 as to which one of the insurers is liable to pay compensation, one of the insurers shall be selected  
27 by a judge of the workers' compensation court, to pay to the injured employee the compensation,  
28 pending a final decision of the workers' compensation court as to the matter in controversy, and  
29 that decision shall require that the amount of compensation paid shall be deducted from the award  
30 if made against another insurer and shall be paid by that other insurer to the insurer selected by  
31 the judge.

32 (2) The workers' compensation court shall award compensation, costs, and attorneys' fees  
33 in its discretion if one of the insurers is held to be liable following the hearing.

34 (c) If any determination of the workers' compensation court entitles an employee to

1 retroactive payment of weekly benefits, the court shall award to the employee interest at the rate  
2 per annum provided in § 9-21-10 on that retroactive weekly payment from six (6) months  
3 subsequent to the date that the employee first filed a petition for benefits to the time when that  
4 retroactive payment is actually made. If the proceedings are unduly delayed by or at the request  
5 of the employee or his or her attorney, the judge may reduce or eliminate interest on retroactive  
6 payment; provided, that the provisions of this section as they relate to interest shall apply only to  
7 petitions filed on or after July 1, 1984.

8 (d) Any fine, penalty, or interest expense incurred by an insurer under this section may  
9 not be used as an expense for the purpose of seeking a rate increase before the department of  
10 business regulation.

11 SECTION 4. Sections 28-53-2 and 28-53-7 of the General Laws in Chapter 28-53  
12 entitled "Rhode Island Uninsured Employers Fund" are hereby amended to read as follows:

13 **28-53-2. Establishment -- Sources -- Administration.** -- (a) There shall be established  
14 within the department of labor and training a special restricted receipt account to be known as the  
15 Rhode Island uninsured employers fund. The fund shall be capitalized from excise taxes assessed  
16 against uninsured employers pursuant to the provisions of § 28-53-9 of this chapter and from  
17 general revenues appropriated by the legislature. Beginning in state fiscal year ending June 30,  
18 ~~2015~~ 2016, the legislature may appropriate up to two million dollars (\$2,000,000) in general  
19 revenue funds annually for deposit into the Rhode Island uninsured employers fund.

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

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

27 **28-53-7. Payments to employees of uninsured employers.** -- (a) Where it is determined  
28 that the employee was injured in the course of employment while working for an employer who  
29 fails to maintain a policy of workers' compensation insurance as required by Rhode Island general  
30 laws § 28-36-1, et seq., the uninsured employers fund shall pay the benefits to which the injured  
31 employee would be entitled pursuant to chapters 29 to 38 of this title subject to the limitations set  
32 forth herein.

33 (b) The workers' compensation court shall hear all petitions for payment from the fund  
34 pursuant to Rhode Island general laws § 28-30-1, et seq., provided, however, that the uninsured

1 employers fund and the employer shall be named as parties to any petition seeking payment of  
2 benefits from the fund.

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

8 (d) The fund shall pay cost, counsel and witness fees as provided in Rhode Island  
9 general laws § 28-35-32 to any employee who successfully prosecutes any petitions for  
10 compensation, petitions for medical expenses, petitions to amend a pretrial order or memorandum  
11 of agreement and all other employee petitions and to employees who successfully defend, in  
12 whole or in part, proceedings seeking to reduce or terminate any and all workers' compensation  
13 benefits; provided, however, that the attorney's fees awarded to counsel who represent the  
14 employee in petitions for lump sum commutation filed pursuant to Rhode Island general laws  
15 § 28-33-25 or in the settlement of disputed cases pursuant to Rhode Island general laws § 28-33-  
16 25.1 shall be limited to the maximum amount paid to counsel who serve as court appointed  
17 attorneys in workers' compensation proceedings as established by rule or order of the Rhode  
18 Island supreme court.

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

23 (f) This section shall apply to injuries that occur on or after January 1, ~~2015~~ [2016](#).

24 SECTION 5. Section 36-10-31 of the General Laws in Chapter 36-10 entitled  
25 "Retirement System-Contributions and Benefits" is hereby amended to read as follows:

26 **36-10-31. Deduction of amounts received from workers' compensation or as**  
27 **damages. --** Any amount paid or payable under the provisions of any workers' compensation law  
28 [exclusive of Medicare set-aside allocations, specific compensation benefits or any benefits](#)  
29 [authorized by the terms of a collective bargaining agreement](#) or as the result of any action for  
30 damages for personal injuries against the state of Rhode Island on account of the death or  
31 disability of a member shall be offset against and payable in lieu of any benefits payable out of  
32 funds provided by the state under the provisions of this chapter on account of the death or  
33 disability of the member. If the value of the total commuted benefits under any workers'  
34 compensation law or action is less than the present value on an actuarial basis of the benefits

- 1 otherwise payable under this chapter, the value of the commuted payments shall be deducted
- 2 from the present value of the benefits and the balance thereof shall be payable under the
- 3 provisions of this chapter.
- 4 SECTION 6. This act shall take effect upon passage.

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LC005819/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 -  
GENERAL PROVISIONS

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- 1 This act would make various changes to the procedure, and administration of the Rhode
- 2 Island workers' compensation court.
- 3 This act would take effect upon passage.

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LC005819/SUB A  
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