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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - UNDERGROUND ECONOMY  
COMMISSION

Introduced By: Senators Doyle, Miller, Jabour, and DiPalma

Date Introduced: February 16, 2012

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 28-29-2, 28-29-6.1 and 28-29-17.1 of the General Laws in Chapter  
2 28-29 entitled "Workers' Compensation - General Provisions" are hereby amended to read as  
3 follows:

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

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

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

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

1 at least thirteen (13) weeks.

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

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

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

1 this act is waived pursuant to subsection 28-29-8(b) or section 28-29-17. Any person who is  
2 appointed a corporate officer between January 1, 1999 and December 31, 2001, and was not  
3 previously an employee of the corporation, will not be considered an employee, for purposes of  
4 these chapters, unless that corporate officer has filed a notice pursuant to subsection 28-29-19(b).  
5 In the case of a person whose services are voluntary or who performs charitable acts, any benefit  
6 received, in the form of monetary remuneration or otherwise, shall be reportable to the  
7 appropriate taxation authority but shall not be deemed to be wages earned under contract of hire  
8 for purposes of qualifying for benefits under chapters 29 -- 38 of this title. Any reference to an  
9 employee who had been injured shall, where the employee is dead, include a reference to his or  
10 her dependents as defined in this section, or to his or her legal representatives, or, where he or she  
11 is a minor or incompetent, to his or her conservator or guardian. A "seasonal occupation" means  
12 those occupations in which work is performed on a seasonal basis of not more than sixteen (16)  
13 weeks.

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

18 (6) "General or special employer":

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

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

24 (iii) Whenever there is a general employer and special employer wherein the general  
25 employer supplies to the special employer an employee and the general employer pays or is  
26 obligated to pay the wages or salaries of the supplied employee, then, notwithstanding the fact  
27 that direction and control is in the special employer and not the general employer, the general  
28 employer, if it is subject to the provisions of the Workers' Compensation Act or has accepted that  
29 Act, shall be deemed to be the employer as set forth in subdivision (5) of this section and both the  
30 general and special employer shall be the employer for purposes of sections 28-29-17 and 28-29-  
31 18.

32 (iv) Effective January 1, 2003, whenever a general employer enters into a contract or  
33 arrangement with a special employer to supply an employee or employees for work, the special  
34 employer shall require an insurer generated insurance coverage certification, on a form prescribed

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

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

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

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

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

32 (10) "Suitable alternative employment" means employment or an actual offer of  
33 employment which the employee is physically able to perform and will not exacerbate the  
34 employee's health condition and which bears a reasonable relationship to the employee's

1 qualifications, background, education, and training. The employee's age alone shall not be  
2 considered in determining the suitability of the alternative employment.

3 (11) "Independent contractor" [except as provided in section 28-29-7.1](#) means a person  
4 who has filed a notice of designation as independent contractor with the director pursuant to  
5 section 28-29-17.1 or as otherwise found by the workers' compensation court [according to the](#)  
6 [provisions of section 28-29-17.2](#).

7 **28-29-6.1. Secondary provision of workers' compensation insurance.** -- (a) Whenever  
8 a general contractor or a construction manager enters into a contract with a subcontractor for  
9 work to be performed in Rhode Island, the general contractor or construction manager shall at all  
10 times require written documentation evidencing that the subcontractor carries workers'  
11 compensation insurance with no indebtedness for its employees for the term of the contract or is  
12 an independent contractor pursuant to the provisions of ~~section~~ [sections](#) 28-29-17.1 [and 28-29-](#)  
13 [17.2](#). In the event that the general contractor or construction manager fails to obtain the written  
14 documentation from the subcontractor, the general contractor or construction manager shall be  
15 deemed to be the employer pursuant to provisions of section 28-29-2.

16 (b) For the purposes of this section, "construction manager" means an individual  
17 corporation, partnership, or joint venture or other legal entity responsible for supervising and  
18 controlling all aspects of construction work to be performed on the construction project, as  
19 designated in the project documents, in addition to the possibility of performing some of the  
20 construction services itself. For the purposes of this section, the construction manager need have  
21 no contractual involvement with any of the parties to the construction project other than the  
22 owner, or may contract directly with the trade contractors pursuant to its agreement with the  
23 owner.

24 (c) This section only applies to a general contractor, subcontractor, or construction  
25 manager deemed an employer subject to the provisions of Chapters 29 -- 38 of this title, as  
26 provided in section 28-29-6.

27 (d) Whenever the workers' compensation insurance carrier is obligated to pay workers'  
28 compensation benefits to the employee of an uninsured subcontractor, the workers' compensation  
29 insurance carrier shall have a complete right of indemnification to the extent benefits are paid  
30 against either the uninsured subcontractor, uninsured general contractor or uninsured construction  
31 manager.

32 **28-29-17.1. Notice of designation as independent contractor.** -- (a) A person will not  
33 be considered an "independent contractor" unless that person ~~files a notice of designation~~  
34 [registers pursuant to section 42-16.1-5.1](#) with the director, consistent with rules and regulations

1 established by the director, in writing, on a form provided by the director, that the person is an  
2 "independent contractor." The filing of the notice of ~~designation~~ the registration shall be a  
3 presumption of "independent contractor" status but shall not preclude a finding of independent  
4 contractor status by the court ~~when the notice is not filed with the director~~ (when the registration  
5 is not filed with the director according to the provisions of section 28-29-17.2). That ~~designation~~  
6 registration shall continue in force and effect unless the person withdraws that ~~designation~~  
7 registration by filing a notice with the director, in writing, on a form provided by the director, that  
8 the person is no longer an "independent contractor." Any ~~designation~~ registration or withdrawal  
9 of ~~designation~~ registration form shall be deemed public information and the director shall furnish  
10 copies or make available electronically the forms and ~~designations, registrations,~~ upon written  
11 request, to any employer or insurer or its authorized representative.

12 (b) The workers' compensation court may, upon petition of an employee, the dependents  
13 of a deceased employee or any other party in interest at any time, vacate any ~~"notice of~~  
14 ~~designation"~~ registration if the ~~"notice of designation"~~ registration has been improperly procured.

15 (c) The provisions of subsections (a) and (b) of this section shall only apply to injuries  
16 occurring on and after January 1, 2001.

17 SECTION 2. Chapter 28-29 of the General Laws entitled "Workers' Compensation -  
18 General Provisions" is hereby amended by adding thereto the following section:

19 **28-29-17.2. Employee presumption; independent contractor exception.** – (a) For the  
20 purposes of Chapter 28 – 38 of this title, a person performing any service, except as authorized  
21 under those chapters, shall be presumed an “employee” unless:

22 (1) The person is free from control and direction in connection with the performance of  
23 the service, both under his or her contract for the performance of service and in fact; and either

24 (2) The service is performed either outside the usual course of the business for which the  
25 service is performed or outside of all the places of business of the enterprise for which the service  
26 is performed; or

27 (3) The person is customarily engaged in an independently established trade, occupation,  
28 profession or business of the same nature as that involved in the service performed.

29 (b) The failure to withhold federal or state income taxes or to pay unemployment  
30 compensation contributions or workers compensation premiums with respect to a person’s wages  
31 shall not be considered in making a determination under this section.

32 (c) Any entity or person failing to treat a person as an employee according to this chapter  
33 shall be subject to sanctions and penalties as provided in section 28-33-17.3.

34 SECTION 3. Section 28-36-15 of the General Laws in Chapter 28-36 entitled "Workers'

1 Compensation - Insurance" is hereby amended to read as follows:

2 **28-36-15. Penalty for failure to secure compensation -- Personal liability of**  
3 **corporate officers.** -- (a) Any employer required to secure the payment of compensation under

4 chapters 29 -- 38 of this title who knowingly fails to secure that compensation shall be guilty of a  
5 felony and shall be subject to imprisonment for up to two (2) years. In addition to the foregoing,  
6 the employer shall be subject to a civil penalty punished by a fine not to exceed one thousand  
7 dollars (\$1,000) for each day of noncompliance with the requirements of this title. The director  
8 shall institute any and all reasonable measures to comprehensively monitor, investigate, and  
9 otherwise discover all employer noncompliance with this section and shall establish rules and  
10 regulations governing these measures. Each day shall constitute a separate and distinct offense for  
11 calculation of the penalty. Where that employer is a corporation the president, vice president,  
12 secretary, treasurer, and other officers of the corporation, shall be severally liable for the fine,  
13 penalty or imprisonment as provided in this section for the failure of that corporation to secure the  
14 payment of compensation. The president, vice president, secretary, treasurer, and other officers of  
15 the corporation shall also be severally personally liable, jointly with the corporation for any  
16 compensation or other benefit which may accrue under those chapters in respect to any injury  
17 which may occur to any employee of that corporation while it fails to secure the payment of  
18 compensation as required by those chapters.

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

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

1 employee of that partnership while it fails to secure the payment as required by those chapters.

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

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

15 The court shall consider the following factors in assessing a civil penalty: gravity of  
16 offense, resources of the employer, effect of the penalty on employees of the company, the reason  
17 for the lapse in coverage, and the recommendation of the director. Following a review of the  
18 factors set forth above, the court may suspend all or a part of a civil penalty or shall establish a  
19 time table for compliance with any court order.

20 (f) (1) As soon as practicable after the director receives notice of noncompliance under  
21 this section, the director shall determine whether cause exists for the imposition of a civil penalty.  
22 Unless the director determines that the noncompliance was unintentional or the result of a clerical  
23 error and subject to the administrative proceedings under subsection (g) of this section, the  
24 director shall commence an action in the workers' compensation court to assess a civil penalty  
25 against the employer as set forth in subsection (a) of this section and shall refer the matter to the  
26 attorney general for prosecution of criminal charges.

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

34 (g) In the case of unintentional noncompliance or noncompliance resulting from clerical

1 error where the uninsured period is less than one year from the date of discovery and there were  
2 no employees injured during the uninsured period and the employer has not been subject to any  
3 other findings of noncompliance with these chapters, the director shall assess an administrative  
4 penalty of not less than the estimated annual workers' compensation insurance premium for that  
5 employer and not more than triple that amount. Any party has the right to appeal the orders of the  
6 director. Such appeal shall be to the workers' compensation court in the first instance and  
7 thereafter from the workers' compensation court to the Rhode Island supreme court in accordance  
8 with section 28-35-30.

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

13 (i) (1) In that the operation of a commercial enterprise without the required workers'  
14 compensation insurance is a crime and creates a clear and present danger of irreparable harm to  
15 employees who are injured while the employer is uninsured, the director shall suspend the  
16 operation of the business immediately and until workers' compensation and employers' liability  
17 insurance is secured consistent with these chapters. The director shall lift the suspension upon  
18 receipt of satisfactory proof of insurance and evidence sufficient to satisfy the director that the  
19 employer is in full compliance with these chapters. Any party has the right to appeal the  
20 suspension to the workers' compensation court where the matter shall proceed pursuant to the  
21 workers' compensation court rules of procedure.

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

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

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

30 (j) These provisions shall take effect upon passage except section 28-29-2(6)(iv) which  
31 shall take effect on January 1, 2006.

32 (k) The department of attorney general, with the assistance of any law enforcement  
33 agency in the state shall, at the request of the director, render any assistance necessary to carry  
34 out the provisions of this section, including, but not limited to, preventing any employee or other

1 persons from remaining at a place of employment or job site after a stop work order has taken  
2 effect.

3 (l) Neither the state of Rhode Island nor any of its political subdivisions shall enter into  
4 any contract for the performance of public work until acceptable evidence of compliance with the  
5 insurance requirements of this chapter have been presented to the contracting authority.

6 (m) Any person or firm that loses a competitive bid for a contract including, but not  
7 limited to, construction, repair, remodeling, alteration, conversion, modernization, replacement or  
8 renovation of a building, roadway or structure may bring an action for damages against another  
9 person who is awarded the contract for which the bid was made, if the other person was awarded  
10 the contract because of cost advantages achieved by violating the provisions of this chapter or by  
11 the deliberate misclassification of employees for the purpose of avoiding full payment of  
12 workers' compensation insurance premiums.

13 (1) A person or firm bringing an action under this section must establish a violation of  
14 said subsection or chapters by a preponderance of the evidence. Upon establishing that the  
15 violation occurred, the person bringing the action shall recover, as liquidated damages, ten  
16 percent (10%) of the total amount bid on the contract, or fifteen thousand dollars (\$15,000),  
17 whichever is lesser.

18 (2) An action under this subsection shall be commenced within one year from the date  
19 when the contract is awarded.

20 (3) No person or firm shall be allowed to recover any damages under this subsection if  
21 they were in violation of this section at the time of making the bid on the contract.

22 (4) In any action under this section, the prevailing party shall be entitled to an award of  
23 reasonable attorneys fees.

24 (n) In addition to being subject to the civil penalties herein provided, an employer who  
25 fails to provide for insurance or self insurance as required by this chapter or knowingly  
26 misclassifies employees, to avoid higher premium rates, will be immediately debarred from  
27 bidding or participating in any state or municipal funded contracts for a period of three (3) years  
28 and shall when applicable be subject to other additional penalties provided for in this chapter.

29 SECTION 4. Section 28-42-7 of the General Laws in Chapter 28-42 entitled  
30 "Employment Security - General Provisions" is hereby amended to read as follows:

31 ~~28-42-7. Independent contractor and employee distinguished~~ **Employee**  
32 **presumption -- Independent contractor exception. --** ~~The determination of independent~~  
33 ~~contractor or employee status for purposes of chapters 42--44 of this title shall be the same as~~  
34 ~~those factors used by the Internal Revenue Service in its code and regulations.~~ (a) For the

1 purposes of Chapter 42 – 44 of this title, except as provided in section 28-42-8, a person  
2 performing any service, except as authorized under those chapters, shall be presumed an  
3 “employee” unless:

4 (1) The person is free from control and direction in connection with the performance of  
5 the service, both under his or her contract for the performance of service and in fact; and either

6 (2) The service is performed either outside the usual course of the business for which the  
7 service is performed or outside of all the places of business of the enterprise for which the service  
8 is performed; or

9 (3) The person is customarily engaged in an independently established trade, occupation,  
10 profession or business of the same nature as that involved in the service performed.

11 (b) The failure to withhold federal or state income taxes or to pay unemployment  
12 compensation contributions or workers’ compensation premiums with respect to a person’s wages  
13 shall not be considered in making a determination under this section.

14 (c) Any entity or person failing to treat a person as an employee according to this chapter  
15 shall be subject to sanctions and penalties as provided in section 28-42-66.

16 SECTION 5. Section 42-16.1-2 of the General Laws in Chapter 42-16.1 entitled  
17 "Department of Labor and Training" is hereby amended to read as follows:

18 **42-16.1-2. Functions of director.** -- The director of labor and training shall:

19 (1) Have all the powers and duties formerly vested by law in the director of labor with  
20 regard to factory inspectors and steam boiler inspectors, and such other duties as may be by law  
21 conferred upon the department;

22 (2) Administer the labor laws of this state concerning women and children and be  
23 responsible for satisfactory working conditions of women and children employed in industry in  
24 this state by a division in the department which shall be known as the division of labor standards;

25 (3) Administer the act relating to state wage payment and wage collection;

26 (4) Have all of the powers and duties formerly vested in the director of the department of  
27 labor and administer those responsibilities set forth in chapters 29 -- 38, inclusive, of title 28;

28 (5) Have all the powers and duties formerly vested by law in the director of employment  
29 and training and administer those responsibilities set forth in chapters 39 -- 44, inclusive, of title  
30 28 and chapter 102 of title 42.

31 (6) Provide to other requesting state departments or agencies any labor related  
32 information, records or documents, concerning employee misclassification, they deem necessary  
33 to review in the fulfillment of their statutory duties, responsibilities and mission, unless deemed  
34 confidential by federal law.

1 SECTION 6. Chapter 42-16.1 of the General Laws entitled "Department of Labor and  
2 Training" is hereby amended by adding thereto the following sections:

3 **42-16.1-5.1. Registration of independent contractors.** – (a) Any person, firm,  
4 corporation or business, identifying itself or themselves as an independent contractor; or firm,  
5 corporation or business, hiring an entity identifying itself as an independent contractor, shall  
6 annually file a notice of registration with the director pursuant to section 28-29-17.1. The  
7 registration form shall identify the registrant as an independent contractor or hiring entity of an  
8 independent contractor. Provided, however, that any independent contractor who has a valid  
9 registration at the time of effective date of this section shall be exempt from the provisions of this  
10 section.

11 (1) The annual registration shall be a public record, on a form provided by the director.

12 (2) Any person or corporation failing to register with the director under the provisions of  
13 this section shall be guilty of a misdemeanor and fined not less than five hundred dollars (\$500)  
14 nor more than one thousand dollars (\$1,000) for each offense, or by imprisonment for not less  
15 than ten (10) days nor more than ninety (90) days or by both such fine and imprisonment. Each  
16 failure to register or withhold shall be considered a separate offense.

17 (3) The director shall establish such rules and regulations as necessary to accomplish the  
18 purpose of the statute.

19 (b) The requirements of subsection (a) shall not apply to property owners in residential  
20 construction projects which comprise less than four (4) units.

21 **42-16.1-5.2. Notice of ramifications of misclassification of employees as independent**  
22 **contractors.** – (a) Employers classification of employees as independent contractors presents  
23 severe economic consequences to the affected employee, to the state and federal government, and  
24 to the workers' compensation system. A significant number of hiring entities are improperly  
25 classifying employees as "independent contractors" either due to a lack of understanding or  
26 knowingly to avoid legal obligations under federal and state labor and tax laws governing  
27 payment of wages, unemployment insurance, workers' compensation, and income and social  
28 security taxation. The state acknowledges the need to educate workers, the business community  
29 and the public on law and ramifications of willful or negligent misclassification of employees.

30 (b) The director shall provide for the placement of information on any poster required  
31 under the federal Fair Labor Standards Act, informing all workers and independent contractors of  
32 their right to be properly classified and the specific detrimental consequences of the  
33 misclassifications of their status. The director shall adopt regulations to implement the provisions  
34 of this section so that all interested parties are properly notified and educated on this critical

1 [classification issue.](#)

2 SECTION 7. Sections 44-1-2 of the General Laws in Chapter 44-1 entitled "State Tax  
3 Officials" is hereby amended to read as follows:

4 **44-1-2. Powers and duties of tax administrator. --** The tax administrator is required:

5 (1) To assess and collect all taxes previously assessed by the division of state taxation in  
6 the department of revenue and regulation, including the franchise tax on domestic corporations,  
7 corporate excess tax, tax upon gross earnings of public service corporations, tax upon interest  
8 bearing deposits in national banks, the inheritance tax, tax on gasoline and motor fuels, and tax on  
9 the manufacture of alcoholic beverages;

10 (2) To assess and collect the taxes upon banks and insurance companies previously  
11 administered by the division of banking and insurance in the department of revenue and  
12 regulation, including the tax on foreign and domestic insurance companies, tax on foreign  
13 building and loan associations, deposit tax on savings banks, and deposit tax on trust companies;

14 (3) To assess and collect the tax on pari-mutuel or auction mutuel betting, previously  
15 administered by the division of horse racing in the department of revenue and regulation.

16 (4) [Deleted by P.L. 2006, ch. 246, art. 38, section 10].

17 (5) To assess and collect the monthly surcharges that are collected by telecommunication  
18 services providers pursuant to section 39-21.1-14 and are remitted to the division of taxation.

19 (6) To audit, assess and collect all unclaimed intangible and tangible property pursuant  
20 to chapter 21.1 of title 33.

21 [\(7\) To provide to other requesting state departments or agencies any tax information,](#)  
22 [records or documents, concerning employee misclassification, they deem necessary to review in](#)  
23 [the fulfillment of their statutory duties, responsibilities and mission, unless deemed confidential](#)  
24 [by federal law.](#)

25 SECTION 8. This act shall take effect on January 1, 2013.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - UNDERGROUND ECONOMY  
COMMISSION

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1           This act would address the issue of employee and independent contractor classification. It  
2 would clarify the definition of employee in the workers' compensation and unemployment  
3 benefits context, would permit the sharing of information by and between state departments to  
4 encourage enforcement. In addition, it would expand the tools which detect and limit the  
5 misclassification of employees. Education of the labor and business communities on the issue and  
6 its ramifications is mandated. Finally, it would require registration with the department of labor  
7 and training of all independent contractors and the entities that hire them.

8           This act would take effect on January 1, 2013.

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