

**2013 -- S 0231 SUBSTITUTE B**

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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2013**

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- TEMPORARY DISABILITY  
INSURANCE

Introduced By: Senators Goldin, Paiva Weed, Miller, Nesselbush, and Metts

Date Introduced: February 06, 2013

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1           SECTION 1. Chapter 28-41 of the General Laws entitled "Temporary Disability  
2 Insurance - Benefits" are hereby amended by adding thereto the following sections:

3           **28-41-34. Temporary caregiver insurance.** – The purpose of this chapter is to establish,  
4 within the state temporary disability insurance program, a temporary caregiver insurance program  
5 to provide wage replacement benefits in accordance with the provisions of this chapter, to  
6 workers who take time off work to care for a seriously ill child, spouse, domestic partner, parent,  
7 parent-in-law, grandparent, or to bond with a new child.

8           Definitions as used in this chapter:

9           (1) "Child" means a biological, adopted, or foster son or daughter, a stepson or  
10 stepdaughter, a legal ward, a son or daughter of a domestic partner, or a son or daughter of an  
11 employee who stands in loco parentis to that child.

12           (2) "Newborn child" means a child under one year of age.

13           (3) "Adopted child" means a child adopted by, or placed for adoption with, the employee.

14           (4) "Bonding or bond" means to develop a psychological and emotional attachment  
15 between a child and his or her parent(s) or persons who stand in loco parentis. This shall involve  
16 being in one another's physical presence.

17           (5) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian,  
18 or other person who stands in loco parentis to the employee or the employee's spouse or domestic

1 partner when he/she was a child.

2 (6) "Domestic partner" means a party to a civil union as defined by chapter 15-3.1.

3 (7) "Spouse" means a party in a common law marriage, a party in a marriage conducted  
4 and recognized by another state or country, or in a marriage as defined by chapter 15-3.

5 (8) "Grandparent" means a parent of the employee's parent.

6 (9) "Parent-in-law" means the parent of the employee's spouse or domestic partner.

7 (10) "Employee" means any person who is or has been employed by an employer subject  
8 to chapters 39 through 41 of this title and in employment subject to those chapters.

9 (11) "Serious health condition" means any illness, injury, impairment, or physical or  
10 mental condition that involves inpatient care in a hospital, hospice, residential health care facility,  
11 or continued treatment or continuing supervision by a licensed health care provider.

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

13 (13) "Persons who stand in loco parentis" means those with day-to-day responsibilities to  
14 care for and financially support a child or, in the case of an employee, who had such  
15 responsibility for the employee when the employee was a child. A biological or legal relationship  
16 shall not be required.

17 **28-41-35. Benefits.** – (a) Subject to the conditions set forth in this chapter, an employee  
18 shall be eligible for temporary caregiver benefits for any week in which he or she is unable to  
19 perform his or her regular and customary work because he or she is:

20 (1) Bonding with a newborn child or a child newly placed for adoption or foster care with  
21 the employee or domestic partner in accordance with the provisions of subdivision 28-41-36-  
22 (c)(1); or

23 (2) Caring for a child, a parent, parent-in-law, grandparent, spouse, or domestic partner,  
24 who has a serious health condition, subject to a waiting period in accordance with the provisions  
25 of section 28-41-12. Employees may use accrued sick time during eligibility waiting period in  
26 accordance with the policy of the individual's employer.

27 (b) Temporary caregiver benefits shall be available only to the employee exercising his or  
28 her right to leave while covered by the temporary caregiver insurance program. An employee  
29 shall file a written intent with their employer, in accordance with rules and regulations  
30 promulgated by the department, with a minimum of thirty (30) days notice prior to  
31 commencement of the family leave. Failure by the employee to provide the written intent may  
32 result in delay or reduction in the claimant's benefits, except in the event the time of the leave is  
33 unforeseeable or the time of the leave changes for unforeseeable circumstances.

34 (c) Employees cannot file for both temporary caregiver benefits and temporary disability

1 benefits for the same purpose, concurrently, in accordance with all provisions of this act and  
2 chapter 39-41.

3 (d) Temporary caregiver benefits may be available to any individual exercising his or her  
4 right to leave while covered by the temporary caregiver insurance program, commencing on or  
5 after January 1, 2014, which shall not exceed the individual's maximum benefits in accordance  
6 with chapters 39-41. The benefits for the temporary caregiver program shall be payable with  
7 respect to the first day of leave taken after the waiting period and each subsequent day of leave  
8 during that period of family temporary disability leave. Benefits shall be in accordance with the  
9 following:

10 (1) Beginning January 1, 2014 temporary caregiver benefits shall be limited to a  
11 maximum of four (4) weeks in a benefit year;

12 (e) In addition, no individual shall be paid temporary caregiver benefits and temporary  
13 disability benefits which together exceed thirty (30) times his or her weekly benefit rate in any  
14 benefit year.

15 (f) Any employee who exercises his or her right to leave covered by temporary caregiver  
16 insurance under this chapter shall, upon the expiration of that leave, be entitled to be restored by  
17 the employer to the position held by the employee when the leave commenced, or to a position  
18 with equivalent seniority, status, employment benefits, pay, and other terms and conditions of  
19 employment including fringe benefits and service credits that the employee had been entitled to at  
20 the commencement of leave.

21 (g) During any caregiver leave taken pursuant to this chapter, the employer shall maintain  
22 any existing health benefits of the employee in force for the duration of the leave as if the  
23 employee had continued in employment continuously from the date he or she commenced the  
24 leave until the date the caregiver benefits terminate; provided, however, that the employee shall  
25 continue to pay any employee shares of the cost of health benefits as required prior to the  
26 commencement of the caregiver benefits.

27 (h) No individual shall be entitled to waiting period credit or temporary caregiver benefits  
28 under this section for any week beginning prior to January 1, 2014.

29 (i) Temporary caregiver benefits shall be in accordance with federal Family and Medical  
30 Leave Act (FMLA) P.L. 103-3 and Rhode Island Family Parental and Family Leave Act in  
31 accordance with section 28-48-1, et. seq. An employer may require an employee who is entitled  
32 to leave under the federal Family and Medical Leave Act, PL 103-3 and/or the Rhode Island  
33 Parental and Family Medical Leave Act, 28-41 et seq., who exercises his or her right to benefits  
34 under the temporary caregiver insurance program under this chapter, to take any temporary

1 caregiver benefits received, concurrently, with any leave taken pursuant to the federal Family and  
2 Medical Leave Act and/or the Rhode Island Parental and Family Medical Leave Act.

3 **28-41-36. Certification of eligibility for leave.** – (a) An individual who exercises his or  
4 her right to leave covered by the temporary caregiver insurance program under this chapter shall  
5 file a certificate form with all information required by the department.

6 (b) For leave for reason of caring for a seriously ill family member, an employee shall  
7 file a certificate with the department that shall contain:

8 (1) A diagnosis and diagnostic code prescribed in the international classification of  
9 diseases, or where no diagnosis has yet been obtained, a detailed statement of symptoms;

10 (2) The date if known, on which the condition commenced;

11 (3) The probable duration of the condition;

12 (4) An estimate of the amount of time that the licensed qualified health care provider  
13 believes the employee is needed to care for the family member;

14 (5) A statement that the serious health condition warrants the participation of the  
15 employee to provide care for his or her family member. "Warrants the participation of the  
16 employee" includes, but is not limited to, providing psychological comfort, arranging third-party  
17 care for the family member as well as directly providing, or participating in the medical and  
18 physical care of the patient; and

19 (6) A certificate filed to establish medical eligibility of the serious health condition of the  
20 employee's family member shall be made by the family member's treating licensed qualified  
21 health care provider.

22 (7) In the case of a parent, or persons who are in loco parentis caring for the serious  
23 health condition of a foster care child, the employee shall submit all required information in  
24 accordance with this section, with a written request to the department of children, youth and  
25 families for the release of medical information by the child's treating licensed qualified health  
26 care provider. The department of children, youth and families shall transmit the requested  
27 medical information, pending all properly submitted forms, to the department of labor and  
28 training, within ten (10) business days of request. In the absence of the requested transmitted  
29 medical information by the department of children, youth and families within ten (10) business  
30 days, the employee may request the licensed qualified healthcare provider to directly transmit the  
31 medical eligibility of the serious health condition to the department of labor and training.  
32 Payment shall not be delayed, in accordance with all provisions of chapter 39-41, as a result of  
33 delays by the department of children, youth and families in transmitting medical information.

34 (c) The department shall develop a certificate of eligibility form for leave in the case of

1 bonding as defined herein, for the birth of a newborn child of the employee or the employee's  
2 domestic partner, or the placement of a child with the employee in connection with the adoption  
3 or foster care of the child by the employee or domestic partner, or persons in loco parentis.

4 Information shall include the following:

5 (1) A birth certificate, certificate of adoption, or other competent evidence showing the  
6 employee or the employee's domestic partner, or persons in loco parentis is the parent of the child  
7 within twelve (12) months of the child's adoption, birth or placement for adoption or foster care  
8 with the employee.

9 **28-41-37. Determination of a Claim.--** (a) In accordance with section 28-41-16, upon  
10 the filing of a claim, the director shall promptly examine the claim and on the basis of facts found  
11 by the director and records maintained by the department, the claim shall be determined to be  
12 valid or invalid, if the claim is determined to be valid, the director shall promptly notify the  
13 claimant as to the week with respect to which benefits shall commence, the weekly benefit  
14 amount payable, and the maximum duration of those benefits. If the claim is determined to be  
15 invalid, the director shall likewise notify the claimant and any other interested parties of that  
16 determination and the reasons for it. if the processing of the claim is delayed for any reason, the  
17 director shall notify the claimant, in writing, within three (3) weeks of the date the application for  
18 benefits is filed of the reason for the delay. Unless the claimant or any other interested party,  
19 within fifteen (15) days, requests a hearing before the board of review, the determination with  
20 reference to the claim is final. However, for good cause shown the fifteen (15) day period may be  
21 extended after notification by the director has been mailed to his or her last known address, as  
22 provided in this section. At any time within one year from the date of a monetary determination,  
23 the director, upon request of the claimant or on his or her own motion, may reconsider his or her  
24 determination if he or she finds that an error in computation or identity has occurred in  
25 connection with it or that additional wages pertinent to the claimant's status have become  
26 available, or if that determination has been made as a result of a nondisclosure or  
27 misrepresentation of a material fact.

28 (b) If an appeal is duly filed, benefits with respect to the period prior to the final decision,  
29 if it is found that those benefits are payable, shall be paid only after the decision. If an appeal  
30 tribunal affirms a decision of the director, or the board of review affirms a decision of an appeal  
31 tribunal allowing benefits, those benefits shall be paid regardless of any appeal which may  
32 subsequently be taken.

33 **28-41-38. Confidential Health Information.--** Information pursuant to any individual's  
34 temporary disability claim or temporary caregiver insurance claim shall be held confidential in

1 accordance with chapters 39-41, section 28-39-19, 5-37.3, and all applicable state and federal  
2 regulations.

3 **28-41-39. Powers and Duties.--** (a) The director of the department of labor and training  
4 shall have the following powers and duties:

5 (1) To promulgate regulations relative to the operation of the temporary caregiver  
6 insurance program;

7 (2) To create all necessary applications and certificates to fulfill the purposes of this  
8 section;

9 (3) To disseminate information regarding the program to Rhode Island employers and  
10 shall carry out a public education program to inform workers and employers about the availability  
11 of benefits under the temporary caregiver insurance program. The director may use a proportion  
12 of the funds collected for the temporary caregiver insurance program in a given year to pay for  
13 the public education program and/or funding received from other sources for the purpose of  
14 educating the public about their benefits. Outreach information shall be available in English and  
15 other languages; and

16 (4) To inform Rhode Island employees of their disability insurance rights and benefits  
17 due to the employee's own sickness, injury, or pregnancy, or the employee's need to provide care  
18 for any sick or injured family member or new child. The notice shall be given by every eligible  
19 employer to each new employee hired on or after January 1, 2014, and to each employee taking  
20 leave from work on or after January 1, 2014 due to pregnancy or the need to provide care for any  
21 sick or injured family member or new child. The director shall require each employer to post and  
22 maintain information regarding the program in accordance with section 28-41-15.

23 **28-41-40. Fraud and Misrepresentation of Benefits. --** (a) The temporary caregiver  
24 insurance program shall be part of the temporary disability insurance fund. If the director finds  
25 that any individual falsely certifies the medical condition of any person in order to obtain family  
26 temporary disability insurance benefits, with the intent to defraud, whether for the maker or for  
27 any other person, the director shall assess a penalty against the individual in the amount of  
28 twenty-five percent (25%) of the benefits paid as a result of the false certification. Unless  
29 otherwise specified to the contrary, all of the provisions of chapters 39 through 41 of this title  
30 shall apply to the temporary caregiver insurance program.

31 (b) If a physician or other qualified health care provider licensed by a foreign country is  
32 under investigation by the department for assisting in the filing of false claims and the department  
33 does not have the legal remedies to conduct a criminal investigation or prosecution in that  
34 country, the department may suspend the processing of all further certifications until the licensed

1 qualified health care provider fully cooperates and continues to cooperate with the investigation.  
2 A qualified health care provider licensed by and practicing in a foreign country who has been  
3 convicted of filing false claims with the department shall be barred indefinitely from filing a  
4 certificate in support of a temporary disability insurance or temporary caregiver insurance claim  
5 in the state of Rhode island.

6 **28-41-41. Criminal Prosecution. --** All criminal actions for any violation of chapter 39 -  
7 41 of this title, or any rule or regulation of the department shall be prosecuted by the attorney  
8 general, or by any qualified member of the Rhode Island bar, that shall be designated by the  
9 director and approved by the attorney general to institute and prosecute that action.

10 **28-41-42. Receipt of Federal Funds. --** To the extent that funds are made available by  
11 the federal government, under title III of the Social Security Act, (42 U.S.C. 501 et seq.), or  
12 otherwise for such purpose, the expenses of administering chapter 39-41 of this title shall be paid  
13 from those funds, provided that this section shall not be considered to permit any expenditure of  
14 funds from the employment security administration account contrary to section 28-42-29. In the  
15 event that the Social Security Act is amended to permit funds granted under Title III to be used to  
16 pay expenses of administering a sickness compensation law, such as chapter 39-41 of this title,  
17 then from and after the effective date of that amendment, the expenses of administering those  
18 chapters shall be paid out of the employment security administration account or any other account  
19 or fund in which funds granted under Title III are deposited.

20 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T  
RELATING TO LABOR AND LABOR RELATIONS -- TEMPORARY DISABILITY  
INSURANCE

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1           This act would establish within the state temporary disability insurance program, a  
2 temporary caregiver insurance program to provide benefits to workers who take time off for a  
3 seriously ill child, spouse, parent, parent-in-law, grandparent, domestic partner or to bond with a  
4 new child.

5           This act would take effect upon passage.

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