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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 -- WORKERS' COMPENSATION

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

Date Introduced: May 16, 2013

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 28-33-5, 28-33-11, 28-33-16, 28-33-18.3 and 28-33-31 of the  
2   General Laws in Chapter 28-33 entitled "Workers' Compensation - Benefits" are hereby amended  
3   to read as follows:  
4           **28-33-5. Medical services provided by employer.** -- The employer shall, subject to the  
5   choice of the employee as provided in section 28-33-8, promptly provide for an injured employee  
6   any reasonable medical, surgical, dental, optical, or other attendance or treatment, nurse and  
7   hospital service, medicines, crutches, and apparatus for such period as is necessary, in order to  
8   cure, rehabilitate or relieve the employee from the effects of his injury; provided, that no fee for  
9   major surgery shall be paid unless permission for it ~~in writing~~ is first obtained from the workers'  
10   compensation court, the employer, or the insurance carrier involved, except where compliance  
11   with it may prove fatal or detrimental to the employee. Irrespective of the date of injury, the  
12   liability of the employer for hospital service rendered under this section to the injured employee  
13   shall be the cost to the hospital of rendering the service at the time the service is rendered. The  
14   director, after consultations with representatives of hospitals, employers, and insurance  
15   companies, shall establish administrative procedures regarding the furnishing and filing of data  
16   and the time and method of billing and may accept as representing the costs for both routine and  
17   special services to patients, costs as computed for the federal Medicare program. Each hospital  
18   licensed under chapter 16 of title 23 which renders services to injured employees under the  
19   Workers' Compensation Act, chapters 29 -- 38 of this title, shall submit and certify to the director,

1 in accordance with requirements of the administrative procedures established by him or her, its  
2 costs for those services. The employer shall also provide all medical, optical, dental, and surgical  
3 appliances and apparatus required to cure or relieve the employee from the effects of the injury,  
4 including but not being limited to the following: ambulance and nursing service, eyeglasses,  
5 dentures, braces and supports, artificial limbs, crutches, and other similar appliances; provided,  
6 that the employer shall not be liable to pay for or provide hearing aids or other amplification  
7 devices.

8 **28-33-11. Notice of hearings -- Time of decision.** -- No hearing shall be held by the  
9 workers' compensation court or any judge of that court under sections 28-33-5 -- 28-33-10 unless  
10 written notice of the hearing is ~~mailed~~ [sent](#) to the employer and employee five (5) days before the  
11 time of the hearing. The decision shall be rendered within seventy-two (72) hours after the  
12 hearing, unless the parties agree otherwise.

13 **28-33-16. Burial expenses.** -- If the employee dies as a result of the injury, the employer  
14 shall pay in addition to any compensation provided for in this chapter, the sum of ~~fifteen thousand~~  
15 ~~dollars (\$15,000)~~ [twenty thousand dollars \(\\$20,000\)](#). This sum shall be paid under the provisions  
16 of section 28-33-23.

17 **28-33-18.3. Continuation of benefits -- Partial incapacity.** -- (a)(1) For all injuries  
18 occurring on or after September 1, 1990, in those cases where the employee has received a notice  
19 of intention to terminate partial incapacity benefits pursuant to section 28-33-18, the employee or  
20 his or her duly authorized representative may file with the workers' compensation court a petition  
21 for continuation of benefits on forms prescribed by the workers' compensation court. In any  
22 proceeding before the workers' compensation court on a petition for continuation of partial  
23 incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence  
24 that his or her partial incapacity poses a material hindrance to obtaining employment suitable to  
25 his or her limitation, partial incapacity benefits shall continue. For injuries on and after July 1,  
26 ~~2012~~ [2016](#), "material hindrance" is defined to include only compensable injuries causing a greater  
27 than sixty-five percent (65%) degree of functional impairment and/or disability. Any period of  
28 time for which the employee has received benefits for total incapacity shall not be included in the  
29 calculation of the three hundred and twelve (312) week period.

30 (2) The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1,  
31 ~~2012~~ [2016](#).

32 (b)(1) Where any employee's incapacity is partial and has extended for more than three  
33 hundred and twelve (312) weeks and the employee has proved an entitlement to continued  
34 benefits under subsection (a) of this section, payments made to these incapacitated employees

1 shall be increased annually on the tenth (10th) day of May thereafter so long as the employee  
2 remains incapacitated. The increase shall be by an amount equal to the total percentage increase  
3 in the annual consumer price index, United States city average for urban wage earners and  
4 clerical workers, as formulated and computed by the Bureau of Labor Statistics of the United  
5 States Department of Labor for the period of March 1 to February 28 each year.

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

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

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

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

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

26 **28-33-31. Contents of notice to employer.** -- Notice as required by section 28-33-30  
27 ~~shall be in writing and~~ shall state in ordinary language the nature, time, place, and cause of the  
28 injury, and the name and address of the person injured, and shall be signed by the injured person,  
29 or by a person in his or her behalf, or, in the event of his or her death, by his or her legal  
30 representative, or by a person in behalf of either.

31 SECTION 2. Sections 28-35-12, 28-35-14, 28-35-15, 28-35-16, 28-35-20, 28-35-27, 28-  
32 35-28, 28-35-28.1 and 28-35-37 of the General Laws in Chapter 28-35 entitled "Workers'  
33 Compensation - Procedure" are hereby amended to read as follows:

34 **28-35-12. Petition for determination of controversy -- Contents and filing.** -- (a) In all

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

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

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

33 (c) If any determination of the workers' compensation court entitles an employee to  
34 retroactive payment of weekly benefits, the court shall award to the employee interest at the rate

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

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

10 **28-35-14. Copies of petition to respondents.** -- Upon filing with the administrator of  
11 any petition ~~in writing~~, stating the general nature of any claim as to which any dispute or  
12 controversy may have arisen, the ~~petitioner administrator~~ shall ~~mail~~ serve a copy of the petition ~~to~~  
13 on the respondent or respondents ~~named in it~~ in accordance with the workers' compensation court  
14 rules of practice. ~~Service by mail to an employee is adequate if mailed postage prepaid to the~~  
15 ~~address to which compensation benefits are mailed.~~

16 **28-35-15. Service on parties outside state.** -- In case an interested party is located out of  
17 the state, and has no post office address within this state, a copy of the petition and copies of all  
18 notices shall be filed by the petitioner in the office of the insurance commissioner and shall also  
19 be sent by registered or certified mail to the last known post office address of that party. This  
20 filing and mailing shall constitute sufficient service, with the same force and effect as if served  
21 upon a party located within the state.

22 **28-35-16. Filing of answer -- Additional parties.** -- Within ten (10) days of the filing of  
23 the petition, the respondent or respondents shall file an answer to the petition with the workers'  
24 compensation court and ~~mail~~ send a copy of it to the petitioner, identifying the specific issues  
25 disputed by the respondent or respondents with reference to the matter in dispute as disclosed by  
26 the petition. No pleadings other than the petition and answer shall be required to bring the matter  
27 to a final determination. If the respondent or respondents does not file an answer, the matter shall  
28 proceed as though the allegations of the petition had been denied. The workers' compensation  
29 court may bring in additional parties by service of a copy of the petition by registered or certified  
30 mail.

31 **28-35-20. Informal pretrial conference.** -- (a) Before any case shall proceed to a trial,  
32 the judge shall conduct a mandatory pretrial conference within twenty-one (21) days of the date  
33 of filing with a view to expediting the case and reducing the issues in dispute to a minimum,  
34 notice of which shall be sent by the administrator to the parties or to their attorneys of record. The

1 conference shall be informal and no oral testimony shall be offered or taken. Any statement then  
2 made by either party shall in the absence of agreement be without prejudice, but any agreement  
3 then made shall be binding.

4 (b) Within a reasonable time of receipt, all medical reports and documentary evidence  
5 which the parties possess and which the parties intend to present as evidence at the pretrial  
6 conference shall be provided to the opposing party.

7 (c) At the pretrial conference, the judge shall make every effort to resolve any  
8 controversies or to plan for any subsequent trial of the case. The judge shall render a pretrial order  
9 immediately at the close of the pretrial conference. The pretrial order shall be set forth in a  
10 simplified manner on forms prescribed by the workers' compensation court. It may reflect any  
11 agreements reached between the parties, but shall grant or deny, in whole or in part, the relief  
12 sought by the petitioner. Subject to the provisions of subsection 45-21.2-9(j), the ~~The~~ pretrial  
13 order shall be effective upon entry. Any payments ordered by it including, but not limited to,  
14 weekly benefits, medical expenses, costs, and attorneys' fees, shall be paid within fourteen (14)  
15 days of the entry of the order.

16 (d) Any party aggrieved by the entry of the order by the judge may claim a trial on any  
17 issue that was not resolved by agreement at the pretrial conference by filing with the  
18 administrator of the workers' compensation court within five (5) days of the date of the entry of  
19 the order, exclusive of Saturdays, Sundays and holidays, a claim for a trial on forms prescribed by  
20 the administrator of the workers' compensation court. If no timely claim for a trial is filed or is  
21 filed and withdrawn, the pretrial order shall become, by operation of law and without further  
22 action by any party, a final decree of the workers' compensation court.

23 (e) All trials shall be assigned for hearing and decision to the same judge who presided  
24 over the pretrial of the matter. Notice of the trial shall be sent by the administrator to the parties  
25 and to their attorneys of record. All trials shall be de novo, except that issues resolved by  
26 agreement at the pretrial conference may not be reopened. Any other case or dispute under  
27 chapters 29 -- 38 of this title that arises during the pendency of this trial, shall be forwarded  
28 immediately to the same judge for pretrial in accordance with this section and for any subsequent  
29 trial.

30 (f) If after trial and the entry of a final decree, it is determined that the employee or  
31 medical services provider was not entitled to the relief sought in the petition, the employer or  
32 insurer shall be reimbursed from the workers' compensation administrative fund, described in  
33 chapter 37 of this title, to the extent of any payments made pursuant to the pretrial order to which  
34 there is no entitlement.

1           **28-35-27. Decision of controversies -- Decree.** -- (a) In any controversy over which the  
2 workers' compensation court has jurisdiction pursuant to this chapter and Rhode Island general  
3 law section 45-21.2-9, any judge of that court shall, pursuant to sections 28-35-11 -- 28-35-28,  
4 and the procedural rules of the court, hear all questions of law and fact involved in the  
5 controversy and presented by any party in interest, and he or she shall within ten (10) days after  
6 the hearing, unless the parties otherwise agree, decide the merits of the controversy pursuant to  
7 the law and the fair preponderance of the evidence and notify the administrator of the court of the  
8 decision, who shall immediately notify the parties ~~by mail~~.

9           (b) Within seventy-two (72) hours of ~~the mailing of the~~ notice, exclusive of Sundays and  
10 holidays, the judge shall enter a decree upon the decision, which shall contain findings of fact, but  
11 within that time any party may appear and present a form of decree for consideration.

12           **28-35-28. Appeal to appellate division.** -- (a) Any person aggrieved by the entry of a  
13 decree by a judge may appeal to the appellate division established pursuant to this section by  
14 filing with the administrator of the court within five (5) days of the date of the entry of a decree,  
15 exclusive of Saturdays, Sundays, and holidays, a claim of appeal and, subject to the rules of the  
16 court, by filing a ~~written~~ request for a transcript of the testimony and ruling or any part thereof  
17 desired. Within any time that a judge shall fix, either by an original fixing or otherwise, the  
18 appellant shall file with the administrator of the court reasons of appeal stating specifically all  
19 matters determined adversely to him or her which he or she desires to appeal, together with so  
20 much of the transcript of testimony and rulings as he or she deems pertinent, and within ten (10)  
21 days after that the parties may file with the administrator of the court those briefs and memoranda  
22 that they may desire concerning the appeal. The chief judge shall appoint appellate panels of three  
23 (3) members of the court to hear any claim of appeal and the decision of the appellate panel shall  
24 be binding on the court. The three (3) members of the appellate panel shall immediately review  
25 the decree upon the record of the case and shall file a decision pursuant to the law and the fair  
26 preponderance of the evidence within ten (10) days of the expiration of the time within which the  
27 parties may file briefs and memoranda. Upon consideration of the appeal, the appellate panel  
28 shall affirm, reverse, or modify the decree appealed from, and may itself take any further  
29 proceedings that are just, or may remand the matter to the trial judge for further consideration of  
30 any factual issue that the appellate division may raise, including the taking of additional evidence  
31 or testimony by the trial judge. It shall be within the prerogative of the appellate panel to remand  
32 a matter to the trial judge. If the decision requires the entry of a new decree, notice shall be given  
33 the parties, and the new decree shall be entered in the same manner as the original decree, but if  
34 the decision of two (2) appellate panel judges does not require the entry of a new decree, the

1 decree shall be affirmed. Any member of the appellate panel may, for cause, disqualify himself or  
2 herself from hearing any appeal that may come before the appellate panel.

3 (b) The findings of the trial judge on factual matters shall be final unless an appellate  
4 panel finds them to be clearly erroneous. The court may award costs, including reasonable  
5 attorney fees, to the prevailing party when the appellate panel finds there was complete absence  
6 of a justiciable issue of either law or fact.

7 **28-35-28.1. Reports of hearings -- Transcripts.** -- (a) Hearings reporters, or electronic  
8 court reporters, shall report stenographically, or electronically, the proceedings in the trial of  
9 every action or proceeding in the workers' compensation court. Electronic court reporting shall be  
10 used only when hearings reporters are unavailable for any reason.

11 (b) Each hearings reporter, or electronic court reporter, shall also, upon the order of any  
12 judge in the court, transcribe his or her report to be filed with the judge in the case. He or she  
13 shall also make a transcript of the whole or any part of that report upon ~~the written~~ request, filed  
14 with the administrator, by either party to the action or proceeding, and when completed and  
15 within the time limited by the court for filing the transcript, shall immediately deliver it to the  
16 party ordering it, or to the attorney of record of that party. For this service, the reporter shall be  
17 paid a reasonable compensation, not less than five dollars (\$5.00), and not exceeding three dollars  
18 (\$3.00) per page for originals and one dollar and fifty cents (\$1.50) per page for copies of it, to be  
19 allowed by the court. If the transcript is used in subsequent proceedings in the cause, the cost of it  
20 may be allowed as a part of the costs.

21 **28-35-37. Delay of process for execution of decree.** -- No process for the execution of  
22 any decree of the workers' compensation court from which an appeal may be taken shall issue  
23 until the expiration of the appeal period, unless all parties against whom the decree is made,  
24 waive an appeal ~~by a writing filed~~ with the administrator or by causing an entry thereof to be  
25 made on the docket.

26 SECTION 3. Section 28-35-59 of the General Laws in Chapter 28-35 entitled "Workers'  
27 Compensation - Procedure" is hereby repealed.

28 ~~**28-35-59. Records of proceedings.** -- The proceedings in all cases before the workers'  
29 compensation court under chapters 29—38 of this title are deemed matters of record, but they are  
30 not required to be recorded at large, but are filed and numbered in the office of the administrator  
31 of the workers' compensation court, and a docket only, or short memorandum of the cases, shall  
32 be kept by the administrator in books provided for the purpose.~~

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



1           **28-53-2. Establishment -- Sources -- Administration.** -- (a) There shall be established  
2 within the department of labor and training a special restricted receipt account to be known as the  
3 Rhode Island uninsured employers fund. The fund shall be capitalized from excise taxes assessed  
4 against uninsured employers pursuant to the provisions of section 28-53-9 of this chapter and  
5 from general revenues appropriated by the legislature. Beginning in state fiscal year ending June  
6 30, ~~2013~~ 2015, the legislature may appropriate up to two million dollars (\$2,000,000) in general  
7 revenue funds annually for deposit into the Rhode Island uninsured employers fund.

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

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

14           **28-53-7. Payments to employees of uninsured employers.** -- (a) Where it is determined  
15 that the employee was injured in the course of employment while working for an employer who  
16 fails to maintain a policy of workers' compensation insurance as required by Rhode Island general  
17 laws section 28-36-1, et seq., the uninsured employers fund shall pay the benefits to which the  
18 injured employee would be entitled pursuant to chapters 29 to 38 of this title subject to the  
19 limitations set forth herein.

20           (b) The workers' compensation court shall hear all petitions for payment from the fund  
21 pursuant to Rhode Island general laws section 28-30-1, et seq., provided, however, that the  
22 uninsured employers fund and the employer shall be named as parties to any petition seeking  
23 payment of benefits from the fund.

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

29           (d) The fund shall pay cost, counsel and witness fees as provided in Rhode Island  
30 general laws section 28-35-32 to any employee who successfully prosecutes any petitions for  
31 compensation, petitions for medical expenses, petitions to amend a pretrial order or memorandum  
32 of agreement and all other employee petitions and to employees who successfully defend, in  
33 whole or in part, proceedings seeking to reduce or terminate any and all workers' compensation  
34 benefits; provided, however, that the attorney's fees awarded to counsel who represent the

1 employee in petitions for lump sum commutation filed pursuant to Rhode Island general laws  
2 section 28-33-25 or in the settlement of disputed cases pursuant to Rhode Island general laws  
3 section 28-33-25.1 shall be limited to the maximum amount paid to counsel who serve as court  
4 appointed attorneys in workers' compensation proceedings as established by rule or order of the  
5 Rhode Island supreme court.

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

10 (f) This section shall apply to injuries that occur on or after January 1, ~~2013~~ 2015.

11 SECTION 5. Chapter 42-16.1 of the General Laws entitled "Department of Labor and  
12 Training" is hereby amended by adding thereto the following section:

13 **42-16.1-18. Confidentiality.** -- (a) Except as provided in subsection (b) of this section,  
14 the department of labor and training shall not release information to any individual not connected  
15 with the department relative to any employee's workers' compensation claim, including, but not  
16 limited to, information obtained from the employee, records or reports of employers, insurers or  
17 the courts, or from permanent records of the department.

18 (b) The department of labor and training may release information to the individual  
19 workers' compensation claimant, employer, insurer or their attorney upon a written request,  
20 specific as to the information being requested, that identifies the parties involved in the dispute  
21 and that specifies the requestor's relationship to the parties and the reason why the records are  
22 being requested.

23 SECTION 6. Section 45-21.2-9 of the General Laws in Chapter 45-21.2 entitled  
24 "Optional Retirement for Members of Police Force and Fire Fighters" is hereby amended to read  
25 as follows:

26 **45-21.2-9. Retirement for accidental disability.** -- (a) Any member in active service,  
27 regardless of length of service, is entitled to an accidental disability retirement allowance.  
28 Application for the allowance is made by the member or on the member's behalf, stating that the  
29 member is physically or mentally incapacitated for further service as the result of an injury  
30 sustained while in the performance of duty and certifying to the time, place, and conditions of the  
31 duty performed by the member which resulted in the alleged disability and that the alleged  
32 disability was not the result of the willful negligence or misconduct on the part of the member,  
33 and was not the result of age or length of service, and that the member has not attained the age of  
34 sixty-five (65). The application shall be made within eighteen (18) months of the alleged

1 accident from which the injury has resulted in the member's present disability and shall be  
2 accompanied by an accident report and a physician's report certifying to the disability. If the  
3 member was able to return to his or her employment and subsequently reinjures or aggravates the  
4 same injury, the member shall make another application within eighteen (18) months of the  
5 reinjury or aggravation which shall be accompanied by a physician's report certifying to the  
6 reinjury or aggravation causing the disability. If a medical examination made by three (3)  
7 physicians engaged by the retirement board, and other investigations as the board may make,  
8 confirms the statements made by the member, the board may grant the member an accidental  
9 disability retirement allowance.

10 (b) For the purposes of subsection (a), "aggravation" shall mean an intervening work-  
11 related trauma that independently contributes to a member's original injury that amounts to more  
12 than the natural progression of the preexisting disease or condition and is not the result of age or  
13 length of service. The intervening independent trauma causing the aggravation must be an  
14 identifiable event or series of work-related events that are the proximate cause of the member's  
15 present condition of disability.

16 (c) "Occupational cancer", as used in this section, means a cancer arising out of  
17 employment as a fire fighter, due to injury due to exposures to smoke, fumes, or carcinogenic,  
18 poisonous, toxic, or chemical substances while in the performance of active duty in the fire  
19 department.

20 (d) For purposes of subsection (a), "reinjury" shall mean a recurrence of the original  
21 work-related injury from a specific ascertainable event. The specific event must be the proximate  
22 cause of the member's present condition of disability.

23 (e) Any fire fighter, including one employed by the state, or a municipal firefighter  
24 employed by a municipality that participates in the optional retirement for police officers and fire  
25 fighters as provided in this chapter, who is unable to perform his or her duties in the fire  
26 department by reason of a disabling occupational cancer which develops or manifests itself  
27 during a period while the fire fighter is in the service of the department, and any retired member  
28 of the fire force of any city or town who develops occupational cancer, is entitled to receive an  
29 occupational cancer disability and he or she is entitled to all of the benefits provided for in this  
30 chapter, chapters 19, 19.1, and 21 of this title and chapter 10 of title 36 if the fire fighter is  
31 employed by the state.

32 (f) In the event that any party is aggrieved by the determination of the retirement board  
33 pursuant to section 45-19-1, for an injury occurring on or after July 1, 2011, the party may submit  
34 an appeal to the Rhode Island workers' compensation court. The appellant shall file a notice of

1 appeal with the retirement board and shall serve a copy of the notice of appeal upon the opposing  
2 party.

3 (g) Within twenty (20) days of the receipt of the notice of appeal, the retirement board  
4 shall transmit the entire record of proceedings before it, together with its order, to the workers'  
5 compensation court.

6 (h) In the event that a party files a notice of appeal to the workers' compensation court,  
7 the order of the retirement board shall be stayed pending further action by the court pursuant to  
8 the provisions of Rhode Island general law section 28-35-20.

9 (i) Upon receipt of the record of proceedings before the retirement board, the court shall  
10 assign the matter to a judge and shall issue a notice at the time advising the parties of the judge to  
11 whom the case has been assigned and the date for pretrial conference in accordance with Rhode  
12 Island general law section 28-35-20.

13 (j) All proceedings filed with the workers' compensation court pursuant to this section  
14 shall be de novo and shall be subject to the provisions of chapters 29 to 38 of Title 28 for all case  
15 management procedures and dispute resolution processes, as provided under the rules of workers'  
16 compensation court. The workers' compensation court shall enter a pretrial order in accordance  
17 with subsection 28-35-20(c) which grants or denies, in whole or in part, the relief sought by the  
18 petitioner. The pretrial order shall be effective upon entry and any payments ordered by it shall be  
19 paid within fourteen (14) days of the entry of the order. Provided, however, that in the event that  
20 the retirement board files a claim for trial of the pretrial order entered by the court, the order of  
21 the court shall be stayed until a final order or decree is entered by the court. If after trial and the  
22 entry of a final decree, the court sustains the findings and orders entered in the pretrial order, the  
23 retirement board shall reimburse the municipality all benefits paid by it from the time the pretrial  
24 order was entered until the time the final decree is entered by the court. Where the matter has  
25 been heard and decided by the workers' compensation court, the court shall retain jurisdiction to  
26 review any prior orders or decrees entered by it. Such petitions to review shall be filed directly  
27 with the workers' compensation court and shall be subject to the case management and dispute  
28 resolution procedures set forth in chapters 29 through 38 of title 28 ("Labor and Labor  
29 Relations").

30 (k) If the court determines that a member qualifies for accidental disability retirement,  
31 the member shall receive a retirement allowance equal to sixty-six and two-thirds percent (66  
32 2/3%) of the rate of the member's compensation at the date of the member's retirement, subject to  
33 the provisions of section 45-21-31.

1 SECTION 7. This act shall take effect upon passage.

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LC02602  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION

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1           This act would amend various procedural provisions in the general laws regarding  
2 workers' compensation cases, including the notice requirements, would increase the amount paid  
3 for burial expenses in cases or work-related injuries resulting in death, and would extend the  
4 appropriation of two million dollars (\$2,000,000) by the state to the uninsured employer fund to  
5 2015.

6           This act would take effect upon passage.

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