

2013 -- S 0951 SUBSTITUTE A

=====
LC02602/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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

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

7 **28-33-11. Notice of hearings -- Time of decision.** -- No hearing shall be held by the
8 workers' compensation court or any judge of that court under sections 28-33-5 -- 28-33-10 unless
9 written notice of the hearing is ~~mailed~~ [sent](#) to the employer and employee five (5) days before the
10 time of the hearing. The decision shall be rendered within seventy-two (72) hours after the
11 hearing, unless the parties agree otherwise.

12 **28-33-31. Contents of notice to employer.** -- Notice as required by section 28-33-30
13 ~~shall be in writing and~~ shall state in ordinary language the nature, time, place, and cause of the
14 injury, and the name and address of the person injured, and shall be signed by the injured person,
15 or by a person in his or her behalf, or, in the event of his or her death, by his or her legal
16 representative, or by a person in behalf of either.

17 SECTION 2. Sections 28-33-16 and 28-33-18.3 of the General Laws in Chapter 28-33
18 entitled "Workers' Compensation - Benefits" are hereby amended to read as follows:

19 **28-33-16. Burial expenses.** -- If the employee dies as a result of the injury, the employer
20 shall pay in addition to any compensation provided for in this chapter, the sum of ~~fifteen thousand~~
21 ~~dollars (\$15,000)~~ [twenty thousand dollars \(\\$20,000\)](#). This sum shall be paid under the provisions
22 of section 28-33-23.

23 **28-33-18.3. Continuation of benefits -- Partial incapacity.** -- (a)(1) For all injuries
24 occurring on or after September 1, 1990, in those cases where the employee has received a notice
25 of intention to terminate partial incapacity benefits pursuant to section 28-33-18, the employee or
26 his or her duly authorized representative may file with the workers' compensation court a petition
27 for continuation of benefits on forms prescribed by the workers' compensation court. In any
28 proceeding before the workers' compensation court on a petition for continuation of partial
29 incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence
30 that his or her partial incapacity poses a material hindrance to obtaining employment suitable to
31 his or her limitation, partial incapacity benefits shall continue. For injuries on and after July 1,
32 ~~2012~~ [2016](#), "material hindrance" is defined to include only compensable injuries causing a greater
33 than sixty-five percent (65%) degree of functional impairment and/or disability. Any period of
34 time for which the employee has received benefits for total incapacity shall not be included in the

1 calculation of the three hundred and twelve (312) week period.

2 (2) The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1,
3 ~~2012~~ 2016.

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

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

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

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

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

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

32 SECTION 3. Sections 28-35-12, 28-35-14, 28-35-15, 28-35-16, 28-35-27, 28-35-28, 28-
33 35-28.1 and 28-35-37 of the General Laws in Chapter 28-35 entitled "Workers' Compensation -
34 Procedure" are hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

32 **28-35-27. Decision of controversies -- Decree.** -- (a) In any controversy over which the
33 workers' compensation court has jurisdiction pursuant to this chapter and Rhode Island general
34 law section 45-21.2-9, any judge of that court shall, pursuant to sections 28-35-11 -- 28-35-28,

1 and the procedural rules of the court, hear all questions of law and fact involved in the
2 controversy and presented by any party in interest, and he or she shall within ten (10) days after
3 the hearing, unless the parties otherwise agree, decide the merits of the controversy pursuant to
4 the law and the fair preponderance of the evidence and notify the administrator of the court of the
5 decision, who shall immediately notify the parties ~~by mail~~.

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

9 **28-35-28. Appeal to appellate division.** -- (a) Any person aggrieved by the entry of a
10 decree by a judge may appeal to the appellate division established pursuant to this section by
11 filing with the administrator of the court within five (5) days of the date of the entry of a decree,
12 exclusive of Saturdays, Sundays, and holidays, a claim of appeal and, subject to the rules of the
13 court, by filing a ~~written~~ request for a transcript of the testimony and ruling or any part thereof
14 desired. Within any time that a judge shall fix, either by an original fixing or otherwise, the
15 appellant shall file with the administrator of the court reasons of appeal stating specifically all
16 matters determined adversely to him or her which he or she desires to appeal, together with so
17 much of the transcript of testimony and rulings as he or she deems pertinent, and within ten (10)
18 days after that the parties may file with the administrator of the court those briefs and memoranda
19 that they may desire concerning the appeal. The chief judge shall appoint appellate panels of three
20 (3) members of the court to hear any claim of appeal and the decision of the appellate panel shall
21 be binding on the court. The three (3) members of the appellate panel shall immediately review
22 the decree upon the record of the case and shall file a decision pursuant to the law and the fair
23 preponderance of the evidence within ten (10) days of the expiration of the time within which the
24 parties may file briefs and memoranda. Upon consideration of the appeal, the appellate panel
25 shall affirm, reverse, or modify the decree appealed from, and may itself take any further
26 proceedings that are just, or may remand the matter to the trial judge for further consideration of
27 any factual issue that the appellate division may raise, including the taking of additional evidence
28 or testimony by the trial judge. It shall be within the prerogative of the appellate panel to remand
29 a matter to the trial judge. If the decision requires the entry of a new decree, notice shall be given
30 the parties, and the new decree shall be entered in the same manner as the original decree, but if
31 the decision of two (2) appellate panel judges does not require the entry of a new decree, the
32 decree shall be affirmed. Any member of the appellate panel may, for cause, disqualify himself or
33 herself from hearing any appeal that may come before the appellate panel.

34 (b) The findings of the trial judge on factual matters shall be final unless an appellate

1 panel finds them to be clearly erroneous. The court may award costs, including reasonable
2 attorney fees, to the prevailing party when the appellate panel finds there was complete absence
3 of a justiciable issue of either law or fact.

4 **28-35-28.1. Reports of hearings -- Transcripts.** -- (a) Hearings reporters, or electronic
5 court reporters, shall report stenographically, or electronically, the proceedings in the trial of
6 every action or proceeding in the workers' compensation court. Electronic court reporting shall be
7 used only when hearings reporters are unavailable for any reason.

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

18 **28-35-37. Delay of process for execution of decree.** -- No process for the execution of
19 any decree of the workers' compensation court from which an appeal may be taken shall issue
20 until the expiration of the appeal period, unless all parties against whom the decree is made,
21 waive an appeal ~~by a writing filed~~ with the administrator or by causing an entry thereof to be
22 made on the docket.

23 SECTION 4. Section 28-35-20 of the General Laws in Chapter 28-35 entitled "Workers'
24 Compensation - Procedure" is hereby amended to read as follows:

25 **28-35-20. Informal pretrial conference.** -- (a) Before any case shall proceed to a trial,
26 the judge shall conduct a mandatory pretrial conference within twenty-one (21) days of the date
27 of filing with a view to expediting the case and reducing the issues in dispute to a minimum,
28 notice of which shall be sent by the administrator to the parties or to their attorneys of record. The
29 conference shall be informal and no oral testimony shall be offered or taken. Any statement then
30 made by either party shall in the absence of agreement be without prejudice, but any agreement
31 then made shall be binding.

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

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

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

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

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

29 SECTION 5. Section 28-35-59 of the General Laws in Chapter 28-35 entitled "Workers'
30 Compensation - Procedure" is hereby repealed.

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

1 ~~be kept by the administrator in books provided for the purpose.~~

2 SECTION 6. Sections 28-53-2 and 28-53-7 of the General Laws in Chapter 28-53
3 entitled "Rhode Island Uninsured Employers Fund" are hereby amended to read as follows:

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

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

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

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

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

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

32 (d) The fund shall pay cost, counsel and witness fees as provided in Rhode Island
33 general laws section 28-35-32 to any employee who successfully prosecutes any petitions for
34 compensation, petitions for medical expenses, petitions to amend a pretrial order or memorandum

1 of agreement and all other employee petitions and to employees who successfully defend, in
2 whole or in part, proceedings seeking to reduce or terminate any and all workers' compensation
3 benefits; provided, however, that the attorney's fees awarded to counsel who represent the
4 employee in petitions for lump sum commutation filed pursuant to Rhode Island general laws
5 section 28-33-25 or in the settlement of disputed cases pursuant to Rhode Island general laws
6 section 28-33-25.1 shall be limited to the maximum amount paid to counsel who serve as court
7 appointed attorneys in workers' compensation proceedings as established by rule or order of the
8 Rhode Island supreme court.

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

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

14 SECTION 7. Chapter 42-16.1 of the General Laws entitled "Department of Labor and
15 Training" is hereby amended by adding thereto the following section:

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

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

26 SECTION 8. Section 45-19-1 of the General Laws in Chapter 45-19 entitled "Relief Of
27 Injured And Deceased Fire Fighters And Police Officers" is hereby amended to read as follows:

28 **45-19-1. Salary payment during line of duty illness or injury.** -- (a) Whenever any
29 police officer of the Rhode Island Airport Corporation or whenever any police officer, fire
30 fighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal of
31 any city, town, fire district, or the state of Rhode Island is wholly or partially incapacitated by
32 reason of injuries received or sickness contracted in the performance of his or her duties or due to
33 their rendering of emergency assistance within the physical boundaries of the state of Rhode
34 Island at any occurrence involving the protection or rescue of human life which necessitates that
35

1 they respond in a professional capacity when they would normally be considered by their
2 employer to be officially off-duty, the respective city, town, fire district, state of Rhode Island or
3 Rhode Island Airport Corporation by which the police officer, fire fighter, crash rescue
4 crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal, is employed, shall,
5 during the period of the incapacity, pay the police officer, fire fighter, crash rescue crewperson,
6 fire marshal, chief deputy fire marshal, or deputy fire marshal, the salary or wage and benefits to
7 which the police officer, fire fighter, crash rescue crewperson, fire marshal, chief deputy fire
8 marshal, or deputy fire marshal, would be entitled had he or she not been incapacitated, and shall
9 pay the medical, surgical, dental, optical, or other attendance, or treatment, nurses, and hospital
10 services, medicines, crutches, and apparatus for the necessary period, except that if any city,
11 town, fire district, the state of Rhode Island or Rhode Island Airport Corporation provides the
12 police officer, fire fighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or
13 deputy fire marshal, with insurance coverage for the related treatment, services, or equipment,
14 then the city, town, fire district, the state of Rhode Island or Rhode Island Airport Corporation is
15 only obligated to pay the difference between the maximum amount allowable under the insurance
16 coverage and the actual cost of the treatment, service, or equipment. In addition, the cities, towns,
17 fire districts, the state of Rhode Island or Rhode Island Airport Corporation shall pay all similar
18 expenses incurred by a member who has been placed on a disability pension and suffers a
19 recurrence of the injury or illness that dictated his or her disability retirement, subject to the
20 provisions of subsection (j) herein.

21 (b) As used in this section, "police officer" means and includes any chief or other
22 member of the police department of any city or town regularly employed at a fixed salary or wage
23 and any deputy sheriff, member of the fugitive task force, or capitol police officer, permanent
24 environmental police officer or criminal investigator of the department of environmental
25 management, or airport police officer.

26 (c) As used in this section, "fire fighter" means and includes any chief or other member
27 of the fire department or rescue personnel of any city, town, or fire district, and any person
28 employed as a member of the fire department of the town of North Smithfield, or fire department
29 or district in any city or town.

30 (d) As used in this section, "crash rescue crewperson" means and includes any chief or
31 other member of the emergency crash rescue section, division of airports, or department of
32 transportation of the state of Rhode Island regularly employed at a fixed salary or wage.

33 (e) As used in this section, "fire marshal," "chief deputy fire marshal", and "deputy fire
34 marshal" mean and include the fire marshal, chief deputy fire marshal, and deputy fire marshals

1 regularly employed by the state of Rhode Island pursuant to the provisions of chapter 28.2 of title
2 23.

3 (f) Any person employed by the state of Rhode Island, except for sworn employees of
4 the Rhode Island State Police, who is otherwise entitled to the benefits of chapter 19 of this title
5 shall be subject to the provisions of chapters 29 - 38 of title 28 for all case management
6 procedures and dispute resolution for all benefits.

7 (g) In order to receive the benefits provided for under this section, a police officer or
8 firefighter must prove to their employer that he or she had reasonable grounds to believe that
9 there was an emergency which required an immediate need for their assistance for the protection
10 or rescue of human life.

11 (h) Any claims to the benefits provided for under this section resulting from the
12 rendering of emergency assistance in the state of Rhode Island at any occurrence involving the
13 protection or rescue of human life while off-duty, shall first require those covered by this section
14 to submit a sworn declaration to their employer attesting to the date, time, place and nature of the
15 event involving the protection or rescue of human life causing the professional assistance to be
16 rendered and the cause and nature of any injuries sustained in the protection or rescue of human
17 life. Sworn declarations shall also be required from any available witness to the alleged
18 emergency involving the protection or rescue of human life.

19 (i) All declarations required under this section shall contain the following language:

20 "Under penalty of perjury, I declare and affirm that I have examined this declaration,
21 including any accompanying schedules and statements, and that all statements contained herein
22 are true and correct."

23 ~~(j) Any person receiving injured on duty benefits pursuant to this section, and subject to~~
24 ~~the jurisdiction of the state retirement board for accidental retirement disability, for an injury~~
25 ~~occurring on or after July 1, 2011, shall be eligible to receive such benefits for a total period of~~
26 ~~eighteen (18) months after the date of the person's injury that resulted in said person's injured on~~
27 ~~duty status, except as provided for in subdivision 45-19-1(j)(2).-~~

28 ~~(1) Within eighteen (18) months of being injured, the person shall apply for an accidental~~
29 ~~disability retirement allowance from the state retirement board. A person who so applies shall~~
30 ~~continue to receive injured on duty payments until the person's application for an accidental~~
31 ~~disability retirement allowance has been allowed or denied, and if denied initially, then upon the~~
32 ~~expiration of the appeal period from such decision to the workers' compensation court pursuant to~~
33 ~~45-21.2-9 of the general laws, or, if appealed, then upon a decision from the workers'~~
34 ~~compensation court denying said appeal, whichever is applicable.-~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

~~(2) If a person with injured on duty status fails to apply for an accidental disability retirement allowance from the state retirement board within the eighteen (18) month period set forth in this subsection, that person's injured on duty payments shall terminate, unless said person provides to the applicable municipality a written opinion from a physician that states that it is the physician's opinion, to a reasonable degree of medical certainty, that the person will be able to return to work within six (6) months. In such event, the injured person may continue to receive injured on duty payments for a period, not to exceed six (6) months, after the initial eighteen (18) month period expires.—~~

(j) Any person receiving injured on-duty benefits pursuant to this section, and subject to the jurisdiction of the state retirement board for accidental retirement disability, for an injury occurring on or after July 1, 2011, shall apply for an accidental disability retirement allowance from the state retirement board not later than the later of eighteen (18) months after the date of the person's injury that resulted in said person's injured on duty status or sixty (60) days from the date on which the treating physician certifies that the person has reached maximum medical improvement. Nothing herein shall be construed to limit or alter any and all rights of the parties with respect to independent medical examination or otherwise, as set forth in the applicable collective bargaining agreement. Notwithstanding the forgoing, any person receiving injured on duty benefits as the result of a static and incapacitating injury whose permanent nature is readily obvious and ascertainable shall be required to apply for an accidental disability retirement allowance within sixty (60) days from the date on which the treating physician certifies that the person's injury is permanent, or sixty (60) days from the date on which such determination of permanency is made in accordance with the independent medical examination procedures as set forth in the applicable collective bargaining agreement.

(1) If a person with injured on duty status fails to apply for an accidental disability retirement allowance from the state retirement board within the time frame set forth above, that person's injured on duty payment shall terminate. Further, any person suffering a static and incapacitating injury as set forth in subsection (j) above and who fails to apply for an accidental disability benefit allowance as set forth in subsection (j) shall have his or her injured on duty payment terminated.

(2) A person who so applies shall continue to receive injured on duty payments, and the right to continue to receive IOD payments of a person who so applies shall terminate in the event of a final ruling of the workers compensation court allowing accidental disability benefits. Nothing herein shall be construed to limit or alter any and all rights of the parties with respect to

1 [independent medical examination or otherwise, as set forth in the applicable collective bargaining](#)
2 [agreement.](#)

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

6 **45-21.2-9. Retirement for accidental disability.** -- (a) Any member in active service,
7 regardless of length of service, is entitled to an accidental disability retirement allowance.
8 Application for the allowance is made by the member or on the member's behalf, stating that the
9 member is physically or mentally incapacitated for further service as the result of an injury
10 sustained while in the performance of duty and certifying to the time, place, and conditions of the
11 duty performed by the member which resulted in the alleged disability and that the alleged
12 disability was not the result of the willful negligence or misconduct on the part of the member,
13 and was not the result of age or length of service, and that the member has not attained the age of
14 sixty-five (65). The application shall be made within eighteen (18) months of the alleged
15 accident from which the injury has resulted in the member's present disability and shall be
16 accompanied by an accident report and a physician's report certifying to the disability. If the
17 member was able to return to his or her employment and subsequently reinjures or aggravates the
18 same injury, the member shall make another application within eighteen (18) months of the
19 reinjury or aggravation which shall be accompanied by a physician's report certifying to the
20 reinjury or aggravation causing the disability. If a medical examination made by three (3)
21 physicians engaged by the retirement board, and other investigations as the board may make,
22 confirms the statements made by the member, the board may grant the member an accidental
23 disability retirement allowance.

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

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

34 (d) For purposes of subsection (a), "reinjury" shall mean a recurrence of the original

1 work-related injury from a specific ascertainable event. The specific event must be the proximate
2 cause of the member's present condition of disability.

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

12 (f) In the event that any party is aggrieved by the determination of the retirement board
13 pursuant to section 45-19-1, for an injury occurring on or after July 1, 2011, the party may submit
14 an appeal to the Rhode Island workers' compensation court. The appellant shall file a notice of
15 appeal with the retirement board and shall serve a copy of the notice of appeal upon the opposing
16 party.

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

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

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

27 (j) All proceedings filed with the workers' compensation court pursuant to this section
28 shall be de novo and shall be subject to the provisions of chapters 29 to 38 of Title 28 for all case
29 management procedures and dispute resolution processes, as provided under the rules of workers'
30 compensation court. The workers' compensation court shall enter a pretrial order in accordance
31 with subsection 28-35-20(c) which grants or denies, in whole or in part, the relief sought by the
32 petitioner. The pretrial order shall be effective upon entry and any payments ordered by it shall be
33 paid within fourteen (14) days of the entry of the order. Provided, however, that in the event that
34 the retirement board files a claim for trial of the pretrial order entered by the court, the order of

1 the court shall be stayed until a final order or decree is entered by the court. If after trial and the
2 entry of a final decree, the court sustains the findings and orders entered in the pretrial order, the
3 retirement board shall reimburse the municipality all benefits paid by it from the time the pretrial
4 order was entered until the time the final decree is entered by the court. Where the matter has
5 been heard and decided by the workers' compensation court, the court shall retain jurisdiction to
6 review any prior orders or decrees entered by it. Such petitions to review shall be filed directly
7 with the workers' compensation court and shall be subject to the case management and dispute
8 resolution procedures set forth in chapters 29 through 38 of title 28 ("Labor and Labor
9 Relations").

10 (k) If the court determines that a member qualifies for accidental disability retirement,
11 the member shall receive a retirement allowance equal to sixty-six and two-thirds percent (66
12 2/3%) of the rate of the member's compensation at the date of the member's retirement, subject to
13 the provisions of section 45-21-31.

14 SECTION 10. Nothing contained in this act shall abrogate or affect substantive rights or
15 pre-existing agreements, preliminary determinations, orders or decrees.

16 SECTION 11. Section 1 and Section 3 shall take effect on October 1, 2013. The
17 remainder of the act shall take effect upon passage.

=====
LC02602/SUB A
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION

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 Nothing contained in the act would abrogate or affect substantive rights or pre-existing
7 agreements, preliminary determinations, orders or decrees.

8 Section 1 and Section 3 would take effect on October 1, 2013. The remainder of the act
9 would take effect upon passage.

=====
LC02602/SUB A
=====