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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

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

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

Date Introduced: May 29, 2014

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-33-8, 28-33-17, 28-33-17.3 and 28-33-18.3 of the General
2 Laws in Chapter 28-33 entitled "Workers' Compensation - Benefits" are hereby amended to read
3 as follows:
4 **28-33-8. Employee's choice of physician, dentist, or hospital -- Payment of charges --**
5 **Physician reporting schedule.** -- (a) (1) An injured employee shall have freedom of choice to
6 obtain health care, diagnosis, and treatment from any qualified health care provider initially. The
7 initial health care provider of record may, without prior approval, refer the injured employee to
8 any qualified specialist for independent consultation or assessment, or specified treatment. If the
9 insurer or self-insured employer has a preferred provider network approved and kept on record by
10 the medical advisory board, any change by the employee from the initial health care provider of
11 record shall only be to a health care provider listed in the approved preferred provider network;
12 provided, however, that any contract proffered or maintained which restricts or limits the health
13 care provider's ability to make referrals pursuant to the provisions of this section, restricts the
14 injured employee's first choice of health care provider, substitutes or overrules the treatment
15 protocols maintained by the medical advisory board or attempts to evade or limit the jurisdiction
16 of the workers' compensation court shall be void as against public policy. If the employee seeks
17 to change to a health care provider not in the approved preferred provider network, the employee
18 must obtain the approval of the insurer or self-insured employer. Nothing contained in this

1 section shall prevent the treatment, care, or rehabilitation of an employee by more than one
2 physician, dentist, or hospital. The employee's first visit to any facility providing emergency care
3 or to a physician or medical facility under contract with or agreement with the employer or
4 insurer to provide priority care shall not constitute the employee's initial choice to obtain health
5 care, diagnosis or treatment.

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

11 (b) Within three (3) days of an initial visit following an injury, the health care provider
12 shall provide to the insurer or self-insured employer, and the employee and his or her attorney a
13 notification of compensable injury form to be approved by the administrator of the medical
14 advisory board. Within three (3) days of the injured employee's release or discharge, return to
15 work, and/or recovery from an injury covered by chapters 29 - 38 of this title, the health care
16 provider shall provide a notice of release to the insurer or self-insured employer and the employee
17 and his or her attorney on a form approved by the division. A twenty dollar (\$20.00) fee may be
18 charged by the health care provider to the insurer or self-insured employer for the notification of
19 compensable injury forms or notice of release forms or for affidavits filed pursuant to subsection
20 (c) of this section, but only if filed in a timely manner. No claim for care or treatment by a
21 physician, dentist, or hospital chosen by an employee shall be valid and enforceable as against his
22 or her employer, the employer's insurer, or the employee, unless the physician, dentist, or hospital
23 gives written notice of the employee's choice to the employer/insurance carrier within fifteen (15)
24 days after the beginning of the services or treatment. The health care provider shall in writing
25 ~~submit present~~ to the employer or insurance carrier [an itemized bill and report for the services or](#)
26 [treatment and](#) a final itemized bill for all unpaid services or treatment within three (3) months
27 after the conclusion of the treatment. The employee shall not be personally liable to pay any
28 physician, dentist, or hospital bills in cases where the physician, dentist, or hospital has forfeited
29 the right to be paid by the employer or insurance carrier because of noncompliance with this
30 section.

31 (c) (1) At six (6) weeks from the date of injury, then every twelve (12) weeks thereafter
32 until maximum medical improvement, any qualified physician or other health care professional
33 providing medical care or treatment to any person for an injury covered by chapters 29 - 38 of
34 this title shall file an itemized bill and an affidavit with the insurer, the employee and his or her

1 attorney, and the medical advisory board. A ten percent (10%) discount may be taken on the
2 itemized bill affidavits not filed in a timely manner and received by the insurer one week or more
3 late. The affidavit shall be on a form designed and provided by the administrator of the medical
4 advisory board and shall state:

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

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

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

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

14 (d) "Itemized bill", as referred to in this section, means a [completed](#) statement of
15 charges, on a form [CMS HCFA 1500, UB 92/94](#) or other form suitable to the insurer, which
16 includes, but is not limited to, an enumeration of specific types of care provided, facilities or
17 equipment used, services rendered, and appliances or medicines prescribed, for purposes of
18 identifying the treatment given the employee with respect to his or her injury.

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

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

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

30 (f) (1) Compensation for medical expenses and other services under § 28-33-5, 28-33-
31 7 or 28-33-8 is due and payable within twenty-one (21) days from the date a request is payment is
32 not made within twenty-one (21) days from the date a request is made for payment, the provider
33 of medical services may add, and the insurer or self-insurer shall pay, interest at the per annum
34 rate as provided in § 9-21-10 on the amount due. The employee or the medical provider may file

1 a petition with the administrator of the workers' compensation court which petition shall follow
2 the procedure as authorized in chapter 35 of this title.

3 (2) The twenty-one (21) day period in subdivision (1) of this subsection [and in § 28-35-](#)
4 [12](#) shall begin on the date the insurer receives a request with appropriate documentation required
5 to determine whether the claim is compensable and the payment requested is due.

6 **28-33-17. Weekly compensation for total incapacity -- Permanent total disability --**
7 **Dependents' allowances.** -- (a) (1) While the incapacity for work resulting from the injury is
8 total, the employer shall pay the injured employee a weekly compensation equal to seventy-five
9 percent (75%) of his or her average weekly spendable base wages, earnings, or salary, as
10 computed pursuant to the provisions of § 28-33-20. The amount may not exceed more than sixty
11 percent (60%) of the state average weekly wage of individuals in covered employment under the
12 provisions of the Rhode Island Employment Security Act as computed and established by the
13 Rhode Island department of labor and training, annually, on or before May 31 of each year, under
14 the provisions of § 28-44-6(a). Effective September 1, 1974, the maximum rate for weekly
15 compensation for total disability shall not exceed sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the
16 state average weekly wage as computed and established under the provisions of § 28-44-6(a).
17 Effective September 1, 1975, the maximum rate for weekly compensation for total disability shall
18 not exceed one hundred percent (100%) of the state average weekly wage as computed and
19 established under the provisions of § 28-44-6(a). Effective September 1, 2007, the maximum rate
20 for weekly compensation for total disability shall not exceed one hundred fifteen percent (115%)
21 of the state average weekly wage as computed and established under the provisions of § 28-44-
22 6(a). [Effective October 1, 2016, the maximum rate for weekly compensation for total disability](#)
23 [shall not exceed one hundred twenty percent \(120%\) of the state average weekly wage as](#)
24 [computed and established under the provisions of § 28-44-6\(a\) and effective October 1, 2017, the](#)
25 [maximum rate for weekly compensation for total disability shall not exceed one hundred twenty -](#)
26 [five percent \(125%\) of the state average weekly wage as computed and established under the](#)
27 [provisions of § 28-44-6\(a\).](#) If the maximum weekly benefit rate is not an exact multiple of one
28 dollar (\$1.00), then the rate shall be raised to the next higher multiple of one dollar (\$1.00).

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

32 (3) (i) "Spendable earnings" means the employee's gross average weekly wages, earnings,
33 or salary, including any gratuities reported as income, reduced by an amount determined to reflect
34 amounts which would be withheld from the wages, earnings, or salary under federal and state

1 income tax laws, and under the Federal Insurance Contributions Act (FICA), 26 U.S.C. 3101 et
2 seq., relating to social security and Medicare taxes. In all cases, it is to be assumed that the
3 amount withheld would be determined on the basis of expected liability of the employee for tax
4 for the taxable year in which the payments are made without regard to any itemized deductions
5 but taking into account the maximum number of personal exemptions allowable.

6 (ii) Each year, the director shall publish tables of the average weekly wage and seventy-
7 five percent (75%) of spendable earnings that are to be in effect on May 10. These tables shall be
8 conclusive for the purposes of converting an average weekly wage into seventy-five percent
9 (75%) of spendable earnings. In calculating spendable earnings the director shall have discretion
10 to exempt funds assigned to third parties by order of the family court pursuant to § 8-10-3 and
11 funds designated for payment of liens pursuant to § 28-33-27 upon submission of supporting
12 evidence.

13 (b) (1) In the following cases, it shall for the purpose of this section be that the injury
14 resulted in permanent total disability:

15 (i) The total and irrecoverable loss of sight in both eyes or the reduction to one-tenth
16 (1/10th) or less of normal vision with glasses;

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

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

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

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

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

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

31 (c) (1) Where the employee has persons conclusively presumed to be dependent upon
32 him or her or in fact so dependent, the sum of fifteen dollars (\$15.00) shall be added to the
33 weekly compensation payable for total incapacity for each person wholly dependent on the
34 employee, except that the sum of forty dollars (\$40.00) shall be added for those receiving benefits

1 under § 28-33-12, but in no case shall the aggregate of those amounts exceed eighty percent
2 (80%) of the average weekly wage of the employee, except that there shall be no limit for those
3 receiving benefits under § 28-33-12.

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

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

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

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

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

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

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

33 (f) (1) Where any employee's incapacity is total and has extended beyond fifty-two (52)
34 weeks, regardless of the date of injury, payments made to all totally incapacitated employees shall

1 be increased as of May 10, 1991, and annually on the tenth of May after that as long as the
2 employee remains totally incapacitated. The increase shall be by an amount equal to the total
3 percentage increase in annual consumer price index, United States city average for urban wage
4 earners and clerical workers, as formulated and computed by the bureau of labor statistics of the
5 United States Department of Labor for the period of March 1 to February 28 each year.

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

9 (3) "Index" as used in this section refers to the consumer price index, United States city
10 average for urban wage earners, clerical workers, as that index is formulated and computed by the
11 Bureau of Labor Statistics of the United States Department of Labor.

12 (4) The May 10, 1991 increase shall be based upon the total percentage increase, if any,
13 in the annual consumer price index for the period of March 1, 1990 to February 28, 1991.
14 Thereafter, increases shall be made on May 10 annually, based upon the percentage increase, if
15 any, in the index for the period March 1 to February 28.

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

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

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

33 **28-33-17.3. Fraud and abuse.** -- (a) (1) The workers' compensation court is authorized
34 and directed to impose sanctions and penalties necessary to maintain the integrity of and to

1 maintain the high standards of professional conduct in the workers' compensation system. All
2 pleadings related to proceedings under chapters 29 - 38 of this title shall be considered an
3 attestation by counsel that valid grounds exist for the position taken and that the pleading is not
4 interposed for delay.

5 (2) If any judge determines that any proceedings have been brought, prosecuted, or
6 defended by an employer, insurer, or their counsel without reasonable grounds, then:

7 (i) The whole cost of the proceedings shall be assessed upon the employer, insurer, or
8 counsel, whoever is responsible; and

9 (ii) If a subsequent order requires that additional compensation be paid, a penalty of
10 double the amount of retroactive benefits ordered shall be paid to the employee and the penalty
11 shall not be included in any formula utilized to establish premium rates for workers'
12 compensation insurance.

13 (3) If any judge determines that any proceedings have been brought or defended by an
14 employee or his or her counsel without reasonable grounds, the whole cost of the proceedings
15 shall be assessed against the employee or counsel, whoever is responsible.

16 (4) The court shall determine whether an action or defense is frivolous or conduct giving
17 rise to the action or defense was unreasonable. Where the amount at issue is less than the actual
18 attorneys' fees of the parties combined, the court shall exercise particular vigilance. Nothing in
19 this subsection, however, is intended to discourage prompt payment in full of all amounts
20 required to be paid.

21 (5) The appropriate body with professional disciplinary authority over the attorney shall
22 be notified of the action.

23 (6) Where any party intentionally and unreasonably utilizes the twenty-one (21) day
24 demand process of § 28-35-12 in order to harass or hinder any opposing entity, the cost of the
25 proceedings shall be assessed against the party, in the discretion of the trial judge, in accordance
26 with subsection (a) herein.

27 (b) (1) It is unlawful to do any of the following:

28 (i) Make or cause to be made any knowingly false or fraudulent material statement or
29 material representation for the purpose of obtaining or denying any compensation;

30 (ii) Present or cause to be presented any knowingly false or fraudulent written or oral
31 material statement in support of, or in opposition to, any claim for compensation or petition
32 regarding the continuation, termination, or modification of benefits;

33 (iii) Knowingly assist, aid and abet, solicit, or conspire with any person who engages in
34 an unlawful act under this section;

1 (iv) Make or cause to be made any knowingly false or fraudulent statements with regard
2 to entitlement to benefits with the intent to discourage an injured worker from claiming benefits
3 or pursuing a claim;

4 (v) Willfully misrepresent or fail to disclose any material fact in order to obtain workers'
5 compensation insurance at less than the proper rate for the insurance including, but not limited to,
6 intentionally misleading or failing to disclose information to an insurer regarding the appropriate
7 rate classification of an employee;

8 (vi) Willfully fail to provide a lower rate adjustment favorable to an employer as required
9 by an approved experience rating plan or regulations promulgated by the insurance
10 commissioners;

11 (vii) Willfully fail to report or provide false or misleading information regarding
12 ownership changes as required by an approved experience rating plan or regulations promulgated
13 by the insurance commissioner; or

14 (viii) Knowingly assist, aid and abet, solicit or conspire to coerce an employee to
15 willfully misrepresent an employee's status as a shareholder, director or officer of a corporation,
16 or as a member or manager of a limited liability company, or as a partner, in a general or, limited
17 partnership, registered limited liability partnership or a registered limited liability limited
18 partnership, or as an independent contractor for the purpose of avoiding the inclusion of that or
19 other employees in a workers' compensation insurance application, renewal or both.

20 (2) For the purposes of this section, "Statement" includes, but is not limited to, any
21 endorsement of a benefit check, application for insurance coverage, oral or written statement,
22 proof of injury, bill for services, diagnosis, prescription, hospital or provider records, x-rays, test
23 results, or other documentation offered as proof of, or in the absence of, a loss, injury, or
24 expense.

25 (3) If it is determined that any person concealed or knowingly failed to disclose that
26 which is required by law to be revealed, knowingly gave or used perjured testimony or false
27 evidence, knowingly made a false statement of fact, participated in the creation or presentation of
28 evidence which he or she knows to be false, or otherwise engaged in conduct in violation of
29 subdivision (1) of this subsection, that person shall be subject in criminal proceedings to a fine
30 and/or penalty not exceeding fifty thousand dollars (\$50,000), or double the value of the fraud,
31 whichever is greater, or by imprisonment up to five (5) years in state prison or both.

32 (4) There shall be a general amnesty until July 1, 1992 for any person receiving
33 compensation under chapters 29 - 38 of this title, to the extent compensation has been voluntarily
34 reduced or relinquished by the employee prior to that date.

1 (c) The director of labor and training shall establish a form, in consultation with the
2 attorney general, to be sent to all workers who are presently receiving benefits and those for
3 whom first reports of injury are filed in the future which shall give the employee notice that the
4 endorsement of a benefit check sent pursuant to § 28-35-39 is the employee's affirmation that he
5 or she is qualified to receive benefits under the Workers' Compensation Act. The insurers and
6 self-insured employers are directed to send the form to all workers receiving benefits.

7 (d) Any employer, or in any case where the employer is a corporation, the president, vice
8 president, secretary, treasurer, and other officers of the corporation, or in any case where the
9 employer is a limited liability company, the managers, and the managing members or in any case
10 where the employer is a general partnership or a registered limited liability partnership, or in the
11 case where the employer is a limited partnership or a registered limited liability limited
12 partnership, the partners, that are found to have violated this section or § 28-36-15, shall be guilty
13 of a felony for failure to secure and maintain compensation, and upon conviction, shall be subject
14 to imprisonment of up to two (2) years, a fine not exceeding ten thousand dollars (\$10,000), or
15 both. In any case where the employer is a corporation, the president, vice president, secretary,
16 treasurer, and other officers of the corporation, shall be severally liable for the fine or subject to
17 imprisonment, or both. In any case where the employer is a limited liability company, the
18 managers and managing members shall be severally liable for the fine or subject to imprisonment,
19 or both. In any case where the employer is a partnership or a registered limited liability
20 partnership, the partners shall be severally liable for the fine or subject to imprisonment, or both.
21 In any case where the employer is a limited partnership or a registered limited liability limited
22 partnership, the general partners shall be severally liable for the fine or subject to imprisonment,
23 or both.

24 **28-33-18.3. Continuation of benefits -- Partial incapacity.** -- (a) (1) For all injuries
25 occurring on or after September 1, 1990, in those cases where the employee has received a notice
26 of intention to terminate partial incapacity benefits pursuant to § 28-33-18, the employee or his or
27 her duly authorized representative may file with the workers' compensation court a petition for
28 continuation of benefits on forms prescribed by the workers' compensation court. In any
29 proceeding before the workers' compensation court on a petition for continuation of partial
30 incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence
31 that his or her partial incapacity poses a material hindrance to obtaining employment suitable to
32 his or her limitation, partial incapacity benefits shall continue. For injuries on and after July 1,
33 ~~2016~~ [2018](#), "material hindrance" is defined to include only compensable injuries causing a greater
34 than sixty-five percent (65%) degree of functional impairment and/or disability. Any period of

1 time for which the employee has received benefits for total incapacity shall not be included in the
2 calculation of the three hundred and twelve (312) week period.

3 (2) The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1,
4 ~~2016~~ 2018.

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

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

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

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

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

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

33 SECTION 2. Section 28-35-12 of the General Laws in Chapter 28-35 entitled "Workers'
34 Compensation - Procedure" is hereby amended to read as follows:

1 **28-35-12. Petition for determination of controversy -- Contents and filing.** -- (a) In
2 all 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 prescribed 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 §§ 28-35-42, 28-35-43, and 28-35-20(c). [All demands seeking payment of bills for medical](#)
19 [services rendered shall include reference to a claim number or a legible copy of the agreement,](#)
20 [order, and/or decree, if appropriate, establishing liability.](#) Medical bills for services ordered paid
21 by decree or pretrial order shall be paid within fourteen (14) days of the entry of the decree or
22 order. In the event that the bills are not paid within the fourteen (14) day period, a petition may be
23 filed to enforce said order or decree without any additional written notice to the employer or
24 insurer.

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

34 (2) The workers' compensation court shall award compensation, costs, and attorneys' fees

1 in its discretion if one of the insurers is held to be liable following the hearing.

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

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

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

15 **28-53-2. Establishment -- Sources -- Administration.** -- (a) There shall be established
16 within the department of labor and training a special restricted receipt account to be known as the
17 Rhode Island uninsured employers fund. The fund shall be capitalized from excise taxes assessed
18 against uninsured employers pursuant to the provisions of § 28-53-9 of this chapter and from
19 general revenues appropriated by the legislature. Beginning in state fiscal year ending June 30,
20 ~~2015~~ 2016, the legislature may appropriate up to two million dollars (\$2,000,000) in general
21 revenue funds annually for deposit into the Rhode Island uninsured employers fund.

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

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

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

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

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

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

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

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

26 SECTION 4. Section 36-10-31 of the General Laws in Chapter 36-10 entitled
27 "Retirement System-Contributions and Benefits" is hereby amended to read as follows:

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

1 disability of the member. If the value of the total commuted benefits under any workers'
2 compensation law or action is less than the present value on an actuarial basis of the benefits
3 otherwise payable under this chapter, the value of the commuted payments shall be deducted
4 from the present value of the benefits and the balance thereof shall be payable under the
5 provisions of this chapter.

6 SECTION 5. This act shall take effect upon passage.

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LC005819/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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

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

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LC005819/SUB A
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