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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION

Introduced By: Representatives Shekarchi, Williams, Kennedy, Lima, and Solomon

Date Introduced: April 30, 2015

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 28-30-22 of the General Laws in Chapter 28-30 entitled "Workers'
2 Compensation Court" is hereby amended to read as follows:

3 **28-30-22. Medical advisory board.** -- (a) The chief judge of the workers' compensation
4 court, in consultation with the appropriate medical or professional association, shall appoint a
5 medical advisory board which shall serve at the chief judge's pleasure and consist of eleven (11)
6 members in the following specialties: one orthopedic surgeon; one neurologist; ~~one~~
7 ~~neurosurgeon~~; one physiatrist; one chiropractor; one physical therapist; one internist; one
8 psychiatrist or psychologist; and ~~three (3)~~ four (4) ad hoc physician members appointed at the
9 discretion of the chief judge. Members of the board shall be reimbursed three hundred dollars
10 (\$300) per day served in the discharge of the board's duties, not to exceed six thousand dollars
11 (\$6,000) per member in any year. The chief judge shall designate the chairperson of the board.

12 (b) The chief judge is authorized, with the advice of the medical advisory board, to do
13 the following:

14 (1) (i) Adopt and review protocols and standards of treatment for compensable injury,
15 which shall address types, frequency, modality, duration, and termination of treatment, and types
16 and frequency of diagnostic procedures.

17 (ii) Within thirty (30) days of its establishment, the medical advisory board shall prepare
18 a recommended standard for the consideration and weighing by the court of medical evidence,
19 including, but not limited to, medical test results, objective clinical findings, subjective

1 complaints supported by tests for inconsistency, and purely subjective complaints, with the
2 purposes of assuring treatment and compensation for legitimate compensable injuries, reducing
3 litigation, inefficiency, and delay in court proceedings, and deterring false or exaggerated claims
4 of injury. The standards shall be applicable to proceedings before the workers' compensation
5 court, including specifically those to determine the nature and extent of injury and the
6 achievement of maximum medical improvement, and shall be effective in all proceedings when
7 adopted by the court.

8 (2) Approve and promulgate rules, regulations, and procedures concerning the
9 appointment and qualifications of comprehensive independent health care review teams which
10 would be composed of any combination of one or more health care provider(s), rehabilitation
11 expert(s), physical therapist(s), occupational therapist(s), psychologist(s), and vocational
12 rehabilitation counselor(s).

13 (3) Approve and administer procedures to disqualify or disapprove medical service
14 providers and maintain the approved provider list.

15 (4) Appoint an administrator of the medical advisory board.

16 (5) Approve and promulgate rules, regulations, and procedures concerning the
17 appointment and qualifications of impartial medical examiners.

18 (6) Annually review the performance of each comprehensive independent health care
19 review team and impartial medical examiner.

20 (c) The administrator of the medical advisory board is authorized and directed to
21 establish terms and conditions for comprehensive independent health care review teams and
22 impartial medical examiners to apply for approval by the medical advisory board and to perform
23 any other duties as directed by the board.

24 (d) Any reference to an impartial medical examiner in chapters 29 -- 38 of this title shall
25 be deemed to include the impartial medical examiners and comprehensive independent health
26 care review teams referred to in subsection (b) of this section.

27 (e) (1) Disqualification of medical care providers. - Every health care provider licensed
28 in the state of Rhode Island shall be presumed to be qualified to provide health care services for
29 injuries compensable under this title, and may recover costs of treatment consistent with
30 established fee and cost schedules. The administrator of the medical advisory board is thereafter
31 authorized to disqualify and/or suspend any qualified provider based upon one or more of the
32 following:

33 (i) The violation of the protocols and standards of care established by the medical
34 advisory board;

- 1 (ii) The filing of affidavits that are untimely, inadequate, incomplete, or untruthful;
- 2 (iii) The provision of unnecessary and/or inappropriate treatment;
- 3 (iv) A pattern of violation and/or evasion of an approved fee schedule;
- 4 (v) The censure or discipline of the provider by the licensing body of the provider's
- 5 profession;
- 6 (vi) The billing of, or pursuing collection efforts against, the employee for treatment or
- 7 diagnostic tests causally related to an injury not deemed non-compensable by the workers'
- 8 compensation court.

9 (2) Upon disqualification or during suspension, the provider shall not be permitted to

10 recover any costs or fees for treatment provided under this title. The appropriate body with

11 professional disciplinary authority over the provider shall be notified of any such action. Appeal

12 of disqualification or suspension shall be to the medical advisory board, with final review by the

13 workers' compensation court.

14 (3) If unnecessary or inappropriate treatment is provided by an entity affiliated with the

15 treating physician, the administrator of the medical advisory board may increase the penalty for a

16 violation.

17 (4) This section shall not prevent the recovery of reasonable costs for immediate

18 emergency care rendered by a provider.

19 (f) As a guide to the interpretation and application of this section, the policy and intent of

20 this legislature is declared to be that every person who suffers a compensable injury with

21 resulting disability should be provided with high quality medical care and the opportunity to

22 return to gainful employment as soon as possible with minimal dependence on compensation

23 awards.

24 SECTION 2. Sections 28-33-17.2, 28-33-17.3 and 28-33-18.3 of the General Laws in

25 Chapter 28-33 entitled "Workers' Compensation - Benefits" are hereby amended to read as

26 follows:

27 **28-33-17.2. Employee's affirmative duty to report earnings -- Penalties for failure to**

28 **provide earnings report -- Civil and criminal liability.** -- (a) It is the intent of the legislature

29 that the costs resulting from fraud and abuse in the workers' compensation system be arrested. In

30 order to discourage potential abusers, employees must be aware of the affirmative duty to report

31 earnings and the penalties for any fraud or abuse must be severe and certain.

32 (b) Any employee entitled to receive weekly workers' compensation benefits shall have

33 an affirmative duty to report those earnings, including wages or salary remuneration paid for

34 personal services, commissions, and bonuses, including the cash value of all remuneration

1 payable in any medium other than cash, earned from self-employment or from any employer
2 other than the employer in whose employ he or she was injured, so that compensation benefits
3 may be properly computed.

4 (c) (1) The department of labor and training, employer, or insurer shall notify any
5 employee receiving weekly workers' compensation benefits, on forms prescribed by the
6 department, of that employee's affirmative duty to report earnings and shall specifically notify the
7 employee that a failure to report earnings may subject him or her to civil or criminal liability.

8 (2) The notice by the employer or insurer may be satisfied by printing the notice on the
9 employee payee statement (check stub) portion of indemnity checks sent to the employee, or by
10 incorporating said notice in an agreement for electronic fund transfer or use or issuance of an
11 electronic access device, signed by both the employee and the employer or its insurer.

12 (d) Any employee entitled to weekly workers' compensation benefits for any period of
13 time shall, upon written request of the employer or insurer, provide at reasonable intervals to the
14 employer or insurer an earnings report, on forms prescribed by the department, advising the
15 employer or insurer of the exact amount of earnings for each week of his or her entitlement to
16 benefits or advising that no earnings were received for particular weeks, so that the employer or
17 insurer may properly compute the amount of benefits due to the employee.

18 (e) If any employee refuses to submit an earnings report upon request by the employer or
19 insurer his or her rights to compensation may be suspended and his or her compensation during
20 that period of suspension may be forfeited.

21 (f) Where any employee is found to be entitled to benefits in excess of fifty-two (52)
22 weeks pursuant to a decision resulting in the entry of an order or decree, he or she shall submit an
23 earnings report as described in subsection (d) of this section. In these cases, the employer or
24 insurer must pay benefits within seven (7) days of receipt of the earnings report; provided, that no
25 petition to enforce shall be allowed nor any penalty for late payment awarded unless payments
26 were not made within seven (7) days after the earnings report has been provided.

27 (g) The employer or insurer shall be entitled to recover overpayments made to any
28 employee as a result of a violation of the employee's duty to report earnings by any of the
29 following means:

30 (1) Upon petition and order of the workers' compensation court to suspend the
31 employer's obligation to pay weekly benefits.

32 (2) By civil action in the district or superior court. Costs and counsel fees for the action
33 may be awarded to the employer or insurer.

34 (h) Any employee who by any fraudulent means obtains or attempts to obtain workers'

1 compensation benefits, whether by failure to report earnings, falsification of the earnings report
2 document, or intentional misrepresentation, may forfeit the right to any future weekly workers'
3 compensation benefits as determined by the workers' compensation court.

4 (i) Any employee who by any fraudulent means obtains or attempts to obtain workers'
5 compensation benefits to which he or she was not entitled, whether by failure to report earnings,
6 falsification of the earnings report, or intentional misrepresentation, shall be deemed guilty of
7 larceny pursuant to § 11-41-4 or other pertinent criminal statutes of the state of Rhode Island.
8 Each occurrence shall constitute a separate and distinct offense.

9 (j) The administrator of the workers' compensation court, any workers' compensation
10 judge, or any representative of an employer may be the party complainant to any complaint and
11 warrant brought to invoke the criminal penalties provided for in this section, and the party
12 complainant shall, except for the representative of the employer, be exempt from giving surety for
13 costs in the action.

14 (k) All criminal actions for any violation of this section shall be prosecuted by the
15 attorney general.

16 (l) Where any employer or insurer intentionally and unreasonably utilizes the earnings
17 report required by subsection (d) of this section in order to harass an employee or delay payment
18 of benefits to an employee, a penalty of twenty percent (20%) shall be added to all amounts of
19 weekly compensation benefits due and owing.

20 **28-33-17.3. Fraud and abuse.** -- (a) (1) The workers' compensation court is authorized
21 and directed to impose sanctions and penalties necessary to maintain the integrity of and to
22 maintain the high standards of professional conduct in the workers' compensation system. All
23 pleadings related to proceedings under chapters 29 -- 38 of this title shall be considered an
24 attestation by counsel that valid grounds exist for the position taken and that the pleading is not
25 interposed for delay.

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

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

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

34 (3) If any judge determines that any proceedings have been brought or defended by an

1 employee or his or her counsel without reasonable grounds, the whole cost of the proceedings
2 shall be assessed against the employee or counsel, whoever is responsible.

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

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

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

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

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

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

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

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

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

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

31 (viii) Knowingly assist, aid and abet, solicit or conspire to coerce an employee to
32 willfully misrepresent an employee's status as a shareholder, director or officer of a corporation,
33 or as a member or manager of a limited liability company, or as a partner, in a general or, limited
34 partnership, registered limited liability partnership or a registered limited liability limited

1 partnership, or as an independent contractor for the purpose of avoiding the inclusion of that or
2 other employees in a workers' compensation insurance application, renewal or both.

3 (2) For the purposes of this section, "Statement" includes, but is not limited to, any
4 endorsement of a benefit check, [signature on an agreement for electronic fund transfer of](#)
5 [compensation benefits or issuance of an electronic access device](#), application for insurance
6 coverage, oral or written statement, proof of injury, bill for services, diagnosis, prescription,
7 hospital or provider records, x-rays, test results, or other documentation offered as proof of, or in
8 the absence of, a loss, injury, or expense.

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

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

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

25 (d) Any employer, or in any case where the employer is a corporation, the president, vice
26 president, secretary, treasurer, and other officers of the corporation, or in any case where the
27 employer is a limited liability company, the managers, and the managing members or in any case
28 where the employer is a general partnership or a registered limited liability partnership, or in the
29 case where the employer is a limited partnership or a registered limited liability limited
30 partnership, the partners, that are found to have violated this section or § 28-36-15, shall be guilty
31 of a felony for failure to secure and maintain compensation, and upon conviction, shall be subject
32 to imprisonment of up to two (2) years, a fine not exceeding ten thousand dollars (\$10,000), or
33 both. In any case where the employer is a corporation, the president, vice president, secretary,
34 treasurer, and other officers of the corporation, shall be severally liable for the fine or subject to

1 imprisonment, or both. In any case where the employer is a limited liability company, the
2 managers and managing members shall be severally liable for the fine or subject to imprisonment,
3 or both. In any case where the employer is a partnership or a registered limited liability
4 partnership, the partners shall be severally liable for the fine or subject to imprisonment, or both.
5 In any case where the employer is a limited partnership or a registered limited liability limited
6 partnership, the general partners shall be severally liable for the fine or subject to imprisonment,
7 or both.

8 **28-33-18.3. Continuation of benefits -- Partial incapacity. --** (a)(1) For all injuries
9 occurring on or after September 1, 1990, in those cases where the employee has received a notice
10 of intention to terminate partial incapacity benefits pursuant to § 28-33-18, the employee, or his
11 or her duly authorized representative, may file with the workers' compensation court a petition for
12 continuation of benefits on forms prescribed by the workers' compensation court. In any
13 proceeding before the workers' compensation court on a petition for continuation of partial
14 incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence
15 that his or her partial incapacity poses a material hindrance to obtaining employment suitable to
16 his or her limitation, partial incapacity benefits shall continue. For injuries on and after July 1,
17 ~~2018~~ [2021](#), "material hindrance" is defined to include only compensable injuries causing a greater
18 than sixty-five percent (65%) degree of functional impairment and/or disability. Any period of
19 time for which the employee has received benefits for total incapacity shall not be included in the
20 calculation of the three hundred and twelve-week (312) period.

21 (2) The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1,
22 ~~2018~~ [2021](#).

23 (b) (1) Where any employee's incapacity is partial and has extended for more than three
24 hundred and twelve (312) weeks and the employee has proved an entitlement to continued
25 benefits under subsection (a) of this section, payments made to these incapacitated employees
26 shall be increased annually on the tenth (10th) day of May thereafter so long as the employee
27 remains incapacitated. The increase shall be by an amount equal to the total percentage increase
28 in the annual Consumer Price Index, United States City Average for Urban Wage Earners and
29 Clerical Workers, as formulated and computed by the Bureau of Labor Statistics of the United
30 States Department of Labor for the period of March 1 to February 28 each year.

31 (2) "Index" as used in this section refers to the Consumer Price Index, United States City
32 Average for Urban Wage Earners and Clerical Workers, as that index was formulated and
33 computed by the Bureau of Labor Statistics of the United States Department of Labor.

34 (3) The annual increase shall be based upon the percentage increase, if any, in the

1 Consumer Price Index for the month of a given year, over the index for February, the previous
2 year. Thereafter, increases shall be made on May 10 annually, based upon the percentage
3 increase, if any, in the Consumer Price Index for the period of March 1 to February 28.

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

11 (5) This section applies only to payment of weekly indemnity benefits to employees as
12 described in subdivision (1) of this subsection, and does not apply to specific compensation
13 payments for loss of use or disfigurement or payment of dependency benefits or any other
14 benefits payable under the workers' compensation act.

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

17 SECTION 3. Sections 28-35-39 and 28-35-40 of the General Laws in Chapter 28-35
18 entitled "Workers' Compensation - Procedure" are hereby amended to read as follows:

19 **28-35-39. Payment of compensation.** -- Compensation under chapters 29 -- 38 of this
20 title shall be paid by check as defined in § 6A-3-104(f) and not by draft, or if mutually agreed
21 upon by both the employee and the employer or its insurer in accordance with § 28-35-40, by
22 electronic fund transfer, or by electronic access device, at no cost to the employee, with the
23 exception of third-party transactional fees and shall be paid promptly and directly to the person
24 entitled to it. The check shall contain the following language: "I understand that endorsement
25 hereon or deposit to my accounts constitutes my affirmation that I am receiving these workers'
26 compensation benefits pursuant to law, that I have made no false claims or statements or
27 concealed any material fact, in order to receive these benefits and that doing so would make me
28 liable for civil and criminal penalties, including jail". If paid by electronic fund transfer or by
29 electronic access device said notice shall be satisfied in accordance with § 28-33-17.2(c)(2). The
30 insurer/employer and/or its third-party administrator shall not have or be entitled to gain access to
31 the details of electronic transactions, without the express written consent of the employee or court
32 order from a court of competent jurisdiction.

33 **28-35-40. Mailing of weekly compensation Delivery of weekly compensation.** --
34 Whenever the employee is entitled to weekly compensation under chapters 29 -- 38 of this title,

1 the employer, and/or insurance carrier, until further order of the workers' compensation court,
2 shall cause to be paid by electronic fund transfer or, issued as an electronic access device, or
3 mailed first class mail to the employee, addressed to his or her last known residence, each week
4 the amount of compensation payable to the employee as it may be due. Electronic funds transfer
5 payments or issuance of an electronic access device shall be permitted if mutually agreed upon by
6 the employee and the employer or its insurer on forms provided by the department of labor and
7 training, which may be rescinded at will be either party on forms provided by the department of
8 labor and training and filed with the department.

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

11 **28-53-2. Establishment -- Sources -- Administration.** -- (a) There shall be established
12 within the department of labor and training a special restricted receipt account to be known as the
13 Rhode Island uninsured employers fund. The fund shall be capitalized from excise taxes assessed
14 against uninsured employers pursuant to the provisions of § 28-53-9 of this chapter and from
15 general revenues appropriated by the legislature. Beginning in state fiscal year ending June 30,
16 ~~2016~~ 2017, the legislature may appropriate up to two million dollars (\$2,000,000) in general
17 revenue funds annually for deposit into the Rhode Island uninsured employers fund.

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

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

24 **28-53-7. Payments to employees of uninsured employers.** -- (a) Where it is determined
25 that the employee was injured in the course of employment while working for an employer who
26 fails to maintain a policy of workers' compensation insurance as required by Rhode Island general
27 laws § 28-36-1, et seq., the uninsured employers fund shall pay the benefits to which the injured
28 employee would be entitled pursuant to chapters 29 to 38 of this title subject to the limitations set
29 forth herein.

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

34 (c) Where an employee is deemed to be entitled to benefits from the uninsured

1 employers fund, the fund shall pay benefits for disability and medical expenses as provided
2 pursuant to chapters 29 to 38 of this title except that the employee shall not be entitled to receive
3 benefits for loss of function and disfigurement pursuant to the provisions of Rhode Island general
4 laws § 28-33-19.

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

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

20 (f) This section shall apply to injuries that occur on or after January 1, ~~2016~~ [2017](#).

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO LABOR AND LABOR RELATIONS -- WORKERS' COMPENSATION

1 This act makes changes to the workers' compensation act concerning the workers'
2 compensation court, medical advisory board, benefits, procedure and the uninsured employees'
3 fund. This act would also authorize the delivery of weekly compensation by electronic fund
4 transfers.

5 This act would take effect upon passage.

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