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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- INDIVIDUALIZED WORKER
SAVINGS ACCOUNT PROGRAM ACT

Introduced By: Representative Jared R. Nunes

Date Introduced: May 11, 2017

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 28-39 of the General Laws entitled "Temporary Disability
2 Insurance - General Provisions" is hereby repealed in its entirety.

3 ~~CHAPTER 28-39~~

4 ~~Temporary Disability Insurance - General Provisions~~

5 ~~28-39-1. Short title.~~

6 ~~Chapters 39—41 of this title shall be known and may be cited as the "Rhode Island~~
7 ~~Temporary Disability Insurance Act".~~

8 ~~28-39-2. Definitions.~~

9 ~~The following words and phrases, as used in chapters 39—41 of this title, have the~~
10 ~~following meanings unless the context clearly requires otherwise:~~

11 ~~(1) "Average weekly wage" means the amount determined by dividing the individual's~~
12 ~~total wages earned for services performed in employment within his or her base period by the~~
13 ~~number of that individual's credit weeks within the base period;~~

14 ~~(2) "Base period" with respect to an individual's benefit year when the benefit year begins~~
15 ~~on or after October 7, 1990, means the first four (4) of the most recently completed five (5)~~
16 ~~calendar quarters immediately preceding the first day of an individual's benefit year; provided,~~
17 ~~that for any individual's benefit year when the benefit year begins on or after October 4, 1992,~~
18 ~~and for any individual deemed monetarily ineligible for benefits under the "base period" as~~

1 ~~defined in this subdivision, the department shall make a re-determination of entitlement based~~
2 ~~upon an alternate base period which consists of the last four (4) completed calendar quarters~~
3 ~~immediately preceding the first day of the claimant's benefit year. Notwithstanding anything~~
4 ~~contained to the contrary in this subdivision, the base period shall not include any calendar~~
5 ~~quarter previously used to establish a valid claim for benefits; provided, however, that the "base~~
6 ~~period" with respect to members of the United States military service, the Rhode Island National~~
7 ~~Guard, or a United States military reserve force, and who served in a United States declared~~
8 ~~combat operation during their military service, who file a claim for benefits following their~~
9 ~~release from their state or federal active military service and who are deemed to be monetarily~~
10 ~~ineligible for benefits under this section, shall mean the first four (4) of the most recently~~
11 ~~completed five (5) calendar quarters immediately preceding the first day the individual was called~~
12 ~~into that state or federal active military service; provided, that for any individual deemed~~
13 ~~monetarily ineligible for benefits under the "base period" as defined in this section, the~~
14 ~~department shall make a re-determination of entitlement based upon an alternative base period~~
15 ~~which consists of the last four (4) completed calendar quarters immediately preceding the first~~
16 ~~day the claimant was called into that state or federal active military service. Notwithstanding any~~
17 ~~provision of this section of the general or public laws to the contrary, the base period shall not~~
18 ~~include any calendar quarter previously used to establish a valid claim for benefits;~~

19 ~~(3) "Benefit" means the money payable, as provided in chapters 39—41 of this title, to~~
20 ~~an individual as compensation for his or her unemployment caused by sickness;~~

21 ~~(4) "Benefit credits" means the total amount of money payable to an individual as~~
22 ~~benefits, as provided in § 28-41-7;~~

23 ~~(5) "Benefit rate" means the money payable to an individual as compensation, as~~
24 ~~provided in chapters 39—41 of this title, for his or her wage losses with respect to any week~~
25 ~~during which his or her unemployment is caused by sickness;~~

26 ~~(6) "Benefit year" with respect to any individual who does not already have a benefit year~~
27 ~~in effect, and who files a valid claim for benefits as of November 16, 1958 or any later date,~~
28 ~~means fifty two (52) consecutive calendar weeks, the first of which shall be the week containing~~
29 ~~the day as of which he or she first files that valid claim in accordance with regulations adopted as~~
30 ~~subsequently prescribed; provided, that for any benefit year beginning on or after October 7,~~
31 ~~1990, the benefit year shall be fifty three (53) consecutive calendar weeks if the subsequent filing~~
32 ~~of a new valid claim immediately following the end of a previous benefit year would result in the~~
33 ~~overlapping of any quarter of the base period of the prior new claim. In no event shall a new~~
34 ~~benefit year begin prior to the Sunday next following the end of the old benefit year;~~

1 ~~(i) For benefit years that begin on or after July 1, 2012, an individual's benefit year will~~
2 ~~begin on the Sunday of the calendar week in which an individual first became unemployed due to~~
3 ~~sickness and for which the individual has filed a valid claim for benefits;~~

4 ~~(7) "Board" means the board of review as created under chapter 19 of title 42;~~

5 ~~(8) "Calendar quarter" has the same definition as contained in chapter 42 of this title;~~

6 ~~(9) "Credit week" means any week within an individual's base period in which that~~
7 ~~individual earns wages amounting to at least twenty (20) times the minimum hourly wage as~~
8 ~~defined in chapter 12 of this title, for performing services in employment for one or more~~
9 ~~employers subject to chapters 39—41 of this title;~~

10 ~~(10) "Director" means the director of the department of labor and training;~~

11 ~~(11) "Employee" means any person who is or has been employed by an employer subject~~
12 ~~to chapters 39—41 of this title and in employment subject to those chapters;~~

13 ~~(12) "Employer" means any employing unit that is an employer under chapters 42—44~~
14 ~~of this title;~~

15 ~~(13) "Employing unit" has the same definition as contained in chapter 42 of this title and~~
16 ~~includes any governmental entity that elects to become subject to the provisions of chapters 39—~~
17 ~~41 of this title, in accordance with the provisions of §§ 28-39-3.1 and 28-39-3.2;~~

18 ~~(14) "Employment" has the same definition as contained in chapter 42 of this title;~~

19 ~~(15) "Employment office" has the same definition as contained in chapter 42 of this title;~~

20 ~~(16) "Fund" means the Rhode Island temporary disability insurance fund established by~~
21 ~~this chapter;~~

22 ~~(17) "Partial unemployment due to sickness" For weeks beginning on or after January 1,~~
23 ~~2006 an individual shall be deemed partially unemployed due to sickness in any week of less than~~
24 ~~full time work if he or she fails to earn in wages for services for that week an amount equal to the~~
25 ~~weekly benefit rate for total unemployment due to sickness to which he or she would be entitled~~
26 ~~if totally unemployed due to sickness and eligible.~~

27 ~~(i) For the purposes of this subdivision and subdivision (22) of this section, "Wages"~~
28 ~~includes only that part of remuneration for any work, which is in excess of one fifth (1/5) of the~~
29 ~~weekly benefit rate for total unemployment, rounded to the next lower multiple of one dollar~~
30 ~~(\$1.00), to which the individual would be entitled if totally unemployed and eligible in any one~~
31 ~~week, and "services" includes only that part of any work for which remuneration in excess of~~
32 ~~one fifth (1/5) of the weekly benefit rate for total unemployment, rounded to the next lower~~
33 ~~multiple of one dollar (\$1.00), to which the individual would be entitled if totally unemployed~~
34 ~~and eligible in any one week is payable; provided, that nothing contained in this paragraph shall~~

1 ~~permit any individual to whom remuneration is payable for any work performed in any week in~~
2 ~~an amount equal to, or greater than, his or her weekly benefit rate to receive benefits under this~~
3 ~~subdivision for that week.~~

4 ~~(18) "Reserve fund" means the temporary disability insurance reserve fund established by~~
5 ~~§ 28-39-7;~~

6 ~~(19) "Services" means all endeavors undertaken by an individual that are paid for by~~
7 ~~another or with respect to which the individual performing the services expects to receive wages~~
8 ~~or profits;~~

9 ~~(20) "Sickness". An individual shall be deemed to be sick in any week in which, because~~
10 ~~of his or her physical or mental condition, including pregnancy, he or she is unemployed and~~
11 ~~unable to perform his or her regular or customary work or services;~~

12 ~~(21) (i) "Taxes" means the money payments required by chapters 39—41 of this title, to~~
13 ~~be made to the temporary disability insurance fund or to the temporary disability insurance~~
14 ~~reserve fund.~~

15 ~~(ii) Wherever and whenever in chapters 39—41 of this title, the words "contribution"~~
16 ~~and/or "contributions" appear, those words shall be construed to mean the "taxes," as defined in~~
17 ~~this subdivision, which are the money payments required by those chapters to be made to the~~
18 ~~temporary disability insurance fund or to the temporary disability insurance reserve fund;~~

19 ~~(22) "Wages" has the same definition as contained in chapter 42 of this title; provided,~~
20 ~~that no individual shall be denied benefits under chapters 39—41 of this title because his or her~~
21 ~~employer continues to pay to that individual his or her regular wages, or parts of them, while he~~
22 ~~or she is unemployed due to sickness and unable to perform his or her regular or customary work~~
23 ~~or services. The amount of any payments, whether or not under a plan or system, made to or on~~
24 ~~behalf of an employee by his or her employer after the expiration of six (6) calendar months~~
25 ~~following the last calendar month in which the employee performed actual bona fide personal~~
26 ~~services for his or her employer, shall not be deemed to be wages either for the purpose of paying~~
27 ~~contributions thereon under chapter 40 of this title, or for the purpose of being used as a basis for~~
28 ~~paying benefits under chapter 41 of this title; and~~

29 ~~(23) "Week" has the same definition as contained in chapter 42 of this title.~~

30 ~~**28-39-3. Exemption of governmental entities.**~~

31 ~~Governmental entities as defined in § 28-42-3(22) shall not be deemed to be employing~~
32 ~~units subject to chapters 39—41 of this title and services performed in the employ of those~~
33 ~~governmental entities shall not be deemed to be employment subject to those chapters; provided,~~
34 ~~that certain governmental entities may elect to become subject to chapters 39—41 of this title in~~

1 ~~accordance with §§ 28-39-3.1 and 28-39-3.2. Unionized state employees may elect to become~~
2 ~~subject to chapters 39—41 of this title through the collective bargaining process.~~

3 ~~**28-39-3.1. Employees of certain governmental entities eligible by election.**~~

4 ~~Notwithstanding any inconsistent provisions of chapters 39—41 of this title, a~~
5 ~~governmental entity which is a political subdivision or instrumentality of a political subdivision,~~
6 ~~or an instrumentality of more than one of them or any instrumentality of them and one or more~~
7 ~~other political subdivisions, may become subject to those chapters by election. The appropriate~~
8 ~~political subdivision may for itself or any pertinent instrumentality of it elect that all services~~
9 ~~performed by individuals or specific classes of individuals in its employ shall be deemed to~~
10 ~~constitute employment subject to these chapters with exceptions set forth in § 28-39-3.3;~~
11 ~~provided, that if the instrumentality pertains to more than one political subdivision, all those~~
12 ~~subdivisions shall be required to be parties to the election. Upon the approval of an election as~~
13 ~~provided in § 28-39-3.2, the governmental entity shall, for the purposes of these chapters, be~~
14 ~~deemed to be an employer of the individual or classes of individuals for whom the election is~~
15 ~~approved. Except as otherwise provided in this title, all other provisions of these chapters shall~~
16 ~~continue to be applicable in connection with the employment.~~

17 ~~**28-39-3.2. Manner of election.**~~

18 ~~The election shall be made by submitting to the director a duly certified copy of a~~
19 ~~resolution or act of the legislative body of the political subdivision or subdivisions passed in~~
20 ~~accordance with their ordinances. Upon receipt of the certified copy of the resolution or act, the~~
21 ~~director shall specify the date as of which the governmental entity shall become subject to these~~
22 ~~provisions. Notwithstanding any provisions of chapters 39—41 of this title to the contrary, any~~
23 ~~political subdivision or subdivisions in this state may elect in accordance with these provisions~~
24 ~~that services performed by individuals for its highway department or department of public works,~~
25 ~~including full-time highway surveyors, whether or not those surveyors are elected, shall be~~
26 ~~deemed to be in employment.~~

27 ~~**28-39-3.3. Exemptions from "employment".**~~

28 ~~For the purposes of §§ 28-39-3.1 and 28-39-3.2 "employment" does not include services~~
29 ~~performed by:~~

30 ~~(1) Elected officials;~~

31 ~~(2) Individuals on any work-relief project undertaken by governmental entities;~~

32 ~~(3) Members of the legislative body, or members of the judiciary of a political~~
33 ~~subdivision;~~

34 ~~(4) Employees serving on a temporary basis in case of fire, storm, snow, earthquake,~~

1 ~~flood, or similar emergency; or~~

2 ~~(5) Positions which, under or pursuant to the laws of this state, are designated as:~~

3 ~~(i) Major non-tenured policymaking or advisory positions; or~~

4 ~~(ii) Policymaking or advisory positions, the performance of the duties of which ordinarily~~
5 ~~does not require more than eight (8) hours per week.~~

6 ~~**28-39-4. Creation of fund -- Sources.**~~

7 ~~(a) There is created the temporary disability insurance fund, to be administered by the~~
8 ~~director, without liability on the part of the state beyond the amounts paid into and earned by the~~
9 ~~fund. This fund shall consist of:~~

10 ~~(1) All payments made subsequent to June 30, 1947, in accordance with § 28-39-29, and~~
11 ~~all payments of interest;~~

12 ~~(2) All moneys requisitioned from the unemployment trust fund and deposited into this~~
13 ~~fund;~~

14 ~~(3) All moneys that may be allocated to the fund from the temporary disability insurance~~
15 ~~reserve fund;~~

16 ~~(4) All property and securities acquired by and through the use of moneys belonging to~~
17 ~~the fund; and~~

18 ~~(5) Interest earned upon the moneys belonging to the fund.~~

19 ~~(b) All moneys in the fund shall be mingled and undivided.~~

20 ~~**28-39-5. Withdrawals from fund.**~~

21 ~~The temporary disability insurance fund shall be administered and used solely to pay~~
22 ~~benefits upon vouchers drawn on the fund by the director pursuant to regulations and no other~~
23 ~~disbursements shall be made from it except as provided in §§ 28-39-33, 28-39-34, and 28-40-6.~~
24 ~~Those regulations shall be governed by and be consistent with any applicable constitutional~~
25 ~~requirements, but the procedure prescribed by those rules shall be deemed to satisfy and shall be~~
26 ~~in lieu of any and all statutory requirements for specific appropriation or other formal release by~~
27 ~~state officers of state moneys prior to their expenditure which might otherwise be applicable to~~
28 ~~withdrawals from the fund.~~

29 ~~**28-39-6. Treasurer of fund.**~~

30 ~~The general treasurer shall be custodian and treasurer of the fund and shall pay all~~
31 ~~vouchers duly authenticated and drawn upon the fund. He or she shall have custody of all moneys~~
32 ~~belonging to the fund and not otherwise held or deposited or invested pursuant to chapters 39--~~
33 ~~41 of this title. The general treasurer shall give bond conditioned on the faithful performance of~~
34 ~~his or her duties as custodian and treasurer of the fund, in a form prescribed by statute and~~

1 approved by the attorney general, and in an amount specified by the director and approved by the
2 governor. All premiums upon bonds required pursuant to this section when furnished by an
3 authorized surety company or by a duly constituted governmental bonding fund shall be paid by
4 the state from funds made available for that purpose by the general assembly. The general
5 treasurer shall deposit the moneys in his or her custody subject to chapters 39—41 of this title.
6 The general treasurer, as treasurer of the fund, shall assign any subordinates or employees to the
7 department of labor and training that he or she deems necessary, and shall be paid out of funds
8 made available to the department for administration purposes.

9 **28-39-7. Creation of reserve fund -- Sources.**

10 (a) There is created the temporary disability insurance reserve fund, to be administered in
11 the manner subsequently prescribed in this chapter, without liability on the part of the state
12 beyond the amounts paid into and earned by the reserve fund. This reserve fund shall consist of:

13 (1) All contributions;

14 (2) All penalties paid subsequent to June 30, 1947, pursuant to §§ 28-39-23—28-39-32
15 and §§ 28-40-1—28-40-8;

16 (3) All other moneys paid into and received by the reserve fund;

17 (4) Property and securities acquired by and through the use of moneys belonging to the
18 reserve fund; and

19 (5) Interest earned upon the moneys belonging to the reserve fund.

20 (b) All moneys in the reserve fund shall be mingled and undivided.

21 **28-39-8. Withdrawals from reserve fund.**

22 The reserve fund shall be administered and used in any manner that the general assembly
23 shall from time to time prescribe for purposes designed to benefit individuals prevented by injury
24 or sickness from performing their regular or customary work; provided, that any sums that may
25 be requisitioned from the fund by the director, for the expenses of administering chapters 39—41
26 of this title, may be withdrawn from the reserve fund from time to time for the payment of those
27 expenses in accordance with §§ 28-39-33 and 28-39-34. In the event that the balance in the
28 temporary disability insurance fund at any time is insufficient to pay benefits under chapters 39—
29 41 of this title, the governor, or the governor's authorized representative, shall cause those sums
30 that may be required for the payment of those benefits to be transferred from the temporary
31 disability insurance reserve fund to the temporary disability insurance fund.

32 **28-39-9. Custodian of reserve fund.**

33 The general treasurer shall be custodian of the reserve fund, and shall pay all vouchers
34 duly drawn upon the reserve fund and properly authenticated. He or she shall have custody of all

1 ~~moneys belonging to the reserve fund and not otherwise held or deposited or invested pursuant to~~
2 ~~chapters 39—41 of this title. The general treasurer shall give bond conditioned on the faithful~~
3 ~~performance of his or her duties as custodian of the fund, in a form prescribed by statute and~~
4 ~~approved by the attorney general, and in an amount specified by the director and approved by the~~
5 ~~governor. All premiums upon bonds required pursuant to this section when furnished by an~~
6 ~~authorized surety company or by a duly constituted governmental bonding fund shall be paid by~~
7 ~~the state from funds made available for that purpose by the general assembly.~~

8 **28-39-10. Responsibility for administration.**

9 ~~Chapters 39—41 of this title shall be administered by the department of labor and~~
10 ~~training. The director and the board of review shall have the same powers and duties with relation~~
11 ~~to those chapters as they have to chapters 42—44 of this title.~~

12 **28-39-11. Recommendations to protect fund -- Emergency modification of rules.**

13 ~~(a) Whenever the director believes that a change in contribution and/or benefit rates shall~~
14 ~~become necessary to protect the solvency of the fund, he or she shall at once inform the governor~~
15 ~~and the general assembly of this and make recommendations accordingly.~~

16 ~~(b) In that case the governor may declare an emergency and authorize the director to~~
17 ~~announce a modified scale of benefits, an increased waiting period, or other changes in rules and~~
18 ~~regulations regarding eligibility for payment of benefits which the director may deem necessary~~
19 ~~to assure the solvency of the fund. The modified regulation shall be in effect until the governor~~
20 ~~declares the emergency at an end, or until further action is taken by the general assembly.~~

21 **28-39-12. Examination of claimants.**

22 ~~The director may require any benefit claimant to submit to a reasonable examination or~~
23 ~~examinations for the purpose of determining his or her physical or mental condition, the~~
24 ~~examination or examinations to be conducted by a qualified healthcare provider appointed by the~~
25 ~~director, and to be made at those times and places that such qualified healthcare provider, with the~~
26 ~~approval of the director, require.~~

27 **28-39-13. Legal representation in actions.**

28 ~~On the request of the director or the board of review, the attorney general shall represent~~
29 ~~the director or the board of review and the state in any court action relating to chapters 39—41 of~~
30 ~~this title or their administration and enforcement, except as special counsel may be designated by~~
31 ~~the director with the approval of the governor and except as otherwise provided in those chapters.~~

32 **28-39-14. Employers' records and reports.**

33 ~~Every employer and every employing unit employing any person in employment in this~~
34 ~~state shall keep true and accurate employment records of all persons employed by him or her, and~~

1 ~~of the weekly hours worked for him or her by each, and of the weekly wages paid by him or her~~
2 ~~to each person. Every employer and employing unit shall keep records containing any other~~
3 ~~information that may be prescribed. Those records shall at all times be available within this state~~
4 ~~and shall be open to inspection by the director or his or her authorized representatives at any~~
5 ~~reasonable time and as often as the director deems necessary. The director may require from any~~
6 ~~employer, or employing unit, employing any person in this state, any reports covering persons~~
7 ~~employed by him or her, on employment, wages, hours, unemployment, and related matters~~
8 ~~which the director deems necessary to the effective administration of chapters 39—41 of this~~
9 ~~title.~~

10 ~~**28-39-15. Procedural regulations -- Record of proceedings and testimony.**~~

11 ~~The manner in which any disputed claims or any other controversies arising out of the~~
12 ~~interpretation or application of chapters 39—41 of this title are presented, or the manner in which~~
13 ~~hearings and appeals are conducted, shall be in accordance with the prescribed regulations,~~
14 ~~whether or not those regulations conform to common law or statutory rules of evidence and other~~
15 ~~technical rules of procedure. A full and complete record shall be kept of all proceedings in~~
16 ~~connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be~~
17 ~~recorded but need not be transcribed unless the disputed claim is further appealed.~~

18 ~~**28-39-16. Enforcement of subpoenas.**~~

19 ~~In case of contumacy by, or refusal to obey a subpoena issued to, any person, pursuant to~~
20 ~~chapters 39—41 of this title, the sixth division of the district court, upon application by the~~
21 ~~director or the board of review, shall have jurisdiction to issue to that person an order requiring~~
22 ~~that person to appear before the director or his or her duly authorized representative, or the board~~
23 ~~of review or its duly authorized representatives, there to produce evidence if so ordered or there~~
24 ~~to give testimony touching the matter under investigation or in question. Any failure to obey that~~
25 ~~order of the court may be punished by the court as a contempt of court. A party aggrieved by an~~
26 ~~order of the court may appeal that order to the supreme court in accordance with the procedures~~
27 ~~contained in Article I of the Supreme Court Rules.~~

28 ~~**28-39-17. Witness fees.**~~

29 ~~Witnesses subpoenaed pursuant to chapters 39—41 of this title shall be allowed fees at a~~
30 ~~rate fixed by the director. Those fees shall be deemed a part of the expense of administering~~
31 ~~chapters 39—41 of this title.~~

32 ~~**28-39-18. Parties to judicial review -- Legal representation.**~~

33 ~~The director or the board of review shall be deemed to be a party to any judicial action~~
34 ~~involving decisions which have been appealed to the courts and may be represented in any~~

1 ~~judicial action by any qualified attorney designated by him, her, or it for that purpose, or at his,~~
2 ~~her, or its request, by the attorney general.~~

3 **28-39-19. Information held confidential.**

4 ~~Every employee of the department of labor and training is expressly prohibited from~~
5 ~~divulging to any individual not officially connected with the department: (1) any information~~
6 ~~obtained by the employee in the regular course of duty, or from the records and reports of~~
7 ~~employing units, or from the permanent records of the department, which would reveal the~~
8 ~~identity of any individual or employing unit; (2) the number of persons employed by any~~
9 ~~employing unit; (3) matters relating to employment of any employing unit; (4) the wages earned~~
10 ~~or paid to any individual; (5) the hours worked by an individual; (6) the type of sickness suffered~~
11 ~~by any individual; or (7) any other information relative to the temporary disability claim or~~
12 ~~payment of it; provided, that this prohibition shall not apply to information concerning wages~~
13 ~~earned or paid requested in a family court proceeding pursuant to §§ 15-5-24 and 15-5-25 or to~~
14 ~~information concerning wages earned or paid requested in a superior court proceeding pursuant to~~
15 ~~§§ 12-25-3 and 12-25-7.~~

16 **28-39-20. Denial of requests for confidential information.**

17 ~~Every request for information relating to the data referred to in § 28-39-19 shall be~~
18 ~~denied, and the individual making that request shall be informed that all requests for information~~
19 ~~must be directed to the director.~~

20 **28-39-21. Denial of requests for information from employment reports.**

21 ~~Every request for information directed to the director shall be denied if the request would~~
22 ~~necessitate that individual to divulge any information that is declared in § 28-42-38 to be held~~
23 ~~confidential by the director.~~

24 **28-39-22. Agencies entitled to information.**

25 ~~Notwithstanding § 28-39-21, the director is authorized to divulge the information~~
26 ~~confidentially held by the department to the agencies enumerated in § 28-42-38 as proper~~
27 ~~agencies entitled to access to that information relating to the administration of temporary~~
28 ~~disability insurance.~~

29 **28-39-23. False representations to obtain benefits.**

30 ~~Whoever knowingly makes a false statement or representation to obtain or increase any~~
31 ~~benefit or other payment under chapters 39—41 of this title, either for himself or herself or for~~
32 ~~any other person, shall upon conviction be punished by a fine of not less than twenty dollars~~
33 ~~(\$20.00) nor more than fifty dollars (\$50.00), or by imprisonment not longer than thirty (30) days,~~
34 ~~or by both that fine and imprisonment; and each false statement or representation shall constitute~~

1 ~~a separate and distinct offense.~~

2 ~~**28-39-24. False representations to avoid contributions -- Failure to produce evidence**~~
3 ~~**-- Inducing waiver of rights.**~~

4 ~~Any individual, or employing unit or its agent, who willfully makes a false statement or~~
5 ~~representation to avoid becoming or remaining subject thereto, or to avoid or reduce any~~
6 ~~contribution or other payment required of an employing unit under chapters 39—41 of this title,~~
7 ~~or who willfully fails or refuses to appear or to testify or produce records as lawfully required~~
8 ~~hereunder, or who tries to induce any individual to waive any right under those chapters, shall~~
9 ~~upon conviction be punished by a fine of not less than twenty dollars (\$20.00) nor more than two~~
10 ~~hundred dollars (\$200), or by imprisonment not longer than sixty (60) days, or by both that fine~~
11 ~~and imprisonment. Each false statement or representation, and each day of that failure or refusal,~~
12 ~~shall constitute a separate and distinct offense. If the employer in question is a corporation, every~~
13 ~~officer of the corporation who knowingly participates in any violation specified in this section~~
14 ~~shall be subject to these penalties.~~

15 ~~**28-39-25. Criminal penalty for failure to make contributions or reports.**~~

16 ~~Any individual, or employing unit or its agent, who knowingly fails or refuses to make~~
17 ~~any contribution or other payment required of an employing unit under chapters 39—41 of this~~
18 ~~title, or who knowingly fails or refuses to make any contribution or report at the time and in the~~
19 ~~manner required by the rules and regulations, shall upon conviction be punished by a fine of not~~
20 ~~less than ten dollars (\$10.00) nor more than one hundred dollars (\$100), or by imprisonment not~~
21 ~~longer than sixty (60) days, or by both that fine and imprisonment, and each day of that failure or~~
22 ~~refusal shall constitute a separate and distinct offense. If the employer in question is a~~
23 ~~corporation, every officer of the corporation who knowingly participates in any violation~~
24 ~~specified in this section shall be subject to these penalties.~~

25 ~~**28-39-26. Pecuniary penalty for failure to make contributions or reports.**~~

26 ~~An employer who fails to file any report required under chapters 39—41 of this title, or~~
27 ~~who fails or refuses to pay any contributions required under those chapters in the manner and at~~
28 ~~the times required by the laws and regulations or as the director may, in accordance with those~~
29 ~~laws and regulations, prescribe, shall pay a penalty of ten dollars (\$10.00) for each failure or~~
30 ~~refusal to file, and where any contribution is due, shall pay an additional penalty of ten percent~~
31 ~~(10%) of the amount due. These penalties shall be paid into the temporary disability insurance~~
32 ~~reserve fund, and shall be in addition to contributions and interest required to be paid as provided~~
33 ~~in chapters 39—41; provided, that if any employer fails to pay the penalty, when assessed, it~~
34 ~~shall be collected by civil action as provided in § 28-40-12.~~

1 **28-39-27. Penalty for violations generally.**

2 ~~Any violation of any provision of chapters 39—41 of this title or of any order, rule, or~~
3 ~~regulation of the department for which a penalty is neither prescribed above nor provided by any~~
4 ~~other applicable statute, shall be punished by a fine of not less than twenty dollars (\$20.00) nor~~
5 ~~more than fifty dollars (\$50.00), or by imprisonment not longer than thirty (30) days, or by both~~
6 ~~that fine and imprisonment.~~

7 **28-39-28. Disposition of fines.**

8 ~~All fines specified or provided for in §§ 28-39-23—28-39-32 shall be paid to the~~
9 ~~temporary disability insurance reserve fund.~~

10 **28-39-29. Recovery of benefits paid in error.**

11 ~~Any individual who, by reason of a mistake or misrepresentation made by himself or~~
12 ~~herself or another, has received any sum as benefits under chapters 39—41 of this title, in any~~
13 ~~week in which any condition for the receipt of those benefits imposed by those chapters was not~~
14 ~~fulfilled by him or her, or with respect to any week in which he or she was disqualified from~~
15 ~~receiving those benefits, shall in the discretion of the director be liable to have that sum deducted~~
16 ~~from any future benefits payable to him or her under those chapters, or shall be liable to repay to~~
17 ~~the director for the temporary disability insurance fund a sum equal to the amount so received and~~
18 ~~that sum shall be collectible in the manner provided in § 28-40-12 for the collection of past due~~
19 ~~contributions.~~

20 **28-39-30. Prosecution of actions for penalties.**

21 ~~The director shall be the party complainant to any complaint and warrant brought to~~
22 ~~invoke the penalties provided for in §§ 28-39-23—28-39-32 and the director shall be exempt~~
23 ~~from giving surety for costs in any action.~~

24 **28-39-31. Prosecution of criminal actions.**

25 ~~All criminal actions for any violation of chapters 39—41 of this title or any rule or~~
26 ~~regulation of the department shall be prosecuted by the attorney general or by any qualified~~
27 ~~member of the Rhode Island bar that shall be designated by the director and approved by the~~
28 ~~attorney general to institute and prosecute that action.~~

29 **28-39-32. Limitation of prosecutions.**

30 ~~No person shall be convicted of any offense for any violation of chapters 39—41 of this~~
31 ~~title or any rule or regulation of the department unless the complaint or warrant for that violation~~
32 ~~has been issued within five (5) years from the time of the commission of the offense.~~

33 **28-39-33. Use of federal funds for administration.**

34 ~~To the extent that funds are made available by the federal government, under title III of~~

1 ~~the Social Security Act, (42 U.S.C. § 501 et seq.), or otherwise for such purpose, the expenses of~~
2 ~~administering chapters 39—41 of this title shall be paid from those funds, provided that this~~
3 ~~section shall not be considered to permit any expenditure of funds from the employment security~~
4 ~~administration account contrary to § 28-42-29. In the event that the Social Security Act is~~
5 ~~amended to permit funds granted under Title III to be used to pay expenses of administering a~~
6 ~~sickness compensation law, such as chapters 39—41 of this title, then from and after the effective~~
7 ~~date of that amendment, the expenses of administering those chapters shall be paid out of the~~
8 ~~employment security administration account or any other account or fund in which funds granted~~
9 ~~under Title III are deposited.~~

10 **28-39-34. Appropriations for administration.**

11 ~~The general assembly shall annually appropriate a sum sufficient for the payment of~~
12 ~~expenses of administering chapters 39—41 of this title during each fiscal year, which sum shall~~
13 ~~be payable out of the temporary disability insurance reserve fund; provided, that those sums shall~~
14 ~~be available to the director for the payment of expenses of administration of those chapters only~~
15 ~~to the extent that moneys received from the federal government are not available for that purpose~~
16 ~~as provided in § 28-39-33.~~

17 **28-39-35. Educational program.**

18 ~~The director shall undertake an educational publicity program designed to safeguard the~~
19 ~~fund created by this chapter. The director shall solicit the co-operation and assistance of labor,~~
20 ~~industry, and the public generally, in effecting that program. In the exercise of his or her authority~~
21 ~~under this chapter, the director shall give publicity to the need for accident prevention, and the~~
22 ~~preservation of health. He or she shall publicize the need for industrial employment to provide the~~
23 ~~best available safeguards for workers, as well as appropriate sanitary facilities, and he or she shall~~
24 ~~also publicize the potential results of malingering.~~

25 **28-39-36. Repealed.**

26 **28-39-37. Functions of treasurer and director of administration.**

27 ~~The general treasurer and the state director of administration shall have the same powers~~
28 ~~and duties with relation to chapters 39—41 of this title as they respectively have to chapters 42—~~
29 ~~44 of this title.~~

30 **28-39-38. Construction of provisions.**

31 ~~Chapters 39—41 of this title shall be construed liberally in aid of their declared purpose,~~
32 ~~which declared purpose is to lighten the burden which now falls on the unemployed worker and~~
33 ~~his family.~~

34 **28-39-39. Reservation of legislative control.**

1 All the rights, privileges, or immunities conferred by chapters 39—41 of this title, or by
2 acts done pursuant to these chapters, shall exist subject to the power of the general assembly to
3 amend or repeal these chapters at any time.

4 **28-39-40. Severability.**

5 If any provision of chapters 39—41 of this title, or its application to any person or
6 circumstances, is held invalid, the remainder of the chapters and the application of that provision
7 to other persons or circumstances shall not be affected by that invalidity.

8 **28-39-41. Task Force. [Effective January 1, 2017.]**

9 (a) ~~There is hereby established a task force on temporary disability insurance fraud and~~
10 ~~program integrity. The task force shall consist of the following members or their designees:~~

- 11 (1) ~~The director of labor and training or designee;~~
- 12 (2) ~~The secretary of health and human services or designee;~~
- 13 (3) ~~The director of health or designee;~~
- 14 (4) ~~The director of the office of management and budget or designee; and~~
- 15 (5) ~~The attorney general or designee.~~

16 ~~The director of labor and training shall chair the task force.~~

17 (b) ~~The task force shall coordinate joint efforts to combat fraud and abuse in the~~
18 ~~temporary disability insurance program. The task force shall:~~

19 (1) ~~Foster appropriate use of the program by both claimants and qualified healthcare~~
20 ~~providers by educating them about the intent of the program, the benefits provided, acceptable~~
21 ~~use of benefits, and applicable requirements;~~

22 (2) ~~Protect the integrity of the temporary disability insurance fund by performing joint~~
23 ~~investigations into fraudulent activities; and~~

24 (3) ~~Employ best practices, as established by other insurance programs both public and~~
25 ~~private, to ensure program goals and objectives are aimed at providing efficient and effective~~
26 ~~services to all customers.~~

27 (c) ~~Notwithstanding any other law or regulation to the contrary, the task force shall~~
28 ~~facilitate timely information sharing between and among task force members, including the~~
29 ~~establishment of protocols by which participating agencies will advise or refer to other agencies~~
30 ~~matters of potential interest.~~

31 SECTION 2. Chapter 28-40 of the General Laws entitled "Temporary Disability
32 Insurance - Contributions" is hereby repealed in its entirety.

33 **CHAPTER 28-40**

34 **Temporary Disability Insurance—Contributions**

1 ~~**28-40-1. Amount of employee contributions -- Wages on which based.**~~

2 ~~(a) The taxable wage base under this chapter for each calendar year shall be equal to the~~
3 ~~greater of thirty eight thousand dollars (\$38,000) or the annual earnings needed by an individual~~
4 ~~to qualify for the maximum weekly benefit amount and the maximum duration under chapters 39~~
5 ~~—41 of this title. That taxable wage base shall be computed as follows: Every September 30, the~~
6 ~~maximum weekly benefit amount in effect as of that date shall be multiplied by thirty (30) and~~
7 ~~the resultant product shall be divided by thirty six hundredths (.36). If the result thus obtained is~~
8 ~~not an even multiple of one hundred dollars (\$100), it shall be rounded upward to the next higher~~
9 ~~even multiple of one hundred dollars (\$100). That taxable wage base shall be effective for the~~
10 ~~calendar year beginning on the next January 1.~~

11 ~~(b) Each employee shall contribute with respect to employment after the date upon which~~
12 ~~the employer becomes subject to chapters 39 — 41 of this title, an amount equal to the fund cost~~
13 ~~rate times the wages paid by the employer to the employee up to the taxable wage base as defined~~
14 ~~and computed in subsection (a) of this section. The employee contribution rate for the following~~
15 ~~calendar year shall be determined by computing the fund cost rate on or before November 15 of~~
16 ~~each year as follows:~~

17 ~~(1) The total amount of disbursements made from the fund for the twelve (12) month~~
18 ~~period ending on the immediately preceding September 30 shall be divided by the total taxable~~
19 ~~wages paid by employers during the twelve (12) month period ending on the immediately~~
20 ~~preceding June 30. The ratio thus obtained shall be multiplied by one hundred (100) and the~~
21 ~~resultant product if not an exact multiple of one tenth of one percent (0.1%) shall be rounded~~
22 ~~down to the next lowest multiple of one tenth of one percent (0.1%);~~

23 ~~(2) If the fund balance as of the preceding September 30 is less than the total~~
24 ~~disbursements from the fund for the six (6) month period ending on that September 30, that~~
25 ~~difference shall be added to the total disbursements for the twelve (12) month period ending~~
26 ~~September 30 for the purpose of computing the fund cost rate, and if the resulting fund cost rate is~~
27 ~~not an exact multiple of one tenth of one percent (0.1%) it shall be rounded to the nearest~~
28 ~~multiple of one tenth of one percent (0.1%).~~

29 ~~**28-40-2. Exemption of employee dependent on spiritual healing.**~~

30 ~~An employee who adheres to the faith or teachings of any church, sect, or denomination~~
31 ~~and in accordance with its creed, tenets, or principles, depends for healing upon prayer or spiritual~~
32 ~~means in the practice of religion, shall be exempt from chapters 39 — 41 of this title and excluded~~
33 ~~from these provisions upon the filing with the director and with his or her employer, affidavits, in~~
34 ~~duplicate, stating that adherence and dependence, and disclaiming any and all benefits under~~

1 ~~those chapters whether or not arising before the passage of these provisions, and stating the name~~
2 ~~of the employer of that employee, which affidavits shall contain certifications by the president of~~
3 ~~the church which that employee attends, or certifications of any practitioner in the state who is~~
4 ~~authorized to practice healing based upon prayer or spiritual means, stating the adherence and~~
5 ~~dependence of that employee. Subsequently, that employee and his or her employer shall be~~
6 ~~exempt from liability for contributions with respect to that employee provided for under chapters~~
7 ~~39—41 of this title, and the employer shall be entitled to rely upon the affidavit filed with it~~
8 ~~unless and until it receives notice from the director that these provisions have not been complied~~
9 ~~with or that the affidavit is not in proper form. In case the employee, after the filing of the~~
10 ~~affidavits, obtains new employment, he or she must file new affidavits as provided in this section~~
11 ~~in order to be exempt from chapters 39—41 of this title.~~

12 **28-40-2.1. Exemption of minors fourteen (14) and fifteen (15) years of age.**

13 ~~Minors fourteen (14) and fifteen (15) years of age shall be exempt from chapters 39—41~~
14 ~~of this title.~~

15 **28-40-2.2. Exemption of certain disabled persons.**

16 ~~Disabled persons employed through a "supported employment" program as described in~~
17 ~~the federal Rehabilitation Act amendments of 1992 (see 29 U.S.C. § 701 et seq.) and who are~~
18 ~~ineligible to receive temporary disability benefits because their pay is too low may elect to be~~
19 ~~exempt from the provisions of chapters 39—41 of this title.~~

20 **28-40-3. Withholding and disposition of contributions.**

21 ~~Each employer shall withhold in trust contributions from the wages of his or her~~
22 ~~employees at the time those wages are earned or paid, shall show the deduction on his or her~~
23 ~~payroll records, and shall furnish to his or her employees any evidence of the deduction as the~~
24 ~~director may prescribe. Each employer shall transmit all contributions withheld to the temporary~~
25 ~~disability insurance fund in the manner, at the time, and under the conditions that shall be~~
26 ~~prescribed by regulations.~~

27 **28-40-3.1. Contributions held in trust for state.**

28 ~~(a) All contributions withheld by any employer from employees in accordance with the~~
29 ~~provisions of this chapter, and all contributions withheld by any employer from employees under~~
30 ~~color of those provisions, shall constitute a trust fund for the state until paid to the director.~~

31 ~~(b) That trust shall be enforceable against:~~

32 ~~(1) The employer;~~

33 ~~(2) Any officer, agent, servant, or employee of any corporate employer responsible for~~
34 ~~either the withholding or payment, or both, of the contribution; and~~

1 ~~(3) Any person receiving any part of the fund without consideration, or knowing that the~~
2 ~~employer or any officer, agent, servant, or employee or any corporate employer is committing a~~
3 ~~breach of trust.~~

4 **28-40-3.2. Notice to segregate trust funds.**

5 ~~If the director believes that the payment to the state of the trust fund established under §~~
6 ~~28-40-3.1 will be jeopardized by delay, neglect, or misappropriation, he or she shall then notify~~
7 ~~the employer that the trust fund shall be segregated, and be kept separate and apart from all other~~
8 ~~funds and assets of the employer and shall not be commingled with any other funds or assets.~~
9 ~~That notice shall be given by either hand delivery or by registered mail, return receipt requested.~~
10 ~~Within four (4) days after the sending of that notice, all taxes which subsequently either become~~
11 ~~collectible or are collected shall be deposited weekly in any financial institution in the state and~~
12 ~~those contributions shall be designated as a special fund in trust for the state and payable to the~~
13 ~~state by the employer as trustee of that fund.~~

14 **28-40-3.3. Penalty for misappropriation.**

15 ~~Any employer and any officer, agent, servant, or employee of any corporate employer~~
16 ~~responsible for either the withholding or payment of contributions, who appropriates or converts~~
17 ~~the contributions withheld to his or her own use or to any use other than the payment of the~~
18 ~~contributions, to the extent that the money required to be withheld is not available for payment on~~
19 ~~the due date as prescribed in this chapter, shall upon conviction for each offense be fined not~~
20 ~~more than one thousand dollars (\$1,000) or be imprisoned for not exceeding one year, or shall be~~
21 ~~both fined and imprisoned, the fine and imprisonment to be in addition to any other penalty~~
22 ~~provided by this chapter.~~

23 **28-40-3.4. Set-off for delinquent contributions.**

24 ~~If the director determines that any individual, or employing unit or its agent, has failed or~~
25 ~~refused to transmit contributions withheld from the wages of employees in accordance with~~
26 ~~chapters 39—41 of this title, the director shall notify the state controller of this delinquency. The~~
27 ~~state controller, upon certification of the amount of the delinquency by the director, shall set off~~
28 ~~the amount of the delinquency against any payment due that person or entity and the director shall~~
29 ~~credit that amount against the contributions due. The director may not seek set-off until such time~~
30 ~~as a delinquency determination for the contributions has been directed to the person or entity. If a~~
31 ~~person or entity assessed a delinquency determination for contributions has requested a hearing~~
32 ~~on the assessment within the applicable statutory period, no request for set-off may be made~~
33 ~~while the matter is pending in the hearing or from any appeal from the hearing.~~

34 **28-40-4. Employer's liability for contributions not withheld.**

1 ~~If any employer fails to deduct the contributions of any of his or her employees at the~~
2 ~~time their wages are paid or fails to make a deduction at the time wages are paid for the next~~
3 ~~succeeding payroll period, he or she alone shall subsequently be liable for those contributions,~~
4 ~~and, for the purposes of §§ 28-39-23—28-39-32 and 28-40-9—28-40-16 those contributions~~
5 ~~shall be treated as employers' contributions required from him or her.~~

6 ~~**28-40-5. Adjustment of erroneous deductions or payments.**~~

7 ~~If more or less than the correct amount of contributions imposed under §§ 28-40-1—28-~~
8 ~~40-4 is paid with respect to any wage payments, then, under prescribed regulations, proper~~
9 ~~adjustments with respect to the contributions shall be made, without interest, in computing~~
10 ~~contributions next due and payable after the discovery of the error with respect to the next~~
11 ~~subsequent wage payment by the same employer. If more or less than the correct amount of~~
12 ~~contributions imposed under §§ 28-40-1—28-40-4 is paid with respect to any wage payment,~~
13 ~~then, under prescribed regulations, proper adjustments with respect to both the contributions and~~
14 ~~the amount to be deducted shall be made, without interest, in connection with the next wage~~
15 ~~payment to the same employee by the same employer.~~

16 ~~**28-40-6. Overpayments.**~~

17 ~~(a) If an employer or employee makes application for refund or credit of any amount paid~~
18 ~~as contributions or interest under this title, and the director determines that the amount or any~~
19 ~~portion of it was erroneously collected, the director shall, in his or her discretion, either allow a~~
20 ~~credit for it, or by voucher duly drawn by the director in an amount and in any manner that the~~
21 ~~director may prescribe, direct the general treasurer to pay the amount determined to be~~
22 ~~erroneously collected from the temporary disability insurance reserve fund.~~

23 ~~(b) If, in the discretion of the director, a credit is to be allowed, that credit shall be~~
24 ~~applied against the payment or payments of contributions next due from that employer~~
25 ~~subsequent to the determination of the director.~~

26 ~~(c) No refund or credit shall be allowed with respect to a payment as contributions or~~
27 ~~interest, unless an application for it is made in writing on or before whichever of the following~~
28 ~~dates is later:~~

29 ~~(1) One year from the date on which the payment was made; or~~

30 ~~(2) Three (3) years from the last day of the period with respect to which the payment was~~
31 ~~made.~~

32 ~~(d) For a like cause and within the same period, a refund may be made, or a credit~~
33 ~~allowed, on the motion of the director.~~

34 ~~(e) No interest shall be allowed or paid with respect to any refund.~~

1 ~~(f) No refund or credit shall be allowed if the amount involved is less than one dollar~~
2 ~~(\$1.00).~~

3 ~~(g) Nothing in this title shall be construed to authorize any refund or credit of money due~~
4 ~~and payable under the law and regulations in effect at the time the money was paid.~~

5 **28-40-6.1. Refunds to disabled persons.**

6 ~~(a) Disabled persons employed through a "supported employment" program as described~~
7 ~~in the federal Rehabilitation Act amendments of 1992 (see 29 U.S.C. § 701 et seq.) and who: (1)~~
8 ~~were or are ineligible to receive temporary disability benefits because their pay is too low and (2)~~
9 ~~during one or more periods of such ineligibility they made contributions to the temporary~~
10 ~~disability insurance fund, shall be entitled to a refund of the contributions, without interest.~~

11 ~~(b) A person eligible for a refund pursuant to subsection (a) of this section for~~
12 ~~contributions made during the period commencing three (3) years prior to June 30, 1995, shall be~~
13 ~~entitled for one year after that date to apply for a refund of the contribution, and shall have one~~
14 ~~year from the date of contribution to apply for a refund of contributions made after June 30, 1995.~~

15 **28-40-6.2. Set-off for delinquent income taxes.**

16 ~~(a) If the tax administrator determines a person has neglected or refused to pay personal~~
17 ~~income taxes as defined in chapter 30 of title 44, the tax administrator shall notify the director of~~
18 ~~labor and training of the delinquency. The director, upon certification of the amount of tax~~
19 ~~delinquency by the tax administrator, shall set off the amount of the tax delinquency against any~~
20 ~~temporary disability insurance tax refund due that person and shall forward that amount to the tax~~
21 ~~administrator.~~

22 ~~(b) The tax administrator may not seek such a set-off unless a delinquency determination~~
23 ~~for the personal income tax has first been directed to the person. Provided, further, that if a person~~
24 ~~assessed a delinquency determination for the personal income tax has requested a hearing within~~
25 ~~the statutory period, no request for set-off may be made while the matter is pending in hearing or~~
26 ~~any appeal from the hearing.~~

27 **28-40-7. Appeals to board of review.**

28 ~~Any employer, employee, or other person aggrieved by any decision of fact or law by the~~
29 ~~director as to his, her, or its liability to make contributions or to withhold and pay contributions,~~
30 ~~or as to the amount of contributions due from or to be withheld and paid by him, her, or it under~~
31 ~~chapters 39—41 of this title, or by any refusal of the director to grant a refund or credit under §~~
32 ~~28-40-6, may, either on behalf of himself or herself, or on behalf of his or her employees or other~~
33 ~~persons aggrieved by the decision, or on behalf of both himself or herself and those employees or~~
34 ~~persons, within fifteen (15) days after notice of the decision has been mailed to his, her, or its~~

1 ~~last known address, file an appeal in writing with the board of review, setting forth the grounds~~
2 ~~for the appeal. If an appeal is duly filed, the board of review shall set a time and place to give the~~
3 ~~appellant an opportunity to show cause as to why the decision of the director should be changed.~~
4 ~~Following that hearing, the board of review shall, as promptly as possible, notify the appellant~~
5 ~~and the director of its decision on the appeal. The decision shall become final unless the appellant~~
6 ~~or the director files an appeal to the courts in accordance with §§ 28-41-26—28-41-29.~~

7 **28-40-8. Date from which employees become subject to provisions.**

8 ~~If any employing unit which is or becomes an employer subject to chapters 39—41 of~~
9 ~~this title within the calendar year 1942, or within any calendar year after that, the employees of~~
10 ~~that employing unit shall become subject to all the provisions of those chapters from the date~~
11 ~~upon which that employing unit became an employer subject to the provisions of those chapters.~~

12 **28-40-9. Interest on delinquent payments.**

13 ~~Employers who fail to make payment of contributions, as required by chapters 39—41 of~~
14 ~~this title, or by the prescribed rules and regulations, shall be additionally liable to the temporary~~
15 ~~disability insurance reserve fund for interest on those delinquent payments at the rate of one and~~
16 ~~one-half percent (1-1/2%) per month from the date the payment became due until paid.~~

17 **28-40-10. Priority of contributions in insolvency or bankruptcy.**

18 ~~In the event of any distribution of an employer's assets pursuant to an order of any court~~
19 ~~under the laws of this state, including any receivership, assignment for benefit of creditors,~~
20 ~~adjudicated insolvency, composition, or similar proceeding, contribution payments then or~~
21 ~~subsequently due shall have the same priority as given to wage claims of not more than one~~
22 ~~hundred dollars (\$100) to each claimant, earned within six (6) months of the commencement of~~
23 ~~the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed~~
24 ~~extension proposal, or composition, under the federal Bankruptcy Act, 11 U.S.C. § 101 et seq.,~~
25 ~~contributions then or subsequently due shall be entitled to the priority provided in 11 U.S.C. §~~
26 ~~507.~~

27 **28-40-11. Determination of unreported contributions due.**

28 ~~If an employer for any reporting period fails to make any report used for the purpose of~~
29 ~~determining the amount of contributions payable under chapters 39—41 of this title at the time~~
30 ~~and in the manner required by the prescribed rules and regulations, or if those reports when filed~~
31 ~~are incorrect or insufficient, and the employer fails to file a corrected or sufficient report within~~
32 ~~twenty (20) days after the director has required it by written notice, the director shall determine~~
33 ~~on the basis of such information as the director may be able to obtain, the amount of contributions~~
34 ~~due from that employer, and the director shall give written notice to any employer of the amount~~

1 of contributions so determined. That determination shall finally and irrevocably fix the amount of
2 contributions due unless the employer, within twenty (20) days after the giving of that notice,
3 applies to the board of review for a hearing, or unless the director on his or her own volition
4 reduces the amount.

5 **28-40-12. Civil action to recover contributions.**

6 If any employer fails to make any payment of contributions or interest on them at the
7 time and in the manner required by the prescribed rules and regulations, the amount of
8 contributions so due shall be collected by civil action. All civil actions shall be instituted in the
9 name of the director, and he or she shall be exempt from giving any surety for costs. Civil actions
10 brought under this section, to collect contributions or interest on them, shall be heard by the court
11 having jurisdiction at the earliest possible date, and shall be entitled to preference upon the
12 calendar of the court over all other civil actions except petitions for a judicial review under
13 chapters 39—41 of this title.

14 **28-40-13. Representation of director in civil actions.**

15 In any civil action brought to enforce chapters 39—41 of this title, the director may be
16 represented by any qualified attorney whom the director has designated and employed for this
17 purpose or, at the director's request, by the attorney general.

18 **28-40-14. Contributions as debt to state -- Lien on real estate.**

19 (a) (1) The amount of any contributions, interest, and penalties imposed upon any
20 employer under this chapter shall:

21 (i) Be a debt due to the state;

22 (ii) Constitute a trust fund for the state until paid to the director;

23 (iii) Be recoverable at law in the same manner as other debts; and

24 (iv) Until collected constitute a lien upon all the real property located in this state of the
25 following persons or entities:

26 (A) The employer;

27 (B) Any officer, agent, servant, or employee of any corporate employer responsible for
28 either the withholding or payment, or both, of the contribution; and

29 (C) Any person receiving any part of the fund without consideration, or knowing that the
30 employer or any officer, agent, servant, or employee or any corporate employer is committing a
31 breach of trust.

32 (2) The lien shall take precedence over any other lien or encumbrance on that property
33 except as provided in this section. The director may file a notice of that tax lien with the records
34 of land evidence for the city or town where that property is located and it shall be the duty of the

1 ~~recorder of deeds or the city or town clerk having custody of those records to receive, file, and~~
2 ~~index that notice under the name of the lienee. Any of the preceding provisions of this section to~~
3 ~~the contrary notwithstanding, the lien imposed by this section shall not be valid with respect to~~
4 ~~property in any city or town as against any bona fide purchaser, mortgagee, or lessee, whose~~
5 ~~interest in that real property appears of record in that city or town prior to the time of filing of that~~
6 ~~notice of tax lien in that city or town.~~

7 ~~(b) The notice of the tax lien filed shall: (1) be in writing; (2) contain the name and last~~
8 ~~known address of the lienee, and (3) state that the lienee is indebted to the state under this~~
9 ~~chapter. The notice need not describe the lienee's property, or specify the amount of contributions~~
10 ~~owed, or the period of time covered by the delinquency. When the notice is filed in a city or town~~
11 ~~by the director, it shall, unless sooner discharged or released, also apply to property in the city or~~
12 ~~town subsequently acquired by the lienee during a period of six (6) years from the date of filing~~
13 ~~and that filing need not be repeated for each successive delinquency of the lienee. The notice~~
14 ~~shall expire six (6) years from the date of filing unless renewed by again filing a similar notice on~~
15 ~~or before the expiration date. The director shall be obliged to discharge or release the notice of~~
16 ~~lien when the lienee is no longer delinquent in the payment of any contributions, interest, or~~
17 ~~penalties, whether incurred prior or subsequent to the date of filing of that notice, or upon request,~~
18 ~~following the expiration of the statutory lien period, as set forth in this section.~~

19 ~~(c) For the filing of a notice of lien or discharge of a lien, the recorder of deeds or the city~~
20 ~~or town clerk shall be paid, out of any money appropriated for expenses of the director, a fee of~~
21 ~~four dollars (\$4.00) for a completed entry.~~

22 ~~(d) The authority granted in this section to the director to file a notice of lien shall not be~~
23 ~~held to repeal or amend in any other respect § 28-39-19.~~

24 ~~**28-40-15. Notice of transfer of business -- Contributions due immediately.**~~

25 ~~The sale or transfer by any employer other than receivers, assignees under a voluntary~~
26 ~~assignment for the benefit of creditors, trustees in bankruptcy, or public officers acting under~~
27 ~~judicial process, of the major part in value of the assets of that employer otherwise than in the~~
28 ~~ordinary course of trade and the regular and usual prosecution of that employer's business, shall~~
29 ~~be fraudulent and void as against the state, unless that employer shall, at least five (5) days before~~
30 ~~the sale or transfer, notify the director of the proposed sale or transfer and of its price, terms, and~~
31 ~~conditions and of the character and location of those assets. Whenever that employer makes that~~
32 ~~sale or transfer, all contributions imposed by this chapter shall be paid at the time when the~~
33 ~~director is so notified or, if he or she is not so notified, at the time when he or she should have~~
34 ~~been notified.~~

1 **28-40-16. Collection powers.**

2 ~~(a) The director shall have, for the collection of the contributions imposed by this chapter,~~
3 ~~all powers as are prescribed for collection of contributions in this title. The director may require~~
4 ~~any person subject to the taxes imposed by this chapter to file with him or her a bond, issued by a~~
5 ~~surety company authorized to transact business in this state, in such an amount as the director~~
6 ~~may fix, to secure the payment of the contributions, penalties, and interest due or which may~~
7 ~~become due from that employer.~~

8 ~~(b)(1) The director may require the employer to deposit with the general treasurer a bond~~
9 ~~by way of cash or other security satisfactory to the director in an amount to be determined by the~~
10 ~~director, but not greater than an amount equal to double the amount of the estimated tax that~~
11 ~~would normally be due from the employer each month under this chapter, but in no case shall the~~
12 ~~deposit be less than one hundred dollars (\$100).~~

13 ~~(2) Where an employer who has deposited a bond with the general treasurer under~~
14 ~~subdivision (1) of this subsection has failed to collect or remit contributions in accordance with~~
15 ~~this chapter, the director may, upon giving written notice to the employer by registered mail or~~
16 ~~personal service, apply the bond in whole or in part to the amount that should have been~~
17 ~~collected, remitted, or paid by the employer.~~

18 **28-40-17. Repealed.**

19 **28-40-18. Waiver of contributions and interest under one dollar.**

20 ~~If the total amount due to the department of labor and training from an employer in~~
21 ~~contributions and/or interest for any period is less than one dollar (\$1.00), this amount shall not~~
22 ~~be assessed.~~

23 SECTION 3. Chapter 28-41 of the General Laws entitled "Temporary Disability
24 Insurance - Benefits" is hereby repealed in its entirety.

25 ~~CHAPTER 28-41~~

26 ~~Temporary Disability Insurance—Benefits~~

27 **28-41-1. Fund from which benefits payable -- Agencies through which paid.**

28 ~~Benefits shall be payable from the fund and shall be paid through employment offices, or~~
29 ~~any other agencies that the director may designate and the federal Social Security Administration~~
30 ~~may approve, in accordance with prescribed regulations.~~

31 **28-41-2. Wages included for benefit purposes.**

32 ~~Notwithstanding any provisions of chapters 39—41 of this title to the contrary, "wages"~~
33 ~~as used in the phrase "wages for employment from employers" means, with reference to the~~
34 ~~benefits provisions of chapters 39—41 of this title, only those wages which are paid subsequent~~

1 ~~to the date upon which the employing unit, by whom those wages were paid, has satisfied the~~
2 ~~conditions of § 28-39-2 (12) with respect to becoming an employer subject to those chapters. No~~
3 ~~individual shall be denied benefits under chapters 39—41 of this title because his or her~~
4 ~~employer continued to pay to that individual his or her regular wages, or parts of them, while he~~
5 ~~or she was sick and unable to perform his or her regular or customary work or services. The~~
6 ~~amount of any payments, whether or not under a plan or system, made to or on behalf of an~~
7 ~~employee by his or her employer after the expiration of six (6) calendar months following the last~~
8 ~~calendar month in which the employee performed actual bona fide personal services for that~~
9 ~~employer, shall not be deemed to be wages for the purpose of being used as a basis for paying~~
10 ~~benefits under chapter 41 of this title.~~

11 **28-41-3. Inclusion of unpaid wages.**

12 ~~Wages earned by an employee for employment from employers, which remain unpaid~~
13 ~~because the assets of the employer for whom that employment was rendered are in the custody or~~
14 ~~control of an assignee for the benefit of a creditor, receiver, trustee, or any other fiduciary~~
15 ~~appointed by or under the control of a court of competent jurisdiction, shall, for all purposes of §§~~
16 ~~28-41-1—28-41-6 and § 28-41-11, be deemed to be, and shall be treated as though those wages~~
17 ~~had been paid to that employee during the calendar year within which those wages were earned.~~

18 **28-41-4. Repealed.**

19 **28-41-5. Weekly benefit rate—Dependents' allowances.**

20 ~~(a) (1) Benefit rate. The benefit rate payable under this chapter to any eligible individual~~
21 ~~with respect to any week of his or her unemployment due to sickness, when that week occurs~~
22 ~~within a benefit year, shall be, for benefit years beginning on or after October 7, 1990, four and~~
23 ~~sixty-two hundredths percent (4.62%) of the wages paid to the individual in that calendar quarter~~
24 ~~of the base period in which the individual's wages were highest; provided, however, that the~~
25 ~~benefit rate shall not exceed eighty-five percent (85%) of the average weekly wage paid to~~
26 ~~individuals covered by chapters 42—44 of this title for the preceding calendar year ending~~
27 ~~December 31. If the maximum weekly benefit rate is not an exact multiple of one dollar (\$1.00)~~
28 ~~then the rate shall be raised to the next higher multiple of one dollar (\$1.00). Those weekly~~
29 ~~benefit rates shall be effective throughout the benefit years beginning on or after July 1 of the~~
30 ~~year prior to July of the succeeding calendar year.~~

31 ~~(2) The benefit rate of any individual, if not an exact multiple of one dollar (\$1.00), shall~~
32 ~~be raised to the next higher multiple of one dollar (\$1.00).~~

33 ~~(b) Dependents' allowances. An individual to whom benefits for unemployment due to~~
34 ~~sickness are payable under this chapter with respect to any week, shall, in addition to those~~

1 ~~benefits, be paid with respect to each week a dependent's allowance of ten dollars (\$10.00) or~~
2 ~~seven percent (7%), of the individual's benefit rate, payable under subsection (a) of this section,~~
3 ~~whichever is greater for each of that individual's children, including adopted and stepchildren or~~
4 ~~that individual's court appointed wards who, at the beginning of the individual's benefit year, is~~
5 ~~under eighteen (18) years of age and who is at that time in fact dependent on that individual. A~~
6 ~~dependent's allowance shall also be paid to that individual for any child, including an adopted~~
7 ~~child or a stepchild or that individual's court appointed ward, eighteen (18) years of age or over,~~
8 ~~incapable of earning any wages because of mental or physical incapacity, and who is dependent~~
9 ~~on that individual in fact at the beginning of the individual's benefit year, including individuals~~
10 ~~who have been appointed the legal guardian of that child by the appropriate court. However, in no~~
11 ~~instance shall the number of dependents for which an individual may receive dependents'~~
12 ~~allowances exceed five (5) in total. The weekly total of dependents' allowances payable to any~~
13 ~~individual, if not an exact multiple of one dollar (\$1.00), shall be rounded to the next lower~~
14 ~~multiple of one dollar (\$1.00). The number of an individual's dependents, and the fact of their~~
15 ~~dependency, shall be determined as of the beginning of that individual's benefit year; provided,~~
16 ~~that only one individual shall be entitled to a dependent's allowance for the same dependent with~~
17 ~~respect to any week. Each individual who claims a dependent's allowance shall establish his or~~
18 ~~her claim to it to the satisfaction of the director under procedures established by the director.~~

19 ~~(c) Any individual's benefit rate and/or dependents' allowance in effect for a benefit year~~
20 ~~shall continue in effect until the end of that benefit year.~~

21 ~~(d) Partial unemployment due to sickness. For weeks beginning on or after January 1,~~
22 ~~2006, an individual partially unemployed due to sickness and otherwise eligible in any week shall~~
23 ~~be paid sufficient benefits with respect to that week, so that his or her wages, rounded to the next~~
24 ~~higher multiple of one dollar (\$1.00), and his or her benefits combined will equal in amount the~~
25 ~~weekly benefit rate to which he or she would be entitled if totally unemployed due to sickness in~~
26 ~~that week; provided that an individual must have been totally unemployed due to sickness for at~~
27 ~~least seven (7) consecutive days prior to claiming partial benefits under this provision; provided,~~
28 ~~that this provision shall not apply if the individual is entitled to lag day benefits pursuant to § 28-~~
29 ~~41-9; provided, further, that nothing contained herein shall permit any individual to whom~~
30 ~~remuneration is payable for any work performed in any week in an amount equal to or greater~~
31 ~~than his or her weekly benefit rate to receive benefits or waiting period credit for that week.~~

32 ~~28-41-6. Effect on waiting period credit and benefits of receipt of workers'~~
33 ~~compensation payments.~~

34 ~~(a) No individual shall be entitled to receive waiting period credit benefits or dependents'~~

1 ~~allowances with respect to which benefits are paid or payable to that individual under any~~
2 ~~workers' compensation law of this state, any other state, or the federal government, on account of~~
3 ~~any disability caused by accident or illness. In the event that workers' compensation benefits are~~
4 ~~subsequently awarded to an individual, whether on a weekly basis or as a lump sum, for a week~~
5 ~~or weeks with respect to which that individual has received waiting period credit, benefits, or~~
6 ~~dependents' allowances, under chapters 39—41 of this title, the director, for the temporary~~
7 ~~disability insurance fund, shall be subrogated to that individual's rights in that award to the extent~~
8 ~~of the amount of benefits and/or dependents' allowances paid to him or her under those chapters.~~

9 ~~Provided, however, that nothing herein shall be construed to deny benefits or waiting~~
10 ~~period credit benefits or dependents' allowances under this chapter to individuals who receive a~~
11 ~~lump sum settlement pursuant to § 28-33-25 and subsequently apply for benefits under this~~
12 ~~chapter as long as the sickness or illness is materially different from the one for which the~~
13 ~~individual was paid workers' compensation, is not affected by said injury and/or the medical~~
14 ~~condition did not result from the injury for which the employee was paid workers' compensation~~
15 ~~benefits.~~

16 ~~(b) (1) Whenever an employer or his or her insurance carrier has been notified that an~~
17 ~~individual has filed a claim for unemployment due to sickness for any week or weeks under~~
18 ~~chapters 39—41 of this title for which week or weeks that individual is or may be eligible for~~
19 ~~benefits under chapters 29—38 of this title, that notice shall constitute a lien upon any pending~~
20 ~~award, order, or settlement to that individual under chapters 29—38 of this title.~~

21 ~~(2) The employer or his insurance carrier shall be required to reimburse the director, for~~
22 ~~the temporary disability insurance fund, the amount of benefits and/or dependents' allowances~~
23 ~~received by the individual under chapters 39—41 of this title, for any week or weeks for which~~
24 ~~that award, order, or settlement is made.~~

25 ~~(c) Whenever an individual becomes entitled to or is awarded workers' compensation~~
26 ~~benefits for the same week or weeks with respect to which he has received benefits and/or~~
27 ~~dependents' allowances under chapters 39—41 of this title, and notice of that receipt has been~~
28 ~~given to the division of workers' compensation of the department of labor and training and/or the~~
29 ~~workers' compensation court, the division or court is required to and shall incorporate in the~~
30 ~~award, order, or approval of settlement, an order requiring the employer or his or her insurance~~
31 ~~carrier to reimburse the director, for the temporary disability insurance fund, the amount of any~~
32 ~~disability benefits and/or dependents' allowances which may have been paid to the employee for~~
33 ~~unemployment due to sickness for those weeks under chapters 39—41 of this title. Nothing~~
34 ~~herein shall be construed to deny benefits under this chapter to individuals who receive a lump~~

1 ~~sum settlement pursuant to § 28-33-25 and subsequently apply for benefits under this chapter as~~
2 ~~long as the sickness or illness is materially different from the one for which the individual was~~
3 ~~paid workers' compensation, is not affected by said injury and/or the medical condition did not~~
4 ~~result from the injury for which the employee was paid workers' compensation benefits.~~

5 ~~(d) If, through inadvertence, error, or mistake, an individual has received benefit~~
6 ~~payments and/or dependents' allowances for any week or weeks under chapters 39—41 of this~~
7 ~~title, and has also received payments for the same week or weeks under any workers'~~
8 ~~compensation law of this state, any other state, or of the federal government, he or she shall, in~~
9 ~~the discretion of the director of the department of labor and training, be liable to have that sum~~
10 ~~deducted from any benefits payable to him or her under chapters 39—41 of this title, or shall be~~
11 ~~liable to repay to the director, for the temporary disability insurance fund, a sum equal to that~~
12 ~~amount received, and that sum shall be collectible in the manner provided in § 28-40-12 for the~~
13 ~~collection of past due contributions.~~

14 ~~(e) Notwithstanding any other provision of this section, no individual who, prior to~~
15 ~~September 1, 1969, has sustained an injury by reason of which he or she may be eligible for~~
16 ~~benefits under chapters 29-38 of this title shall be deprived of any rights which he or she may~~
17 ~~have under chapters 39—41 of this title.~~

18 **28-41-7. Total amount of benefits.**

19 ~~The total amount of benefits payable during a benefit year to any eligible individual shall~~
20 ~~be an amount equal to thirty six percent (36%) of the individual's total wages for employment by~~
21 ~~employers subject to chapters 39—41 of this title during his or her base period; provided, that no~~
22 ~~individual shall be paid total benefits in any benefit year which exceed thirty (30) times his or her~~
23 ~~weekly benefit rate; provided further, that dependents' allowances to which he or she might be~~
24 ~~entitled under § 28-41-5 shall be in addition to these total benefits. If the total amount of benefits~~
25 ~~is not an exact multiple of one dollar (\$1.00), then it shall be raised to the next higher multiple of~~
26 ~~one dollar (\$1.00).~~

27 **28-41-8. Pregnancy benefits.**

28 ~~An eligible individual who is unemployed due to sickness resulting from pregnancy,~~
29 ~~childbirth, miscarriage, or abortion shall be entitled to receive those benefits which are regularly~~
30 ~~provided for unemployment due to sickness in chapters 39—41 of this title.~~

31 **28-41-9. Lag day benefits.**

32 ~~(a) An individual who, having been unemployed due to sickness and who is in receipt of~~
33 ~~benefits under this chapter, returns to work prior to the end of the immediately succeeding week,~~
34 ~~shall be entitled to one fifth (1/5) of his or her benefit rate for each day of unemployment due to~~

1 ~~sickness in which work is ordinarily performed in the occupation in which he or she is employed~~
2 ~~during the week in which he or she returns to work, figured to the highest dollar, including any~~
3 ~~holiday when the performance of services is waived by his or her employer; provided, that in no~~
4 ~~case shall any individual be entitled to more than four fifths (4/5) of his benefit rate, figured to~~
5 ~~the highest dollar, for that week.~~

6 ~~(b) An individual who, having been unemployed due to sickness at a later date during his~~
7 ~~or her benefit year, again becomes unemployed due to sickness, and refiles his or her claim for~~
8 ~~benefits, shall, if his or her first day of unemployment begins on a day subsequent to the first day~~
9 ~~of any week, be entitled to one fifth (1/5) of his or her benefit rate for each day in that week in~~
10 ~~which work is ordinarily performed in the occupation in which he or she was last employed,~~
11 ~~including any holiday when the performance of services is waived by his or her employer, figured~~
12 ~~to the highest dollar, if his or her unemployment continues for seven (7) consecutive calendar~~
13 ~~days, including the first day of unemployment due to sickness for which he or she has refiled his~~
14 ~~or her claim. In no case shall any individual be entitled to more than four fifths (4/5) of his or her~~
15 ~~benefit rate, figured to the highest dollar, for the week in which his or her unemployment begins~~
16 ~~on a day subsequent to the first day of that week.~~

17 **28-41-10. Benefits payable for last week of benefit year.**

18 ~~Notwithstanding any provision of chapters 39 — 41 of this title to the contrary, if the~~
19 ~~benefit year of an individual terminates prior to the end of a week throughout which he or she is~~
20 ~~unemployed due to sickness and eligible and his or her benefit credits for that benefit year have~~
21 ~~not been exhausted, then that individual shall be entitled to receive for that week the full amount~~
22 ~~of benefits which he or she would have received if his or her benefit year had not so terminated;~~
23 ~~provided, that this shall in no manner affect the establishment of a new base period and benefit~~
24 ~~year in accordance with § 28-39-2(2) and (6).~~

25 **28-41-11. Eligibility.**

26 ~~(a) For benefit years beginning on or after July 1, 1981 and prior to October 7, 1990, an~~
27 ~~individual shall be deemed eligible for benefits for any given week of his or her unemployment~~
28 ~~due to sickness only if he or she has, within the base period immediately preceding the benefit~~
29 ~~year in which that week of unemployment occurs, earned wages amounting to at least twenty (20)~~
30 ~~times the minimum hourly wage as defined in chapter 12 of this title, in each of at least twenty~~
31 ~~(20) weeks or, in the alternative, in an amount equal to three (3) times the total minimum amount~~
32 ~~required in this chapter.~~

33 ~~(b) In order to be deemed eligible for benefits, an individual whose benefit year begins on~~
34 ~~or after October 7, 1990, must have been paid wages in:~~

1 ~~(1) Any one calendar quarter of the base period which are at least two hundred (200)~~
2 ~~times the minimum hourly wage, as defined in chapter 12 of this title, and must have been paid~~
3 ~~wages in the base period amounting to at least one and one half (1 1/2) times the wages paid to~~
4 ~~the individual in that calendar quarter of the base period in which the individual's wages were~~
5 ~~highest; provided, that the minimum amount of total base period wages paid to the individual~~
6 ~~must be at least four hundred (400) times the minimum hourly wage, as defined in chapter 12 of~~
7 ~~this title. The base period wages must have been paid to the individual for performing services in~~
8 ~~employment for one or more employers subject to chapters 39—41 of this title; or, in the~~
9 ~~alternative,~~

10 ~~(2) The base period for performing services in employment for one or more employers~~
11 ~~subject to chapters 39—41 of this title amounting to at least three (3) times the total minimum~~
12 ~~amount required in subdivision (1) of this subsection.~~

13 ~~(c) In addition to the provisions of subsection (b) of this section, for benefit years that~~
14 ~~begin on or after July 1, 2012, an individual must have been unemployed due to sickness for at~~
15 ~~least seven (7) consecutive days in order to be eligible for benefits.~~

16 ~~**28-41-12. Repealed.**~~

17 ~~**28-41-13. Disqualification by receipt of unemployment compensation benefits.**~~

18 ~~(a) (1) An individual shall be disqualified from receiving benefits during any week with~~
19 ~~respect to which he or she will receive remuneration in the form of benefits under an~~
20 ~~unemployment compensation law of any state or of the United States.~~

21 ~~(2) Notwithstanding any provisions of chapters 39—41 of this title to the contrary, an~~
22 ~~individual receiving unemployment compensation and who is injured while unemployed and who~~
23 ~~is then denied unemployment compensation as a result of those injuries, shall, if otherwise~~
24 ~~eligible, be entitled to receive temporary disability insurance benefits without serving a waiting~~
25 ~~period as required in § 28-41-12.~~

26 ~~(b) Notwithstanding any provisions of chapters 39—41 of this title to the contrary, if an~~
27 ~~individual has been determined to have been paid unemployment compensation benefits and/or~~
28 ~~dependents' allowances under chapters 42—44 of this title, for the same week or weeks with~~
29 ~~respect to which the individual was entitled to receive temporary disability insurance benefits~~
30 ~~and/or dependents' allowances under chapters 39—41 of this title, that individual shall, at the~~
31 ~~discretion of the director, be liable to have that sum deducted from any benefits payable to him or~~
32 ~~her under chapters 39—41 of this title for the same week or weeks, to reimburse the director for~~
33 ~~the employment security fund.~~

34 ~~**28-41-14. Disqualification by conviction of fraud.**~~

1 ~~(a) An individual who has been convicted by a court of competent jurisdiction of~~
2 ~~knowingly or fraudulently making a false statement, or knowingly or fraudulently~~
3 ~~misrepresenting a material fact, with intent to defraud the temporary disability insurance fund of~~
4 ~~any benefit or wrongfully to obtain or increase any benefit, either for himself or herself or for any~~
5 ~~other person, shall be disqualified from receiving benefits for a period of one year following that~~
6 ~~conviction.~~

7 ~~(b) This disqualification shall be imposed by the director and shall be in addition to any~~
8 ~~criminal penalty which may be imposed under any other provision in chapters 39—41 of this~~
9 ~~title.~~

10 ~~**28-41-15. Filing of claims -- Restriction on waiting period credit or benefits -- Copies**~~
11 ~~**of law and regulations. [Effective until January 1, 2017.]**~~

12 ~~(a) Benefit claims shall be filed pursuant to prescribed regulations.~~

13 ~~(b) No individual shall be eligible for waiting period credits or benefits under this title for~~
14 ~~any week of unemployment due to sickness which occurs more than fifty two (52) weeks prior to~~
15 ~~the time when written notice of his or her claim for waiting period credits or benefits is mailed or~~
16 ~~delivered to the department of labor and training or such other agency as the director may~~
17 ~~designate.~~

18 ~~(c) Each employer shall post and maintain printed statements of subsection (b) of this~~
19 ~~section and of those regulations, in places readily accessible to individuals in his or her service.~~
20 ~~Those printed statements shall be supplied by the director to each employer without cost to that~~
21 ~~employer.~~

22 ~~(d) Upon the filing of a claim, the director shall promptly mail a notice of the filing of the~~
23 ~~claim to the claimant's most recent employer and to all employers for whom the claimant states~~
24 ~~he or she performed services and earned wages during his or her base period. The employers shall~~
25 ~~promptly furnish the information required to determine the claimant's benefit rights. If the~~
26 ~~claimant's employer or employers have any information which might affect either the validity of~~
27 ~~the claim or the right of the claimant to waiting period credit or benefits, the employer shall return~~
28 ~~the notice with this information. Notwithstanding any inconsistent provisions of chapters 39—41~~
29 ~~of this title, any employer who fails without good cause as established to the satisfaction of the~~
30 ~~director to return the notice within seven (7) working days of its mailing shall pay a penalty of~~
31 ~~twenty five dollars (\$25.00) for each failure. This penalty shall be paid into the temporary~~
32 ~~disability insurance reserve fund and if any employer fails to pay the penalty, when assessed, it~~
33 ~~shall be collected by civil action as provided in § 28-40-12.~~

34 ~~**28-41-15. Filing of claims -- Restriction on benefits -- Copies of law and regulations.**~~

1 ~~Effective January 1, 2017.~~

2 ~~(a) Benefit claims shall be filed pursuant to prescribed regulations.~~

3 ~~(b) No individual shall be eligible for benefits under this title for any week of~~
4 ~~unemployment due to sickness that occurs more than ninety (90) days prior to the time when~~
5 ~~written notice of his or her claim for benefits is mailed or delivered to the department of labor and~~
6 ~~training or such other agency as the director may designate. Notwithstanding the above, the~~
7 ~~director may extend the claim filing period up to twenty-six (26) weeks if the individual can show~~
8 ~~a good, medical reason for the delay in filing the claim for benefits.~~

9 ~~(c) Each employer shall post and maintain printed statements of subsection (b) and of~~
10 ~~those regulations, in places readily accessible to individuals in his or her service. Those printed~~
11 ~~statements shall be supplied by the director to each employer without cost to that employer.~~

12 ~~(d) Upon the filing of a claim, the director shall promptly mail a notice of the filing of the~~
13 ~~claim to the claimant's most recent employer and to all employers for whom the claimant states~~
14 ~~he or she performed services and earned wages during his or her base period. The employers shall~~
15 ~~promptly furnish the information required to determine the claimant's benefit rights. If the~~
16 ~~claimant's employer or employers have any information that might affect either the validity of the~~
17 ~~claim or the right of the claimant to waiting period credit or benefits, the employer shall return the~~
18 ~~notice with this information. Notwithstanding any inconsistent provisions of chapters 39—41 of~~
19 ~~this title, any employer who fails, without good cause as established to the satisfaction of the~~
20 ~~director, to return the notice within seven (7) working days of its mailing shall pay a penalty of~~
21 ~~twenty five dollars (\$25.00) for each failure. This penalty shall be paid into the temporary~~
22 ~~disability insurance reserve fund and, if any employer fails to pay the penalty, when assessed, it~~
23 ~~shall be collected by civil action as provided in § 28-40-12.~~

24 ~~**28-41-16. Determination of claim.**~~

25 ~~(a) Upon the filing of a claim, the director shall promptly examine the claim and on the~~
26 ~~basis of facts found by the director and records maintained by the department, the claim shall be~~
27 ~~determined to be valid or invalid. If the claim is determined to be valid, the director shall~~
28 ~~promptly notify the claimant as to the week with respect to which benefits shall commence, the~~
29 ~~weekly benefit amount payable, and the maximum duration of those benefits. If the claim is~~
30 ~~determined to be invalid, the director shall likewise notify the claimant and any other interested~~
31 ~~parties of that determination and the reasons for it. If the processing of the claim is delayed for~~
32 ~~any reason, the director shall notify the claimant, in writing, within three (3) weeks of the date the~~
33 ~~application for benefits is filed of the reason for the delay. Unless the claimant or any other~~
34 ~~interested party, within fifteen (15) days, requests a hearing before the board of review, the~~

1 ~~determination with reference to the claim is final. However, for good cause shown the fifteen (15)~~
2 ~~day period may be extended after notification by the director has been mailed to his or her last~~
3 ~~known address, as provided in this section. At any time within one year from the date of a~~
4 ~~monetary determination, the director, upon request of the claimant or on his or her own motion,~~
5 ~~may reconsider his or her determination if he or she finds that an error in computation or identity~~
6 ~~has occurred in connection with it or that additional wages pertinent to the claimant's status have~~
7 ~~become available, or if that determination has been made as a result of a nondisclosure or~~
8 ~~misrepresentation of a material fact.~~

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

14 ~~**28-41-17. Appeal tribunals.**~~

15 ~~To hear and decide disputed claims, the board of review may appoint one or more~~
16 ~~impartial referees, each of whom shall constitute an appeal tribunal to hear and decide appeals~~
17 ~~from determinations and re-determinations. The board may make appointments to this tribunal~~
18 ~~and fix its salaries in accordance with the state civil service law, rules, and regulations. No person~~
19 ~~shall participate on behalf of the board in any case in which he or she is an interested party.~~

20 ~~**28-41-18. Filing of appeal -- Parties -- Withdrawal.**~~

21 ~~Any claimant may file an appeal from the determination of the director to an appeal~~
22 ~~tribunal within the specified time. The parties to an appeal from a determination shall include all~~
23 ~~interested parties, including the director. Appeals may be withdrawn at the request of the~~
24 ~~appellant and with the permission of the appeal tribunal, if the record preceding the appeal and~~
25 ~~the request for the withdrawal support the correctness of the determination and indicate that no~~
26 ~~coercion or fraud is involved in the withdrawal.~~

27 ~~**28-41-19. Hearing by appeal tribunal -- Regulations -- Record of proceedings.**~~

28 ~~A reasonable opportunity for a fair hearing shall promptly be afforded all interested~~
29 ~~parties. An appeal tribunal shall inquire into and develop all facts bearing on the issues and shall~~
30 ~~receive and consider evidence without regard to statutory and common law rules. The board of~~
31 ~~review shall adopt regulations governing the manner of filing appeals and the conduct of hearings~~
32 ~~and appeals, consistent with chapters 39--41 of this title. A record shall be kept of all testimony~~
33 ~~and proceedings in an appeal, but testimony need not be transcribed unless further review is~~
34 ~~initiated.~~

1 ~~**28-41-20. Consolidated appeals.**~~

2 ~~When the same or substantially similar evidence is material to the matter in issue with~~
3 ~~respect to more than one individual, the same time and place for considering all those cases may~~
4 ~~be fixed, hearings on the evidence jointly conducted, a single record of the proceedings made, and~~
5 ~~evidence introduced with respect to one proceeding considered as introduced in the others,~~
6 ~~provided no party is prejudiced thereby.~~

7 ~~**28-41-21. Decision of appeal tribunal or referee.**~~

8 ~~(a) After a hearing, an appeal tribunal shall make findings and conclusions promptly and~~
9 ~~on the basis of the findings and conclusions affirm, modify, or reverse the director's~~
10 ~~determination. Each party shall be promptly furnished a copy of the decision and the supporting~~
11 ~~findings and conclusions. This decision shall be final unless further review is initiated pursuant to~~
12 ~~§ 28-41-22 within fifteen (15) days after the decision has been mailed to each party's last known~~
13 ~~address or otherwise delivered to him or her, provided that that period may be extended for good~~
14 ~~cause.~~

15 ~~(b) A decision of the referee of the board of review shall be honored and complied with~~
16 ~~until or unless modified or overruled by the board or a court of competent jurisdiction.~~

17 ~~**28-41-22. Appeal to and review by board.**~~

18 ~~Any party in interest, including the director, shall be allowed an appeal to the board of~~
19 ~~review from the decision of an appeal tribunal. The board on its own motion may initiate a review~~
20 ~~of a decision or determination of an appeal tribunal within fifteen (15) days after the date of~~
21 ~~decision. The board may affirm, modify, or reverse the findings or conclusions of the appeal~~
22 ~~tribunal solely on the basis of previously submitted evidence or upon the basis of such additional~~
23 ~~evidence as it may direct to be taken.~~

24 ~~**28-41-23. Removal to board of cases pending before appeal tribunals.**~~

25 ~~The board of review may remove to itself or transfer to another appeal tribunal any~~
26 ~~appeal pending before an appeal tribunal. An appeal so removed to the board before a fair hearing~~
27 ~~has been completed shall be given a fair hearing by the board, as required by § 28-41-19 with~~
28 ~~respect to proceedings before an appeal tribunal.~~

29 ~~**28-41-24. Conclusiveness of decisions -- Reopening in cases of fraud or coercion.**~~

30 ~~All final determinations and decisions shall be conclusive upon all parties in interest,~~
31 ~~including the director. The director, appeal tribunal, or board of review shall reopen a~~
32 ~~determination or decision or revoke permission for withdrawal of an appeal if:~~

33 ~~(1) He, she, or it finds that a worker or employer has been defrauded or coerced in~~
34 ~~connection with the determination, decision, or withdrawal of the appeal; and~~

1 ~~(2) The defrauded or coerced person informs the appropriate officer or body of the fraud~~
2 ~~or coercion within sixty (60) days after he or she has become aware of the fraud or within sixty~~
3 ~~(60) days after the coercion has been removed.~~

4 ~~**28-41-25. Rule of decision -- Certification of questions to board.**~~

5 ~~Final decisions of the board of review and the principles of law declared in their support~~
6 ~~shall be binding in all subsequent proceedings involving similar questions, unless expressly or~~
7 ~~impliedly overruled by a later decision of the board or of a court of competent jurisdiction. Final~~
8 ~~decisions of appeal tribunals and the principles of law declared in their support shall be binding~~
9 ~~on the director and shall further be persuasive authority in subsequent appeal tribunal~~
10 ~~proceedings. If in any subsequent proceedings, the director or an appeal tribunal has serious doubt~~
11 ~~as to the correctness of any principles previously declared by an appeal tribunal or by the board,~~
12 ~~or if there is an apparent inconsistency or conflict in final decisions of comparable authority, then~~
13 ~~the findings of fact in that case may be certified, together with the question of law involved, to the~~
14 ~~board. After giving notice and reasonable opportunity for a hearing upon the law to all parties to~~
15 ~~the proceedings, the board shall certify to the director or appeal tribunal and the parties in interest,~~
16 ~~its answer to the question submitted, or the board, in its discretion, may remove to itself the entire~~
17 ~~proceeding as provided in § 28-41-23 and render its decision upon the entire case.~~

18 ~~**28-41-26. Denial of appeal to board deemed decision of board.**~~

19 ~~For the purposes of judicial review, an appeal tribunal's decision from which an~~
20 ~~application for appeal has been denied by the board of review shall be deemed to be the decision~~
21 ~~of the board, except that the time for initiating judicial review shall run from the date of the~~
22 ~~mailing or delivery of the notice of the denial of the application for appeal by the board.~~

23 ~~**28-41-27. Judicial appeals.**~~

24 ~~Appeals from administrative orders or decisions made pursuant to any provisions of this~~
25 ~~chapter shall be to the sixth division district court, pursuant to chapter 35 of title 42, the~~
26 ~~Administrative Procedures Act.~~

27 ~~**28-41-28. Parties to review -- Service of petition -- Certification of record.**~~

28 ~~The board of review and all parties to the proceedings before it shall be parties to the~~
29 ~~review proceedings. If the director is a party respondent, the petition shall be served by leaving~~
30 ~~with him or her, or any representative whom he or she designates for that purpose, as many~~
31 ~~copies of the petition as there are respondents. Within ten (10) days after filing of the petition, an~~
32 ~~affidavit of compliance shall be filed with the superior court in which the petition has been filed.~~
33 ~~The director shall file with the court certified copies of the record of the case together with his or~~
34 ~~her petition for review or his or her answer to the appellant's petition. Upon the filing of a petition~~

1 for review by the director, or upon service of a petition upon him or her, the director shall send a
2 copy of the petition by registered or certified mail to each party and that mailing shall constitute
3 service upon the parties.

4 ~~**28-41-29. Questions reviewed by court -- Additional evidence -- Precedence --**~~

5 ~~**Appeal to supreme court.**~~

6 The jurisdiction of the reviewing court shall be confined to questions of law and, in the
7 absence of fraud, the findings of fact by the board of review, if supported by substantial evidence
8 regardless of statutory or common-law rules, shall be conclusive. Additional evidence required by
9 the court shall be taken before the board, and the board, after hearing that additional evidence,
10 shall file with the court any additional or modified findings of fact or conclusions that it may
11 make, together with transcripts of the additional record. All proceedings under §§ 28-41-26—28-
12 41-29 shall be summarily heard and given precedence over all other civil cases. Appeals
13 involving benefit rights shall be given precedence over all other cases arising under chapters 39—
14 41 of this title. An appeal may be taken from the decision of the superior court to the supreme
15 court in the same manner as an appeal is taken under § 28-35-29, relating to appeals in cases
16 under the workers' compensation law.

17 ~~**28-41-30. Waiver of rights -- Agreement to pay employer's contributions.**~~

18 No agreement by any individual to waive his or her right to benefits or any other right
19 under chapters 39—41 of this title shall be valid. No agreement by any individual in the employ
20 of any person or concern, to pay all or any portion of the contributions required under these
21 chapters from employers, shall be valid. No employer shall make or require or accept any
22 deduction from wages to finance the contributions required of him or her, or require or accept any
23 waiver by an individual of any right under chapters 39—41 of this title. The director shall have
24 power to take any steps necessary or suitable under those chapters to correct or prosecute any
25 violation.

26 ~~**28-41-31. Fees charged claimants.**~~

27 No individual claiming benefits shall be charged fees of any kind by the director or his or
28 her representative, or by the board of review or its representatives, in any proceeding under
29 chapters 39—41 of this title. Any individual claiming benefits in any proceeding or court action
30 may be represented by counsel or other duly authorized agent. The director shall have the
31 authority to fix the fees of that counsel or other duly authorized agent, but no counsel or agents
32 shall together be allowed to charge or receive for those services more than ten per cent (10%) of
33 the maximum benefits at issue in that proceeding or court action except as specifically allowed by
34 the superior court.

1 ~~**28-41-32. Exemption of benefits from assignment or process.**~~

2 ~~Benefits which are due or may become due under chapters 39—41 of this title shall not~~
3 ~~be assigned, pledged, or encumbered before payment. When awarded, adjudged, or paid, so long~~
4 ~~as they are not mingled with other funds of the recipient, the benefits shall be exempt from all~~
5 ~~claims of creditors, and from levy, execution, and attachment or other remedy now or~~
6 ~~subsequently provided for recovery or collection of debt, which exemption may not be waived.~~

7 ~~**28-41-33. Legal counsel to board of review.**~~

8 ~~(a) The board of review shall be empowered to appoint and employ a qualified attorney,~~
9 ~~who shall act in accordance with any instructions that he or she may receive from the board~~
10 ~~concerning appeals from its decisions and other related duties, and shall be paid an annual base~~
11 ~~salary of eleven thousand dollars (\$11,000).~~

12 ~~(b) Whenever the board becomes a party to court action, the attorney shall represent its~~
13 ~~interests before the courts.~~

14 ~~(c) The duly appointed attorney shall serve in this capacity for a term of three (3) years~~
15 ~~from the date of his or her appointment by the board, and until his or her successor is appointed.~~

16 ~~**28-41-34. Temporary caregiver insurance.**~~

17 ~~The purpose of this chapter is to establish, within the state temporary disability insurance~~
18 ~~program, a temporary caregiver insurance program to provide wage replacement benefits in~~
19 ~~accordance with the provisions of this chapter, to workers who take time off work to care for a~~
20 ~~seriously ill child, spouse, domestic partner, parent, parent-in-law, grandparent, or to bond with a~~
21 ~~new child.~~

22 ~~Definitions as used in this chapter:~~

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

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

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

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

31 ~~(5) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian,~~
32 ~~or other person who stands in loco parentis to the employee or the employee's spouse or domestic~~
33 ~~partner when he/she was a child.~~

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

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

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

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

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

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

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

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

15 **28-41-35. Benefits.**

16 ~~(a) Subject to the conditions set forth in this chapter, an employee shall be eligible for~~
17 ~~temporary caregiver benefits for any week in which he or she is unable to perform his or her~~
18 ~~regular and customary work because he or she is:~~

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

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

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

33 ~~(c) Employees cannot file for both temporary caregiver benefits and temporary disability~~
34 ~~benefits for the same purpose, concurrently, in accordance with all provisions of this act and~~

1 ~~chapters 39-41.~~

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

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

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

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

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

26 ~~(h) No individual shall be entitled to waiting period credit or temporary caregiver benefits~~
27 ~~under this section for any week beginning prior to January 1, 2014. An employer may require an~~
28 ~~employee who is entitled to leave under the federal Family and Medical Leave Act, PL 103-3~~
29 ~~and/or the Rhode Island Parental and Family Medical Leave Act, 28-41 et seq., who exercises his~~
30 ~~or her right to benefits under the temporary caregiver insurance program under this chapter, to~~
31 ~~take any temporary caregiver benefits received, concurrently, with any leave taken pursuant to the~~
32 ~~federal Family and Medical Leave Act and/or the Rhode Island Parental and Family Medical~~
33 ~~Leave Act.~~

34 ~~(i) Temporary caregiver benefits shall be in accordance with federal Family and Medical~~

1 ~~Leave Act (FMLA) P.L. 103-3 and Rhode Island Family Parental and Family Leave Act in~~
2 ~~accordance with § 28-48-1, et seq. An employer may require an employee who is entitled to leave~~
3 ~~under the federal Family and Medical Leave Act, PL 103-3 and/or the Rhode Island Parental and~~
4 ~~Family Medical Leave Act, 28-41 et seq., who exercises his or her right to benefits under the~~
5 ~~temporary caregiver insurance program under this chapter, to take any temporary caregiver~~
6 ~~benefits received, concurrently, with any leave taken pursuant to the federal Family and Medical~~
7 ~~Leave Act and/or the Rhode Island Parental and Family Medical Leave Act.~~

8 **28-41-36. Certification of eligibility for leave.**

9 ~~(a) An individual who exercises his or her right to leave covered by the temporary~~
10 ~~caregiver insurance program under this chapter shall file a certificate form with all information~~
11 ~~required by the department.~~

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

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

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

17 ~~(3) The probable duration of the condition;~~

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

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

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

28 ~~(7) In the case of a parent, or persons who are in loco parentis caring for the serious~~
29 ~~health condition of a foster care child, the employee shall submit all required information in~~
30 ~~accordance with this section, with a written request to the department of children, youth and~~
31 ~~families for the release of medical information by the child's treating licensed qualified health~~
32 ~~care provider. The department of children, youth and families shall transmit the requested~~
33 ~~medical information, pending all properly submitted forms, to the department of labor and~~
34 ~~training, within ten (10) business days of request. In the absence of the requested transmitted~~

1 ~~medical information by the department of children, youth and families within ten (10) business~~
2 ~~days, the employee may request the licensed qualified healthcare provider to directly transmit the~~
3 ~~medical eligibility of the serious health condition to the department of labor and training.~~
4 ~~Payment shall not be delayed, in accordance with all provisions of chapters 39-41, as a result of~~
5 ~~delays by the department of children, youth and families in transmitting medical information.~~

6 ~~(c) The department shall develop a certificate of eligibility form for leave in the case of~~
7 ~~bonding as defined herein, for the birth of a newborn child of the employee or the employee's~~
8 ~~domestic partner, or the placement of a child with the employee in connection with the adoption~~
9 ~~or foster care of the child by the employee or domestic partner, or persons in loco parentis.~~

10 ~~Information shall include the following:~~

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

15 **28-41-37. Determination of a claim.**

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

34 ~~(b) If an appeal is duly filed, benefits with respect to the period prior to the final decision,~~

1 ~~if it is found that those benefits are payable, shall be paid only after the decision. If an appeal~~
2 ~~tribunal affirms a decision of the director, or the board of review affirms a decision of an appeal~~
3 ~~tribunal allowing benefits, those benefits shall be paid regardless of any appeal which may~~
4 ~~subsequently be taken.~~

5 ~~**28-41-38. Confidential health information.**~~

6 ~~Information pursuant to any individual's temporary disability claim or temporary~~
7 ~~caregiver insurance claim shall be held confidential in accordance with chapters 39-41, § 28-39-~~
8 ~~19, 5-37.3, and all applicable state and federal regulations.~~

9 ~~**28-41-39. Powers and duties.**~~

10 ~~The director of the department of labor and training shall have the following powers and~~
11 ~~duties:~~

12 ~~(1) To promulgate regulations relative to the operation of the temporary caregiver~~
13 ~~insurance program;~~

14 ~~(2) To create all necessary applications and certificates to fulfill the purposes of this~~
15 ~~section;~~

16 ~~(3) To disseminate information regarding the program to Rhode Island employers and~~
17 ~~shall carry out a public education program to inform workers and employers about the availability~~
18 ~~of benefits under the temporary caregiver insurance program. The director may use a proportion~~
19 ~~of the funds collected for the temporary caregiver insurance program in a given year to pay for~~
20 ~~the public education program and/or funding received from other sources for the purpose of~~
21 ~~educating the public about their benefits. Outreach information shall be available in English and~~
22 ~~other languages; and~~

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

30 ~~**28-41-40. Fraud and misrepresentation of benefits.**~~

31 ~~(a) The temporary caregiver insurance program shall be part of the temporary disability~~
32 ~~insurance fund. If the director finds that any individual falsely certifies the medical condition of~~
33 ~~any person in order to obtain family temporary disability insurance benefits, with the intent to~~
34 ~~defraud, whether for the maker or for any other person, the director shall assess a penalty against~~

1 ~~the individual in the amount of twenty five percent (25%) of the benefits paid as a result of the~~
2 ~~false certification. Unless otherwise specified to the contrary, all of the provisions of chapters 39~~
3 ~~through 41 of this title shall apply to the temporary caregiver insurance program.~~

4 ~~(b) If a physician or other qualified health care provider licensed by a foreign country is~~
5 ~~under investigation by the department for assisting in the filing of false claims and the department~~
6 ~~does not have the legal remedies to conduct a criminal investigation or prosecution in that~~
7 ~~country, the department may suspend the processing of all further certifications until the licensed~~
8 ~~qualified health care provider fully cooperates and continues to cooperate with the investigation.~~
9 ~~A qualified health care provider licensed by and practicing in a foreign country who has been~~
10 ~~convicted of filing false claims with the department shall be barred indefinitely from filing a~~
11 ~~certificate in support of a temporary disability insurance or temporary caregiver insurance claim~~
12 ~~in the state of Rhode Island.~~

13 **28-41-41. Criminal prosecution.**

14 ~~All criminal actions for any violation of chapters 39-41 of this title, or any rule or~~
15 ~~regulation of the department shall be prosecuted by the attorney general, or by any qualified~~
16 ~~member of the Rhode Island bar, that shall be designated by the director and approved by the~~
17 ~~attorney general to institute and prosecute that action.~~

18 **28-41-42. Receipt of federal funds.**

19 ~~To the extent that funds are made available by the federal government, under Title III of~~
20 ~~the Social Security Act, (42 U.S.C. 501 et seq.), or otherwise for such purpose, the expenses of~~
21 ~~administering chapters 39-41 of this title shall be paid from those funds, provided that this section~~
22 ~~shall not be considered to permit any expenditure of funds from the employment security~~
23 ~~administration account contrary to § 28-42-29. In the event that the Social Security Act is~~
24 ~~amended to permit funds granted under Title III to be used to pay expenses of administering a~~
25 ~~sickness compensation law, such as chapters 39-41 of this title, then from and after the effective~~
26 ~~date of that amendment, the expenses of administering those chapters shall be paid out of the~~
27 ~~employment security administration account or any other account or fund in which funds granted~~
28 ~~under Title III are deposited.~~

29 SECTION 4. Title 28 of the General Laws entitled "LABOR AND LABOR
30 RELATIONS" is hereby amended by adding thereto the following chapter:

31 CHAPTER 39.1

32 RHODE ISLAND INDIVIDUALIZED WORKER SAVINGS ACCOUNT PROGRAM ACT

33 **28-39.1-1. Short title.**

34 Chapters 39.1, 40.1 and 41.1 of this title shall be known and may be cited as the "Rhode

1 Island Individualized Worker Savings Account Act."

2 **28-39.1-2. Definitions.**

3 The following words and phrases, as used in chapters 39.1, 40.1 and 41.1 of this title,
4 have the following meanings unless the context clearly requires otherwise:

5 (1) "Average weekly wage" means the amount determined by dividing the individual's
6 total wages earned for services performed in employment within their base period by the number
7 of that individual's credit weeks within the base period;

8 (2) "Base period" means, with respect to an individual's withdrawal year when the
9 withdrawal year begins on or after October 4, 1992, and for any individual deemed monetarily
10 ineligible for benefits under the "base period" as defined in this subsection, the department shall
11 make a re-determination of entitlement based upon an alternate base period which consists of the
12 last four (4) completed calendar quarters immediately preceding the first day of the claimant's
13 withdrawal year. Notwithstanding anything contained to the contrary in this subsection, the base
14 period shall not include any calendar quarter previously used to establish a valid claim for
15 benefits; provided, however, that the "base period" with respect to members of the United States
16 military service, the Rhode Island National Guard, or a United States military reserve force, and
17 who served in a United States declared combat operation during their military service, who file a
18 claim for benefits following their release from their state or federal active military service and
19 who are deemed to be monetarily ineligible for benefits under this section, shall mean the first
20 four (4) of the most recently completed five (5) calendar quarters immediately preceding the first
21 day the individual was called into that state or federal active military service; provided, that for
22 any individual deemed monetarily ineligible for benefits under the "base period" as defined in this
23 section, the department shall make a redetermination of entitlement based upon an alternative
24 base period which consists of the last four (4) completed calendar quarters immediately preceding
25 the first day the claimant was called into that state or federal active military service.
26 Notwithstanding any provision of this section or of the general or public laws to the contrary, the
27 base period shall not include any calendar quarter previously used to establish a valid claim for
28 benefits;

29 (3) "Benefit" means the money payable, as provided in chapters 39.1, 40.1 and 41.1 of
30 this title, to an individual as compensation for their unemployment caused by sickness;

31 (4) "Benefit rate" means the money payable to an individual as compensation from their
32 individualized worker savings account, as provided in chapters 39.1, 40.1 and 41.1 of this title,
33 for their wage losses with respect to any week during which their unemployment is caused by
34 sickness;

- 1 (5) "Board" means the board of review as referred to in §28-42-34;
- 2 (6) "Calendar quarter" has the same definition as contained in chapter 42 of this title;
- 3 (7) "Claim" means any worker's request to obtain a withdrawal benefit from their
4 individualized worker savings account, due to a disability;
- 5 (8) "Credit week" means any week within an individual's base period in which that
6 individual earns wages amounting to at least twenty (20) times the minimum hourly wage as
7 defined in chapter 12 of this title, for performing services in employment for one or more
8 employers subject to chapters 39.1, 40.1 and 41.1 of this title;
- 9 (9) "Director" means the director of the department of labor and training;
- 10 (10) "Employee" means any person who is or has been employed by an employer subject
11 to chapters 39.1, 40.1 and 41.1 of this title and in employment subject to those chapters;
- 12 (11) "Employer" means any employing unit that is an employer under chapters 42
13 through 44 of this title;
- 14 (12) "Employing unit" has the same definition as contained in chapter 42 of this title and
15 includes all governmental entities;
- 16 (13) "Employment" has the same definition as contained in chapter 42 of this title;
- 17 (14) "Employment office" has the same definition as contained in chapter 42 of this title;
- 18 (15) "Fund" means the Rhode Island individual worker savings account established by
19 this chapter, which shall be composed of individual accounts for each worker who is a participant
20 in this program;
- 21 (16) "Individual savings account withdrawal" means the total amount of money payable
22 to an individual as benefits, as provided in §28-41.1-6;
- 23 (17) "Partial unemployment due to sickness" means an individual shall be deemed
24 partially unemployed due to sickness in any week of less than full-time work if they fail to earn in
25 wages for services for that week an amount equal to the weekly withdrawal rate for total
26 unemployment due to sickness to which they would be entitled if totally unemployed due to
27 sickness and eligible.
- 28 (i) For the purposes of this subsection and §28-39.1-2(21), "Wages" includes only that
29 part of remuneration for any work, which is in excess of one-fifth (1/5) of the weekly withdrawal
30 rate for total unemployment, rounded to the next lower multiple of one dollar (\$1.00), to which
31 the individual would be entitled if totally unemployed and eligible in any one week, and
32 "services" includes only that part of any work for which remuneration in excess of one-fifth (1/5)
33 of the weekly withdrawal rate for total unemployment, rounded to the next lower multiple of one
34 dollar (\$1.00), to which the individual would be entitled if totally unemployed and eligible in any

1 one week is payable; provided, that nothing contained in this subsection shall permit any
2 individual to whom remuneration is payable for any work performed in any week in an amount
3 equal to, or greater than, their weekly withdrawal rate to receive benefits under this subsection for
4 that week.

5 (18) "Services" means all endeavors undertaken by an individual that are paid for by
6 another or with respect to which the individual performing the services expects to receive wages
7 or profits;

8 (19) "Sickness" means an individual shall be deemed to be sick in any week in which,
9 because of their physical or mental condition, including pregnancy, they are unemployed and
10 unable to perform their regular or customary work or services;

11 (20)(i) "Taxes" means the money payments required by chapters 39.1, 40.1 and 41.1 of
12 this title, to be made to the Rhode Island individualized worker savings account;

13 (ii) Wherever and whenever in chapters 39.1, 40.1 and 41.1 of this title, the words
14 "contribution" and/or "contributions" appear, those words shall be construed to mean the "taxes,"
15 as defined in this subsection, which are the money payments required by those chapters to be
16 made to the Rhode Island individualized worker savings account;

17 (21) "Wages" has the same definition as contained in chapter 42 of this title; provided,
18 that no individual shall be denied benefits under chapters 39.1, 40.1 and 41.1 of this title because
19 their employer continues to pay to that individual their regular wages, or parts of them, while they
20 are unemployed due to sickness and unable to perform their regular or customary work or
21 services. The amount of any payments, whether or not under a plan or system, made to or on
22 behalf of an employee by their employer after the expiration of six (6) calendar months following
23 the last calendar month in which the employee performed actual bona fide personal services for
24 their employer, shall not be deemed to be wages either for the purpose of paying contributions
25 thereon under chapter 40.1 of this title, or for the purpose of being used as a basis for paying
26 benefits under chapter 41.1 of this title; and

27 (22) "Week" has the same definition as contained in chapter 42 of this title.

28 (23) "Withdrawal year" means fifty-two (52) consecutive calendar weeks, the first of
29 which shall be the week containing the day as of which they first filed that valid claim in
30 accordance with regulations adopted as subsequently prescribed; provided, that any withdrawal
31 year shall be fifty-three (53) consecutive calendar weeks if the subsequent filing of a new valid
32 claim immediately following the end of a previous withdrawal year would result in the
33 overlapping of any quarter of the base period of the prior new claim. In no event shall a new
34 withdrawal year begin prior to the Sunday next following the end of the old withdrawal year;

1 (i) An individual's withdrawal year will begin on the Sunday of the calendar week in
2 which an individual first became unemployed due to sickness and for which the individual has
3 filed a valid claim for benefits;

4 **28-39.1-3. Conversion of temporary disability insurance funds.**

5 (a) The repeal of the temporary disability insurance program found in chapters 39, 40 and
6 41 of this title and the subsequent enactment of the individualized worker savings account
7 program act in chapters 39.1, 40.1 and 41.1 of this title, necessitated a transitional period to
8 ensure the continuous availability of financial benefits for eligible workers, unable to work, due
9 to non-work related causes.

10 (b) Separate individualized accounts for all employees that were participating in the
11 temporary disability insurance program, as of December 31, 2018, shall be established. Upon the
12 repeal of the temporary disability insurance program, the entirety of its funds shall be transferred
13 to the director who shall utilize the monies to fund the individualized worker savings account
14 program. The transferred temporary disability insurance funds shall be divided and distributed, on
15 a pro rata basis, among the covered workers, in their individualized savings accounts.

16 (c) Recipients of temporary disability insurance benefits as of December 31, 2018, shall
17 continue to receive weekly benefits, as established by the individualized workers' savings account
18 act, as long as they remain eligible and there are funds available for withdrawal in their
19 individualized savings accounts.

20 **28-39.1-4. Creation of fund -- Sources.**

21 There is created the Rhode Island individualized worker savings account fund, which is
22 composed of separate individual worker savings accounts to be administered by the director,
23 without liability on the part of the state beyond the amounts paid into and earned by the fund.
24 This fund shall consist of:

25 (1) All monies that may be allocated to the fund through the workers' contributions to
26 their individual savings account;

27 (2) All payments made in accordance with §28-39.1-29, and all payments of interest;

28 (3) All property and securities acquired by and through the use of monies belonging to
29 the fund; and

30 (4) Interest earned upon the monies belonging to the fund.

31 **28-39.1-5. Withdrawals from fund and individualized worker savings account.**

32 The Rhode Island individualized worker savings account shall be administered and used
33 solely to pay benefits upon vouchers drawn on the fund by the director pursuant to regulations
34 and no other disbursements shall be made from it except as provided in §28-40.1-10. Those

1 regulations shall be governed by and be consistent with any applicable constitutional
2 requirements, but the procedure prescribed by those rules shall be deemed to satisfy and shall be
3 in lieu of any and all statutory requirements for specific appropriation or other formal release by
4 state officers of state monies prior to their expenditure which might otherwise be applicable to
5 withdrawals from the fund.

6 **28-39.1-6. Non-account holder access.**

7 Any worker that funds and maintains an individualized worker savings account pursuant
8 to this chapter, shall be allowed to authorize the access to their account to a designee, who may
9 receive funds from the worker's account, as long as they meet all the other requirement of
10 chapters 39.1, 40.1 and 41.1 of this title.

11 **28-39.1-7. Self-employed workers' election to participate in program.**

12 All workers, that are not employees subject to this chapter, shall be allowed to elect to
13 participate in the individualized worker savings account program established by this chapter. The
14 director is empowered to promulgate rules which establish the terms and conditions it deems
15 necessary to effectuate the inclusion of nonemployees in this program if they so elect.

16 **28-39.1-8. Individualized workers' savings account fund distribution upon death.**

17 Any funds left in an individualized worker savings account at the time of the worker's
18 death shall be property of their estate and shall be transferred, tax exempt, to the worker's estate
19 upon request.

20 **28-39.1-9. Treasurer of fund.**

21 The general treasurer shall be custodian and treasurer of the fund and shall pay all
22 individual withdrawal requests duly authenticated and drawn upon the individualized worker
23 savings account. The general treasurer shall have custody of all monies belonging to the fund and
24 not otherwise held or deposited or invested pursuant to chapters 39.1, 40.1 and 41.1 of this title.
25 The general treasurer shall give bond conditioned on the faithful performance of their duties as
26 custodian and treasurer of the fund, in a form prescribed by statute and approved by the attorney
27 general, and in an amount specified by the director and approved by the governor. The general
28 treasurer shall deposit the monies in their custody subject to chapters 39.1, 40.1 and 41.1 of this
29 title. The general treasurer, as treasurer of the fund, shall assign any subordinates or employees to
30 the department of labor and training that the general treasurer deems necessary, and shall be paid
31 out of funds made available to the department for administration purposes.

32 **28-39.1-10. Responsibility for administration.**

33 Chapters 39.1, 40.1 and 41.1 of this title shall be administered by the department of labor
34 and training. The director and the board of review shall have the same powers and duties with

1 [relation to those chapters as they have to chapters 42 through 44 of this title.](#)

2 **28-39.1-11. Fund solvency surcharge.**

3 [The director is empowered to promulgate a rule that imposes a solvency surcharge upon](#)
4 [workers' contributions to their individualized savings accounts, to ensure the financial soundness](#)
5 [of the fund, which is comprised of separate individual accounts.](#)

6 **28-39.1-12. Investment powers.**

7 [Investment of the funds contained in the individualized worker savings accounts,](#)
8 [managed by the director and treasurer, shall be made as would be done by prudent persons of](#)
9 [discretion and intelligence in these matters, who are seeking a reasonable income and](#)
10 [preservation of their capital.](#)

11 **28-39.1-13. Examination of claimants.**

12 [The director may require any withdrawal claimant to submit to a reasonable examination](#)
13 [or examinations for the purpose of determining their physical or mental condition, the](#)
14 [examination or examinations to be conducted by a qualified health care provider appointed by the](#)
15 [director, and to be made at those times and places that such qualified health care provider, with](#)
16 [the approval of the director, require.](#)

17 **28-39.1-14. Legal representation in actions.**

18 [On the request of the director or the board of review, the attorney general shall represent](#)
19 [the director or the board of review and the state in any court action relating to chapters 39.1, 40.1](#)
20 [and 41.1 of this title or their administration and enforcement, except as special counsel may be](#)
21 [designated by the director with the approval of the governor and except as otherwise provided in](#)
22 [those chapters.](#)

23 **28-39.1-15. Employers' records and reports.**

24 [Every employer and every employing unit employing any person in employment in this](#)
25 [state shall keep true and accurate employment records of all persons employed by them, and of](#)
26 [the weekly hours worked for them by each, and of the weekly wages paid by them to each person.](#)
27 [Every employer and employing unit shall keep records containing any other information that may](#)
28 [be prescribed. Those records shall at all times be available within this state and shall be open to](#)
29 [inspection by the director or their authorized representatives at any reasonable time and as often](#)
30 [as the director deems necessary. The director may require from any employer, or employing unit,](#)
31 [employing any person in this state, any reports covering persons employed by them, on](#)
32 [employment, wages, hours, unemployment, and related matters which the director deems](#)
33 [necessary to the effective administration of chapters 39.1, 40.1 and 41.1 of this title.](#)

34 **28-39.1-16. Procedural regulations – Record of proceedings and testimony.**

1 The manner in which any disputed claims or any other controversies arising out of the
2 interpretation or application of chapters 39.1, 40.1 and 41.1 of this title are presented, or the
3 manner in which hearings and appeals are conducted, shall be in accordance with the prescribed
4 regulations, whether or not those regulations conform to common law or statutory rules of
5 evidence and other technical rules of procedure. A full and complete record shall be kept of all
6 proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed
7 claim shall be recorded but need not be transcribed unless the disputed claim is further appealed.

8 **28-39.1-17. Enforcement of subpoenas.**

9 In case of contumacy by, or refusal to obey a subpoena issued to, any person, pursuant to
10 chapters 39.1, 40.1 and 41.1 of this title, the sixth division of the district court, upon application
11 by the director or the board of review, shall have jurisdiction to issue to that person an order
12 requiring that person to appear before the director or their duly authorized representative, or the
13 board of review or its duly authorized representatives, there to produce evidence if so ordered or
14 there to give testimony touching the matter under investigation or in question. Any failure to obey
15 that order of the court may be punished by the court as a contempt of court. A party aggrieved by
16 an order of the court may appeal that order to the supreme court in accordance with the
17 procedures contained in Article I of the Supreme Court Rules.

18 **28-39.1-18. Witness fees.**

19 Witnesses subpoenaed pursuant to chapters 39.1, 40.1 and 41.1 of this title shall be
20 allowed fees at a rate fixed by the director. Those fees shall be deemed a part of the expense of
21 administering chapters 39.1, 40.1 and 41.1 of this title.

22 **28-39.1-19. Parties to judicial review – Legal representation.**

23 The director or the board of review shall be deemed to be a party to any judicial action
24 involving decisions which have been appealed to the courts and may be represented in any
25 judicial action by any qualified attorney designated by them or it for that purpose, or at their, or
26 its request, by the attorney general.

27 **28-39.1-20. Information held confidential.**

28 Every employee of the department of labor and training is expressly prohibited from
29 divulging to any individual, not officially connected with the department:

30 (1) Any information obtained by the employee in the regular course of duty, or from the
31 records and reports of employing units, or from the permanent records of the department, which
32 would reveal the identity of any individual or employing unit;

33 (2) The number of persons employed by any employing unit;

34 (3) Matters relating to employment of any employing unit;

- 1 (4) The wages earned or paid to any individual;
2 (5) The hours worked by an individual;
3 (6) The type of sickness suffered by any individual; or
4 (7) Any other information relative to the individualized worker savings account
5 withdrawal or payment of it; provided, that this prohibition shall not apply to information
6 concerning wages earned or paid requested in family court proceeding pursuant to §§15-5-24 and
7 15-5-25.

8 **28-39.1-21. Denial of requests for confidential information.**

9 Every request for information relating to the data referred to in §28-39.1-20 shall be
10 denied, and the individual making that request shall be informed that all requests for information
11 must be directed to the director.

12 **28-39.1-22. Denial of requests for information from employment reports.**

13 Every request for information directed to the director shall be denied if the request would
14 necessitate that individual to divulge any information that is declared in §28-42-38 to be held
15 confidential by the director.

16 **28-39.1-23. Agencies entitled to information.**

17 Notwithstanding §28-39.1-21, the director is authorized to divulge the information
18 confidentially held by the department to the agencies enumerated in §28-42-38 as proper agencies
19 entitled to access to that information relating to the administration of individualized worker
20 savings account program.

21 **28-39.1-24. False representations to obtain benefits.**

22 Whoever knowingly makes a false statement or representation to obtain or increase any
23 withdrawal or other payment under chapters 39.1, 40.1 and 41.1 of this title, either for themselves
24 or for any other person, shall upon conviction be punished by a fine of not less than twenty
25 dollars (\$20.00) nor more than fifty dollars (\$50.00), or by imprisonment not longer than thirty
26 (30) days, or by both fine and imprisonment; and each false statement or representation shall
27 constitute a separate and distinct offense.

28 **28-39.1-25. False representations to avoid contributions – Failure to produce**
29 **evidence – Inducing waiver of rights.**

30 Any individual, or employing unit or its agent, who willfully makes a false statement or
31 representation to avoid becoming or remaining subject thereto, or to avoid or reduce any
32 contribution or other payment required of an employing unit under chapters 39.1, 40.1 and 41.1
33 of this title, or who willfully fails or refuses to appear or to testify or produce records as lawfully
34 required hereunder, or who tries to induce any individual to waive any right under those chapters,

1 shall upon conviction be punished by a fine of not less than twenty dollars (\$20.00) nor more than
2 two hundred dollars (\$200), or by imprisonment not longer than sixty (60) days, or by both, fine
3 and imprisonment. Each false statement or representation, and each day of that failure or refusal,
4 shall constitute a separate and distinct offense. If the employer in question is a corporation, every
5 officer of the corporation who knowingly participates in any violation specified in this section
6 shall be subject to these penalties.

7 **28-39.1-26. Pecuniary penalty for failure to make contributions or reports.**

8 An employer who fails to file any report required under chapters 39.1, 40.1 and 41.1 of
9 this title, or who fails or refuses to pay any contributions required under those chapters in the
10 manner and at the times required by the laws and regulations or as the director may, in
11 accordance with those laws and regulations, prescribe, shall pay a penalty of ten dollars (\$10.00)
12 for each failure or refusal to file, and where any contribution is due, shall pay an additional
13 penalty of ten percent (10%) of the amount due. These penalties shall be paid into the
14 individualized worker savings account, and shall be in addition to contributions and interest
15 required to be paid as provided in chapters 39.1, 40.1 and 41.1 of this title; provided, that if any
16 employer fails to pay the penalty, when assessed, it shall be collected by civil action, as provided
17 in §28-40.1-17.

18 **28-39.1-27. Penalty for violations generally.**

19 Any violation of any provision of chapters 39.1, 40.1 and 41.1 of this title or of any order,
20 rule, or regulation of the department for which a penalty is neither prescribed above nor provided
21 by any other applicable statute, shall be punished by a fine of not less than twenty dollars
22 (\$20.00) nor more than fifty dollars (\$50.00), or by imprisonment not longer than thirty (30) days,
23 or by both fine and imprisonment.

24 **28-39.1-28. Disposition of fines.**

25 All fines specified or provided for in §§28-39.1-24 through 28-39.1-27 shall be paid to
26 the Rhode Island individualized worker savings account.

27 **28-39.1-29. Recovery of benefits paid in error.**

28 Any individual who, by reason of a mistake or misrepresentation made by themselves or
29 another, has received any sum as benefits under chapters 39.1, 40.1 and 41.1 of this title, in any
30 week in which any condition for the receipt of those benefits imposed by those chapters was not
31 fulfilled by them, or with respect to any week in which they were disqualified from receiving
32 those benefits, shall in the discretion of the director be liable to have that sum deducted from any
33 future benefits payable to them under those chapters, or shall be liable to repay to the director for
34 the individualized worker savings account a sum equal to the amount so received and that sum

1 shall be collectible in the manner provided in §28-40.1-17 for the collection of past due
2 contributions.

3 **28-39.1-30. Prosecution of actions for penalties.**

4 The director shall be the party complainant to any complaint and warrant brought to
5 invoke the penalties provided for in §§28-39.1-24 through 28-39.1-27 and the director shall be
6 exempt from giving surety for costs in any action.

7 **28-39.1-31. Prosecution of criminal actions.**

8 All criminal actions for any violation of chapters 39.1, 40.1 and 41.1 of this title or any
9 rule or regulation of the department shall be prosecuted by the attorney general or by any
10 qualified member of the Rhode Island bar that shall be designated by the director and approved
11 by the attorney general to institute and prosecute that action.

12 **28-39.1-32. Limitation of prosecutions.**

13 No person shall be convicted of any offense for any violation of chapters 39.1, 40.1 and
14 41.1 of this title or any rule or regulation of the department unless the complaint or warrant for
15 that violation has been issued within five (5) years from the time of the commission of the
16 offense.

17 **28-39.1-33. Functions of treasurer and director of administration.**

18 The general treasurer and the state director of administration shall have the same powers
19 and duties with relation to chapters 39.1, 40.1 and 41.1 of this title as they respectively have to
20 chapters 42 through 44 of this title.

21 **28-39.1-34. Construction of provisions.**

22 Chapters 39.1, 40.1 and 41.1 of this title shall be construed liberally in aid of their
23 declared purpose, which declared purpose is to lighten the burden which now falls on the
24 unemployed worker and his family.

25 **28-39.1-35. Rules.**

26 The director shall be empowered to promulgate any and all rules necessary for the
27 implementation and accommodation of the individualized worker savings account program
28 established by chapters 39.1, 40.1 and 41.1 of this title. That authorization include amending
29 existing rules to accommodate the transition from the temporary disability insurance program to
30 the individualized worker savings account program.

31 **28-39.1-36. Severability.**

32 If any provision of chapters 39.1, 40.1 and 41.1 of this title, or its application to any
33 person or circumstances, is held invalid, the remainder of the chapters and the application of that
34 provision to other persons or circumstances shall not be affected by that invalidity.

1 SECTION 5. Title 28 of the General Laws entitled "LABOR AND LABOR
2 RELATIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 40.1

4 RHODE ISLAND INDIVIDUALIZED WORKER SAVINGS ACCOUNT PROGRAM ACT --
5 CONTRIBUTIONS

6 **28-40.1-1. Amount of employee contributions – Wages on which based.**

7 (a) The taxable wage base under this chapter for each calendar year shall be equal to the
8 greater of thirty-eight thousand dollars (\$38,000) or the annual earnings needed by an individual
9 to qualify for the maximum weekly withdrawal amount and the maximum duration under
10 chapters 39.1, 40.1 and 41.1 of this title. That taxable wage base shall be computed as follows:
11 Every September 30, the maximum weekly withdrawal amount in effect as of that date shall be
12 multiplied by thirty (30) and the resultant product shall be divided by thirty-six hundredths (.36).
13 If the result thus obtained is not an even multiple of one hundred dollars (\$100), it shall be
14 rounded upward to the next higher even multiple of one hundred dollars (\$100). That taxable
15 wage base shall be effective for the calendar year beginning on the next January 1.

16 (b) Each employee shall contribute with respect to employment after the date upon which
17 the employer becomes subject to chapters 39.1, 40.1 and 41.1 of this title, an amount equal to the
18 fund cost rate times the wages paid by the employer to the employee up to the taxable wage base
19 as defined and computed in subsection (a) of this section. The employee contribution rate for the
20 following calendar year shall be determined by computing the fund cost rate on or before
21 November 15 of each year as follows:

22 (1) The total amount of disbursements made from the fund for the twelve (12) month
23 period ending on the immediately preceding September 30 shall be divided by the total taxable
24 wages paid by employers during the twelve (12) month period ending on the immediately
25 preceding June 30. The ratio thus obtained shall be multiplied by one hundred (100) and the
26 resultant product if not an exact multiple of one-tenth of one percent (0.1%) shall be rounded
27 down to the next lowest multiple of one-tenth of one percent (0.1%);

28 (2) If the fund balance as of the preceding September 30 is less than the total
29 disbursements from the fund for the six (6) month period ending on that September 30, that
30 difference shall be added to the total disbursements for the twelve (12) month period ending
31 September 30 for the purpose of computing the fund cost rate, and if the resulting fund cost rate is
32 not an exact multiple of one-tenth of one percent (0.1%) it shall be rounded to the nearest
33 multiple of one-tenth of one percent (0.1%).

34 **28-40.1-2. Exemption of certain disabled persons.**

1 Disabled persons employed through a "supported employment" program as described in
2 the federal Rehabilitation Act amendments of 1992 (29 U.S.C. §701 et seq.) and who are
3 ineligible to receive their withdrawals because their pay is too low may elect to be exempt from
4 the provisions of chapters 39.1, 40.1 and 41.1 of this title.

5 **28-40.1-3. Withholding and disposition of contributions.**

6 Each employer shall withhold in trust contributions from the wages of their employees at
7 the time those wages are earned or paid, shall show the deduction on their payroll records, and
8 shall furnish to their employees any evidence of the deduction as the director may prescribe. Each
9 employer shall transmit all contributions withheld to the individualized worker savings accounts
10 in the manner, at the time, and under the conditions that shall be prescribed by regulations.

11 **28-40.1-4. Contributions held in trust for state.**

12 (a) All contributions withheld by any employer from employees in accordance with the
13 provisions of this chapter, and all contributions withheld by any employer from employees under
14 color of those provisions, shall constitute a trust fund for the state until paid to the director.

15 (b) That trust shall be enforceable against:

16 (1) The employer;

17 (2) Any officer, agent, servant, or employee of any corporate employer responsible for
18 either the withholding or payment, or both, of the contribution; and

19 (3) Any person receiving any part of the fund without consideration, or knowing that the
20 employer or any officer, agent, servant, or employee or any corporate employer is committing a
21 breach of trust.

22 **28-40.1-5. Notice to segregate trust funds.**

23 If the director believes that the payment to the state of the trust fund established under
24 §28-40.1-4 will be jeopardized by delay, neglect, or misappropriation, they shall then notify the
25 employer that the trust fund shall be segregated, and be kept separate and apart from all other
26 funds and assets of the employer and shall not be commingled with any other funds or assets.
27 That notice shall be given by either hand delivery or by registered mail, return receipt requested.
28 Within four (4) days after the sending of that notice, all taxes which subsequently either become
29 collectible or are collected shall be deposited weekly in any financial institution in the state and
30 those contributions shall be designated as a special fund in trust for the state and payable to the
31 state by the employer as trustee of that fund.

32 **28-40.1-6. Penalty for misappropriation.**

33 Any employer and any officer, agent, servant, or employee of any corporate employer
34 responsible for either the withholding or payment of contributions, who appropriates or converts

1 the contributions withheld to their own use or to any use other than the payment of the
2 contributions, to the extent that the money required to be withheld is not available for payment on
3 the due date as prescribed in this chapter, shall upon conviction for each offense be fined not
4 more than one thousand dollars (\$1,000) or be imprisoned for not exceeding one year, or shall be
5 both fined and imprisoned, the fine and imprisonment to be in addition to any other penalty
6 provided by this chapter.

7 **28-40.1-7. Set-off for delinquent contributions.**

8 If the director determines that any individual, or employing unit or its agent, has failed or
9 refused to transmit contributions withheld from the wages of employees in accordance with
10 chapters 39.1, 40.1 and 41.1 of this title, the director shall notify the state controller of this
11 delinquency. The state controller, upon certification of the amount of the delinquency by the
12 director, shall set-off the amount of the delinquency against any payment due that person or entity
13 and the director shall credit that amount against the contributions due. The director may not seek
14 set-off until such time as a delinquency determination for the contributions has been directed to
15 the person or entity. If a person or entity assessed a delinquency determination for contributions
16 has requested a hearing on the assessment within the applicable statutory period, no request for
17 set-off may be made while the matter is pending in the hearing or from any appeal from the
18 hearing.

19 **28-40.1-8. Employer's liability for contributions not withheld.**

20 If any employer fails to deduct the contributions of any of their employees at the time
21 their wages are paid or fails to make a deduction at the time wages are paid for the next
22 succeeding payroll period, they alone shall subsequently be liable for those contributions, and, for
23 the purposes of §§28-39.1-24 through 28-39.1-27 and §§28-40.1-14 through 28-40.1-17 those
24 contributions shall be treated as employers' contributions required from them.

25 **28-40.1-9. Adjustment of erroneous deductions or payments.**

26 If more or less than the correct amount of contributions imposed under §§28-40.1-1
27 through 28-40.1-4 is paid with respect to any wage payments, then, under prescribed regulations,
28 proper adjustments with respect to the contributions shall be made, without interest, in computing
29 contributions next due and payable after the discovery of the error with respect to the next
30 subsequent wage payment by the same employer. If more or less than the correct amount of
31 contributions imposed under §§28-40.1-1 through 28-40.1-4 is paid with respect to any wage
32 payment, then, under prescribed regulations, proper adjustments with respect to both the
33 contributions and the amount to be deducted shall be made, without interest, in connection with
34 the next wage payment to the same employee by the same employer.

1 **28-40.1-10. Overpayments.**

2 (a) If an employer or employee makes application for refund or credit of any amount paid
3 as contributions or interest under this title, and the director determines that the amount or any
4 portion of it was erroneously collected, the director shall, in their discretion, either allow a credit
5 for it, or by voucher duly drawn by the director in an amount and in any manner that the director
6 may prescribe, direct the general treasurer to pay the amount determined to be erroneously
7 collected from the individualized worker savings account.

8 (b) If, in the discretion of the director, a credit is to be allowed, that credit shall be
9 applied against the payment or payments of contributions next due from that employer
10 subsequent to the determination of the director.

11 (c) No refund or credit shall be allowed with respect to a payment as contributions or
12 interest, unless an application for it is made in writing on or before whichever of the following
13 dates is later:

14 (1) One year from the date on which the payment was made; or

15 (2) Three (3) years from the last day of the period with respect to which the payment was
16 made.

17 (d) For a like cause and within the same period, a refund may be made, or a credit
18 allowed, on the motion of the director.

19 (e) No interest shall be allowed or paid with respect to any refund.

20 (f) No refund or credit shall be allowed if the amount involved is less than one dollar
21 (\$1.00).

22 (g) Nothing in this title shall be construed to authorize any refund or credit of money due
23 and payable under the law and regulations in effect at the time the money was paid.

24 **28-40.1-11. Refunds to disabled persons.**

25 (a) Disabled persons employed through a "supported employment" program as described
26 in the federal Rehabilitation Act amendments of 1992 (29 U.S.C. §701 et seq.) and who:

27 (1) Were or are ineligible to receive individualized worker savings account withdrawal
28 because their pay is too low; and

29 (2) During one or more periods of such ineligibility they made contributions to the
30 individualized worker savings accounts, they shall be entitled to a refund of the contributions,
31 without interest.

32 (b) A person eligible for a refund pursuant to subsection (a) of this section for
33 contributions made during the period commencing three (3) years prior to June 30, 1995, shall be
34 entitled for one year after that date to apply for a refund of the contribution, and shall have one

1 year from the date of contribution to apply for a refund of contributions made after June 30, 1995.

2 **28-40.1-12. Set-off for delinquent income taxes.**

3 (a) If the tax administrator determines a person has neglected or refused to pay personal
4 income taxes as defined in chapter 30 of title 44, the tax administrator shall notify the director of
5 labor and training of the delinquency. The director, upon certification of the amount of tax
6 delinquency by the tax administrator, shall set off the amount of the tax delinquency against any
7 individualized worker savings accounts tax refund due that person and shall forward that amount
8 to the tax administrator.

9 (b) The tax administrator may not seek such a set-off unless a delinquency determination
10 for the personal income tax has first been directed to the person. Provided, further, that if a person
11 assessed a delinquency determination for the personal income tax has requested a hearing within
12 the statutory period, no request for set-off may be made while the matter is pending in hearing or
13 any appeal from the hearing.

14 **28-40.1-13. Appeals to board of review.**

15 Any employer, employee, or other person aggrieved by any decision of fact or law by the
16 director as to their, or its liability to make contributions or to withhold and pay contributions, or
17 as to the amount of contributions due from or to be withheld and paid by them, under chapters
18 39.1, 40.1 and 41.1 of this title, or by any refusal of the director to grant a refund or credit under
19 §28-40.1-10, may, either on behalf of themselves, or on behalf of their employees or other
20 persons aggrieved by the decision, or on behalf of both themselves and those employees or
21 persons, within fifteen (15) days after notice of the decision has been mailed to their, or its last
22 known address, file an appeal in writing with the board of review, setting forth the grounds for
23 the appeal. If an appeal is duly filed, the board of review shall set a time and place to give the
24 appellant an opportunity to show cause as to why the decision of the director should be changed.
25 Following that hearing, the board of review shall, as promptly as possible, notify the appellant
26 and the director of its decision on the appeal. The decision shall become final unless the appellant
27 or the director files an appeal to the courts in accordance with §§28-41.1-26 through 28-41.1-28.

28 **28-40.1-14. Interest on delinquent payments.**

29 Employers who fail to make payment of contributions, as required by chapters 39.1, 40.1
30 and 41.1 of this title, or by the prescribed rules and regulations, shall be additionally liable to the
31 individualized worker savings accounts for interest on those delinquent payments at the rate of
32 one and one-half percent (1 1/2%) per month from the date the payment became due until paid.

33 **28-40.1-15. Priority of contributions in insolvency or bankruptcy.**

34 In the event of any distribution of an employer's assets pursuant to an order of any court

1 under the laws of this state, including any receivership, assignment for benefit of creditors,
2 adjudicated insolvency, composition, or similar proceeding, contribution payments then or
3 subsequently due shall have the same priority as given to wage claims of not more than one
4 hundred dollars (\$100) to each claimant, earned within six (6) months of the commencement of
5 the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed
6 extension proposal, or composition, under the federal Bankruptcy Act, (11 U.S.C. §101 et seq.),
7 contributions then or subsequently due shall be entitled to the priority provided in 11 U.S.C.
8 §507.

9 **28-40.1-16. Determination of unreported contributions due.**

10 If an employer for any reporting period fails to make any report used for the purpose of
11 determining the amount of contributions payable under chapters 39.1, 40.1 and 41.1 of this title at
12 the time and in the manner required by the prescribed rules and regulations, or if those reports
13 when filed are incorrect or insufficient, and the employer fails to file a corrected or sufficient
14 report within twenty (20) days after the director has required it by written notice, the director
15 shall determine on the basis of such information as the director may be able to obtain, the amount
16 of contributions due from that employer, and the director shall give written notice to any
17 employer of the amount of contributions so determined. That determination shall finally and
18 irrevocably fix the amount of contributions due unless the employer, within twenty (20) days
19 after the giving of that notice, applies to the board of review for a hearing, or unless the director
20 on their own volition reduces the amount.

21 **28-40.1-17. Civil action to recover contributions.**

22 If any employer fails to make any payment of contributions or interest on them at the
23 time and in the manner required by the prescribed rules and regulations, the amount of
24 contributions so due shall be collected by civil action. All civil actions shall be instituted in the
25 name of the director, and they shall be exempt from giving any surety for costs. Civil actions
26 brought under this section, to collect contributions or interest on them, shall be heard by the court
27 having jurisdiction at the earliest possible date, and shall be entitled to preference upon the
28 calendar of the court over all other civil actions except petitions for a judicial review under
29 chapters 39.1, 40.1 and 41.1 of this title.

30 **28-40.1-18. Representation of director in civil actions.**

31 In any civil action brought to enforce chapters 39.1, 40.1 and 41.1 of this title, the
32 director may be represented by any qualified attorney whom the director has designated and
33 employed for this purpose or, at the director's request, by the attorney general.

34 **28-40.1-19. Contributions as debt to state – Lien on real estate.**

1 (a)(1) The amount of any contributions, interest, and penalties imposed upon any
2 employer under this chapter shall:

3 (i) Be a debt due to the state;

4 (ii) Constitute a trust fund for the state until paid to the director;

5 (iii) Be recoverable at law in the same manner as other debts; and

6 (iv) Until collected constitute a lien upon all the real property located in this state of the
7 following persons or entities:

8 (A) The employer;

9 (B) Any officer, agent, servant, or employee of any corporate employer responsible for
10 either the withholding or payment, or both, of the contribution; and

11 (C) Any person receiving any part of the fund without consideration, or knowing that the
12 employer or any officer, agent, servant, or employee or any corporate employer is committing a
13 breach of trust.

14 (2) The lien shall take precedence over any other lien or encumbrance on that property
15 except as provided in this section. The director may file a notice of that tax lien with the records
16 of land evidence for the city or town where that property is located and it shall be the duty of the
17 recorder of deeds or the city or town clerk having custody of those records to receive, file, and
18 index that notice under the name of the lienee. Any of the preceding provisions of this section to
19 the contrary notwithstanding, the lien imposed by this section shall not be valid with respect to
20 property in any city or town as against any bona fide purchaser, mortgagee, or lessee, whose
21 interest in that real property appears of record in that city or town prior to the time of filing of that
22 notice of tax lien in that city or town.

23 (b) The notice of the tax lien filed shall:

24 (1) Be in writing;

25 (2) Contain the name and last known address of the lienee; and

26 (3) State that the lienee is indebted to the state under this chapter. The notice need not
27 describe the lienee's property, or specify the amount of contributions owed, or the period of time
28 covered by the delinquency. When the notice is filed in a city or town by the director, it shall,
29 unless sooner discharged or released, also apply to property in the city or town subsequently
30 acquired by the lienee during a period of six (6) years from the date of filing and that filing need
31 not be repeated for each successive delinquency of the lienee. The notice shall expire six (6) years
32 from the date of filing unless renewed by again filing a similar notice on or before the expiration
33 date. The director shall be obliged to discharge or release the notice of lien when the lienee is no
34 longer delinquent in the payment of any contributions, interest, or penalties, whether incurred

1 prior or subsequent to the date of filing of that notice, or upon request, following the expiration of
2 the statutory lien period, as set forth in this section.

3 (c) For the filing of a notice of lien or discharge of a lien, the recorder of deeds or the city
4 or town clerk shall be paid, out of any money appropriated for expenses of the director, a fee of
5 four dollars (\$4.00) for a completed entry.

6 (d) The authority granted in this section to the director to file a notice of lien shall not be
7 held to repeal or amend in any other respect §28-39.1-15.

8 **28-40.1-20. Notice of transfer of business – Contributions due immediately.**

9 The sale or transfer by any employer other than receivers, assignees under a voluntary
10 assignment for the benefit of creditors, trustees in bankruptcy, or public officers acting under
11 judicial process, of the major part in value of the assets of that employer other than in the
12 ordinary course of trade and the regular and usual prosecution of that employer's business, shall
13 be fraudulent and void as against the state, unless that employer shall, at least five (5) days before
14 the sale or transfer, notify the director of the proposed sale or transfer and of its price, terms, and
15 conditions and of the character and location of those assets. Whenever that employer makes that
16 sale or transfer, all contributions imposed by this chapter shall be paid at the time when the
17 director is so notified or, if they are not so notified, at the time when they should have been
18 notified.

19 **28-40.1-21. Collection powers.**

20 (a) The director shall have, for the collection of the contributions imposed by this chapter,
21 all powers as are prescribed for collection of contributions in this title. The director may require
22 any person subject to the taxes imposed by this chapter to file with them a bond, issued by a
23 surety company authorized to transact business in this state, in such an amount as the director
24 may fix, to secure the payment of the contributions, penalties, and interest due or which may
25 become due from that employer.

26 (b)(1) The director may require the employer to deposit with the general treasurer a bond
27 by way of cash or other security satisfactory to the director in an amount to be determined by the
28 director, but not greater than an amount equal to double the amount of the estimated tax that
29 would normally be due from the employer each month under this chapter, but in no case shall the
30 deposit be less than one hundred dollars (\$100).

31 (2) Where an employer who has deposited a bond with the general treasurer under
32 subsection (b)(1) of this section has failed to collect or remit contributions in accordance with this
33 chapter, the director may, upon giving written notice to the employer by registered mail or
34 personal service, apply the bond in whole or in part to the amount that should have been

1 collected, remitted, or paid by the employer.

2 **28-40.1-22. Waiver of contributions and interest under one dollar.**

3 If the total amount due to the department of labor and training from an employer in
4 contributions and/or interest for any period is less than one dollar (\$1.00), this amount shall not
5 be assessed.

6 SECTION 6. Title 28 of the General Laws entitled "LABOR AND LABOR
7 RELATIONS" is hereby amended by adding thereto the following chapter:

8 CHAPTER 41.1

9 RHODE ISLAND INDIVIDUALIZED WORKER SAVINGS ACCOUNT PROGRAM ACT --

10 BENEFITS

11 **28-41.1-1. Fund from which benefits payable – Agencies through which paid.**

12 Benefits shall be payable from the fund and shall be paid through employment offices, or
13 any other agencies that the director may designate and the federal Social Security Administration
14 may approve, in accordance with prescribed regulations.

15 **28-41.1-2. Wages included for benefit purposes.**

16 Notwithstanding any provisions of chapters 39.1, 40.1 and 41.1 of this title to the
17 contrary, "wages" as used in the phrase "wages for employment from employers" means, with
18 reference to the benefits provisions of chapters 39.1, 40.1 and 41.1 of this title, only those wages
19 which are paid subsequent to the date upon which the employing unit, by whom those wages
20 were paid, has satisfied the conditions of §28-39.1-2(13) with respect to becoming an employer
21 subject to those chapters. No individual shall be denied benefits under chapters 39.1, 40.1 and
22 41.1 of this title because their employer continued to pay to that individual their regular wages, or
23 parts of them, while they were sick and unable to perform their regular or customary work or
24 services. The amount of any payments, whether or not under a plan or system, made to or on
25 behalf of an employee by their employer after the expiration of six (6) calendar months following
26 the last calendar month in which the employee performed actual bona fide personal services for
27 that employer, shall not be deemed to be wages for the purpose of being used as a basis for
28 paying benefits under chapter 41.1 of this title.

29 **28-41.1-3. Inclusion of unpaid wages.**

30 Wages earned by an employee for employment from employers, which remain unpaid
31 because the assets of the employer for whom that employment was rendered are in the custody or
32 control of an assignee for the benefit of a creditor, receiver, trustee, or any other fiduciary
33 appointed by or under the control of a court of competent jurisdiction, shall, for all purposes of
34 §§28-41.1-1 through 28-41.1-6 and §28-41.1-10, be deemed to be, and shall be treated as though

1 those wages had been paid to that employee during the calendar year within which those wages
2 were earned.

3 **28-41.1-4. Weekly benefit rate – Dependents' allowances.**

4 (a)(1) Benefit rate. The benefit rate payable under this chapter to any eligible individual
5 with respect to any week of their unemployment due to sickness, when that week occurs within a
6 benefit year, shall be four and sixty-two hundredths percent (4.62%) of the wages paid to the
7 individual in that calendar quarter of the base period in which the individual's wages were
8 highest; provided, however, that the benefit rate shall not exceed eighty-five percent (85%) of the
9 average weekly wage paid to individuals covered by chapters 42 through 44 of this title for the
10 preceding calendar year ending December 31. If the maximum weekly benefit rate is not an exact
11 multiple of one dollar (\$1.00) then the rate shall be raised to the next higher multiple of one dollar
12 (\$1.00). Those weekly benefit rates shall be effective throughout the benefit years beginning on
13 or after July 1 of the year prior to July of the succeeding calendar year.

14 (2) The benefit rate of any individual, if not an exact multiple of one dollar (\$1.00), shall
15 be raised to the next higher multiple of one dollar (\$1.00).

16 (b) Dependents' allowances. An individual to whom benefits for unemployment due to
17 sickness are payable under this chapter with respect to any week, shall, in addition to those
18 benefits, be paid with respect to each week a dependent's allowance of ten dollars (\$10.00) or
19 seven percent (7%), of the individual's benefit rate, payable under subsection (a) of this section,
20 whichever is greater for each of that individual's children, including adopted and stepchildren or
21 that individual's court appointed wards who, at the beginning of the individual's benefit year, is
22 under eighteen (18) years of age and who is at that time in fact dependent on that individual. A
23 dependent's allowance shall also be paid to that individual for any child, including an adopted
24 child or a stepchild or that individual's court appointed ward, eighteen (18) years of age or over,
25 incapable of earning any wages because of mental or physical incapacity, and who is dependent
26 on that individual in fact at the beginning of the individual's benefit year, including individuals
27 who have been appointed the legal guardian of that child by the appropriate court. However, in no
28 instance shall the number of dependents for which an individual may receive dependents'
29 allowances exceed five (5) in total. The weekly total of dependents' allowances payable to any
30 individual, if not an exact multiple of one dollar (\$1.00), shall be rounded to the next lower
31 multiple of one dollar (\$1.00). The number of an individual's dependents, and the fact of their
32 dependency, shall be determined as of the beginning of that individual's benefit year; provided,
33 that only one individual shall be entitled to a dependent's allowance for the same dependent with
34 respect to any week. Each individual who claims a dependent's allowance shall establish their

1 claim to it to the satisfaction of the director under procedures established by the director.

2 (c) Any individual's benefit rate and/or dependents' allowance in effect for a benefit year
3 shall continue in effect until the end of that benefit year.

4 (d) Partial unemployment due to sickness. An individual partially unemployed due to
5 sickness and otherwise eligible in any week shall be paid sufficient benefits with respect to that
6 week, so that their wages, rounded to the next higher multiple of one dollar (\$1.00), and their
7 benefits combined will equal in amount the weekly benefit rate to which they would be entitled if
8 totally unemployed due to sickness in that week; provided that an individual must have been
9 totally unemployed due to sickness for at least seven (7) consecutive days prior to claiming
10 partial benefits under this provision; provided, that this provision shall not apply if the individual
11 is entitled to lag day benefits pursuant to §28-41.1-8; provided, further, that nothing contained
12 herein shall permit any individual to whom remuneration is payable for any work performed in
13 any week in an amount equal to or greater than their weekly benefit rate to receive benefits or
14 waiting period credit for that week.

15 **28-41.1-5. Effect on waiting period credit and benefits of receipt of workers'**
16 **compensation payments.**

17 (a) No individual shall be entitled to receive waiting period credit benefits or dependents'
18 allowances with respect to which benefits are paid or payable to that individual under any
19 workers' compensation law of this state, any other state, or the federal government, on account of
20 any disability caused by accident or illness. In the event that workers' compensation benefits are
21 subsequently awarded to an individual, whether on a weekly basis or as a lump sum, for a week
22 or weeks with respect to which that individual has received waiting period credit, benefits, or
23 dependents' allowances, under chapters 39.1, 40.1 and 41.1 of this title, the director, for the
24 individual workers' savings accounts, shall be subrogated to that individual's rights in that award
25 to the extent of the amount of benefits and/or dependents' allowances paid to them under those
26 chapters.

27 Provided, however, that nothing herein shall be construed to deny benefits or waiting
28 period credit benefits or dependents' allowances under this chapter to individuals who receive a
29 lump sum settlement pursuant to §28-33-25 and subsequently apply for benefits under this
30 chapter as long as the sickness or illness is materially different from the one for which the
31 individual was paid workers' compensation, is not affected by said injury, and/or the medical
32 condition did not result from the injury for which the employee was paid workers' compensation
33 benefits.

34 (b)(1) Whenever an employer or their insurance carrier has been notified that an

1 individual has filed a claim for unemployment due to sickness for any week or weeks under
2 chapters 39.1, 40.1 and 41.1 of this title for which week or weeks that individual is or may be
3 eligible for benefits under chapters 29 through 38 of this title, that notice shall constitute a lien
4 upon any pending award, order, or settlement to that individual under chapters 29 through 38 of
5 this title.

6 (2) The employer or their insurance carrier shall be required to reimburse the director, for
7 the individualized worker savings accounts, the amount of benefits and/or dependents' allowances
8 received by the individual under chapters 39.1, 40.1 and 41.1 of this title, for any week or weeks
9 for which that award, order, or settlement is made.

10 (c) Whenever an individual becomes entitled to or is awarded workers' compensation
11 benefits for the same week or weeks with respect to which they have received benefits and/or
12 dependents' allowances under chapters 39.1, 40.1 and 41.1 of this title, and notice of that receipt
13 has been given to the division of workers' compensation of the department of labor and training
14 and/or the workers' compensation court, the division or court is required to and shall incorporate
15 in the award, order, or approval of settlement, an order requiring the employer or their insurance
16 carrier to reimburse the director, for the individualized worker savings accounts, the amount of
17 any disability benefits and/or dependents' allowances which may have been paid to the employee
18 for unemployment due to sickness for those weeks under chapters 39.1, 40.1 and 41.1 of this title.
19 Nothing herein shall be construed to deny benefits under this chapter to individuals who receive a
20 lump sum settlement pursuant to §28-33-25 and subsequently apply for benefits under this
21 chapter as long as the sickness or illness is materially different from the one for which the
22 individual was paid workers' compensation, is not affected by said injury, and/or the medical
23 condition did not result from the injury for which the employee was paid workers' compensation
24 benefits.

25 (d) If, through inadvertence, error, or mistake, an individual has received benefit
26 payments and/or dependents' allowances for any week or weeks under chapters 39.1, 40.1 and
27 41.1 of this title, and has also received payments for the same week or weeks under any workers'
28 compensation law of this state, any other state, or of the federal government, they shall, in the
29 discretion of the director of the department of labor and training, be liable to have that sum
30 deducted from any benefits payable to them under chapters 39.1, 40.1 and 41.1 of this title, or
31 shall be liable to repay to the director, for the individualized worker savings accounts, a sum
32 equal to that amount received, and that sum shall be collectible in the manner provided in §28-
33 40.1-17 for the collection of past due contributions.

34 (e) Notwithstanding any other provision of this section, no individual who, prior to

1 September 1, 1969, has sustained an injury by reason of which they may be eligible for benefits
2 under chapters 29 through 38 of this title shall be deprived of any rights which they may have
3 under through of this title.

4 **28-41.1-6. Total amount of benefits.**

5 The total amount of benefits payable during a benefit year to any eligible individual shall
6 be an amount equal to thirty-six percent (36%) of the individual's total wages for employment by
7 employers subject to chapters 39.1, 40.1 and 41.1 of this title during their base period; provided,
8 that no individual shall be paid total benefits in any benefit year which exceed thirty (30) times
9 their weekly benefit rate; provided further, that dependents' allowances to which they might be
10 entitled under §28-41.1-4 shall be in addition to these total benefits. If the total amount of benefits
11 is not an exact multiple of one dollar (\$1.00), then it shall be raised to the next higher multiple of
12 one dollar (\$1.00).

13 **28-41.1-7. Pregnancy benefits.**

14 An eligible individual who is unemployed due to sickness resulting from pregnancy,
15 childbirth, miscarriage, or abortion shall be entitled to receive those benefits which are regularly
16 provided for unemployment due to sickness in chapters 39.1, 40.1 and 41.1 of this title.

17 **28-41.1-8. Lag day benefits.**

18 (a) An individual who, having been unemployed due to sickness and who is in receipt of
19 benefits under this chapter, returns to work prior to the end of the immediately succeeding week,
20 shall be entitled to one-fifth (1/5) of their benefit rate for each day of unemployment due to
21 sickness in which work is ordinarily performed in the occupation in which they are employed
22 during the week in which they return to work, figured to the highest dollar, including any holiday
23 when the performance of services is waived by their employer; provided, that in no case shall any
24 individual be entitled to more than four-fifths (4/5) of their benefit rate, figured to the highest
25 dollar, for that week.

26 (b) An individual who, having been unemployed due to sickness at a later date during
27 their benefit year, again becomes unemployed due to sickness, and refiles their claim for benefits,
28 shall, if their first day of unemployment begins on a day subsequent to the first day of any week,
29 be entitled to one-fifth (1/5) of their benefit rate for each day in that week in which work is
30 ordinarily performed in the occupation in which they were last employed, including any holiday
31 when the performance of services is waived by their employer, figured to the highest dollar, if
32 their unemployment continues for seven (7) consecutive calendar days, including the first day of
33 unemployment due to sickness for which they have refiled their claim. In no case shall any
34 individual be entitled to more than four-fifths (4/5) of their benefit rate, figured to the highest

1 dollar, for the week in which their unemployment begins on a day subsequent to the first day of
2 that week.

3 **28-41.1-9. Benefits payable for last week of benefit year.**

4 Notwithstanding any provision of chapters 39.1, 40.1 and 41.1 of this title to the contrary,
5 if the benefit year of an individual terminates prior to the end of a week throughout which they
6 are unemployed due to sickness and eligible and their benefit credits for that benefit year have not
7 been exhausted, then that individual shall be entitled to receive for that week the full amount of
8 benefits which they would have received if their benefit year had not so terminated; provided, that
9 this shall in no manner affect the establishment of a new base period and benefit year in
10 accordance with §§28-39.1-2(3) and 28-39.1-2 (5).

11 **28-41.1-10. Eligibility.**

12 (a) In order to be deemed eligible for benefits, an individual whose benefit year begins on
13 or after January 1, 2018, must have been paid wages in:

14 (1) Any one calendar quarter of the base period which are at least two hundred (200)
15 times the minimum hourly wage, as defined in chapter 12 of this title, and must have been paid
16 wages in the base period amounting to at least one and one-half (1 1/2) times the wages paid to
17 the individual in that calendar quarter of the base period in which the individual's wages were
18 highest; provided, that the minimum amount of total base period wages paid to the individual
19 must be at least four hundred (400) times the minimum hourly wage, as defined in chapter 12 of
20 this title. The base period wages must have been paid to the individual for performing services in
21 employment for one or more employers subject to chapters 39.1, 40.1 and 41.1 of this title; or, in
22 the alternative,

23 (2) The base period for performing services in employment for one or more employers
24 subject to chapters 39.1, 40.1 and 41.1 of this title amounting to at least three (3) times the total
25 minimum amount required in subsection (a) of this section.

26 (c) In addition to the provisions of subsection (b) of this section, for benefit years that
27 begin on or after January 1, 2018, an individual must have been unemployed due to sickness for
28 at least seven (7) consecutive days in order to be eligible for benefits.

29 **28-41.1-11. Waiting period.**

30 (a) For benefit years beginning on or after July 6, 2008, the waiting period of any
31 individual shall be either:

32 (1) Seven (7) consecutive days commencing with the Sunday of the week in which the
33 claimant filed a claim for benefits, during which that individual is unemployed due to sickness
34 and during which the individual earned remuneration in an amount less than their weekly benefit

1 rate for work performed during that week prior to their unemployment due to sickness; or

2 (2) Seven (7) consecutive days, commencing with the Sunday of the week following the
3 week in which the individual filed a claim for benefits, during which the individual is
4 unemployed due to sickness and the individual earned remuneration in an amount greater than or
5 equal to their weekly benefit rate for work performed during that week prior to filing a claim for
6 benefits.

7 (b) No waiting period shall be credited to any individual unless they have filed a valid
8 claim in accordance with regulations adopted as prescribed in this title.

9 (c) Benefits shall be payable to an eligible individual only for those weeks of their
10 unemployment due to sickness within a benefit year which occur subsequent to one waiting
11 period, which shall be served at any time during the benefit year. If the first week of an
12 individual's unemployment due to sickness which occurs within their new benefit year is
13 immediately preceded by a week for which they are in receipt of benefits (including lag day
14 payments as provided in §28-41.1-8) for total or partial unemployment due to sickness under
15 chapters 39.1, 40.1 and 41.1 of this title, or under similar federal provisions, they shall not be
16 required to serve a waiting period for that new benefit year.

17 (d) Except as provided in subsection (c) of this section, no period of unemployment due
18 to sickness shall be counted towards an individual's required waiting period if with respect to any
19 portion of that period of unemployment due to sickness, benefits have been paid under the
20 employment security or temporary disability insurance acts of any other state or of any similar
21 acts of the United States or of any foreign government.

22 (e) If an individual is unemployed due to sickness for the seven (7) consecutive days, as
23 provided for in subsection (a) of this section, and their sickness continues for at least an
24 additional twenty-one (21) consecutive days, they shall be eligible to receive benefits for the
25 waiting period of seven (7) consecutive days.

26 **28-41.1-12. Disqualification by receipt of unemployment compensation benefits.**

27 (a)(1) An individual shall be disqualified from receiving benefits during any week with
28 respect to which they will receive remuneration in the form of benefits under an unemployment
29 compensation law of any state or of the United States.

30 (2) Notwithstanding any provisions of chapters 39.1, 40.1 and 41.1 of this title to the
31 contrary, an individual receiving unemployment compensation and who is injured while
32 unemployed and who is then denied unemployment compensation as a result of those injuries,
33 shall, if otherwise eligible, be entitled to receive individualized worker savings account benefits
34 without serving a waiting period as required in §28-41.1-11.

1 (b) Notwithstanding any provisions of chapters 39.1, 40.1 and 41.1 of this title to the
2 contrary, if an individual has been determined to have been paid unemployment compensation
3 benefits and/or dependents' allowances under chapters 42 through 44 of this title, for the same
4 week or weeks with respect to which the individual was entitled to receive individualized worker
5 savings account benefits and/or dependents' allowances under chapters 39.1, 40.1 and 41.1 of this
6 title, that individual shall, at the discretion of the director, be liable to have that sum deducted
7 from any benefits payable to them under chapters 39.1, 40.1 and 41.1 of this title for the same
8 week or weeks, to reimburse the director for the employment security fund.

9 **28-41.1-13. Disqualification by conviction of fraud.**

10 (a) An individual who has been convicted by a court of competent jurisdiction of
11 knowingly or fraudulently making a false statement, or knowingly or fraudulently
12 misrepresenting a material fact, with intent to defraud the individualized worker savings accounts
13 of any benefit or wrongfully to obtain or increase any benefit, either for themselves or for any
14 other person, shall be disqualified from receiving benefits for a period of one year following that
15 conviction.

16 (b) This disqualification shall be imposed by the director and shall be in addition to any
17 criminal penalty which may be imposed under any other provision in chapters 39.1, 40.1 and 41.1
18 of this title.

19 **28-41.1-14. Filing of claims – Restriction on benefits – Copies of laws and**
20 **regulations.**

21 (a) Benefit claims shall be filed pursuant to prescribed regulations.

22 (b) No individual shall be eligible for benefits under this title for any week of
23 unemployment due to sickness that occurs more than ninety (90) days prior to the time when
24 written notice of their claim for benefits is mailed or delivered to the department of labor and
25 training or such other agency as the director may designate. Notwithstanding the above, the
26 director may extend the claim filing period up to twenty-six (26) weeks if the individual can show
27 a good, medical reason for the delay in filing the claim for benefits.

28 (c) Each employer shall post and maintain printed statements of subsection (b) of this
29 section and of those regulations, in places readily accessible to individuals in their service. Those
30 printed statements shall be supplied by the director to each employer without cost to that
31 employer.

32 (d) Upon the filing of a claim, the director shall promptly mail a notice of the filing of the
33 claim to the claimant's most recent employer and to all employers for whom the claimant states
34 they performed services and earned wages during their base period. The employers shall promptly

1 furnish the information required to determine the claimant's benefit rights. If the claimant's
2 employer or employers have any information that might affect either the validity of the claim or
3 the right of the claimant to waiting period credit or benefits, the employer shall return the notice
4 with this information. Notwithstanding any inconsistent provisions of chapters 39.1, 40.1 and
5 41.1 of this title, any employer who fails, without good cause as established to the satisfaction of
6 the director, to return the notice within seven (7) working days of its mailing shall pay a penalty
7 of twenty-five dollars (\$25.00) for each failure. This penalty shall be paid into the individualized
8 worker savings accounts and, if any employer fails to pay the penalty, when assessed, it shall be
9 collected by civil action as provided in §28-40.1-17.

10 **28-41.1-15. Determination of claim.**

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

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

34 **28-41.1-16. Appeal tribunals.**

1 To hear and decide disputed claims, the board of review may appoint one or more
2 impartial referees, each of whom shall constitute an appeal tribunal to hear and decide appeals
3 from determinations and redeterminations. The board may make appointments to this tribunal and
4 fix its salaries in accordance with the state civil service law, rules, and regulations. No person
5 shall participate on behalf of the board in any case in which they are an interested party.

6 **28-41.1-17. Filing of appeal – Parties -- Withdrawal.**

7 Any claimant may file an appeal from the determination of the director to an appeal
8 tribunal within the specified time. The parties to an appeal from a determination shall include all
9 interested parties, including the director. Appeals may be withdrawn at the request of the
10 appellant and with the permission of the appeal tribunal, if the record preceding the appeal and
11 the request for the withdrawal support the correctness of the determination and indicate that no
12 coercion or fraud is involved in the withdrawal.

13 **28-41.1-18. Hearing by appeal tribunal – Regulations – Record of proceedings.**

14 A reasonable opportunity for a fair hearing shall promptly be afforded all interested
15 parties. An appeal tribunal shall inquire into and develop all facts bearing on the issues and shall
16 receive and consider evidence without regard to statutory and common law rules. The board of
17 review shall adopt regulations governing the manner of filing appeals and the conduct of hearings
18 and appeals, consistent with chapters 39.1, 40.1 and 41.1 of this title. A record shall be kept of all
19 testimony and proceedings in an appeal, but testimony need not be transcribed unless further
20 review is initiated.

21 **28-41.1-19. Consolidated appeals.**

22 When the same or substantially similar evidence is material to the matter at issue with
23 respect to more than one individual, the same time and place for considering all those cases may
24 be fixed, hearings on the evidence jointly conducted, a single record of the proceedings made, and
25 evidence introduced with respect to one proceeding considered as introduced in the others,
26 provided no party is prejudiced thereby.

27 **28-41.1-20. Decision of appeal tribunal or referee.**

28 (a) After a hearing, an appeal tribunal shall make findings and conclusions promptly and
29 on the basis of the findings and conclusions affirm, modify, or reverse the director's
30 determination. Each party shall be promptly furnished a copy of the decision and the supporting
31 findings and conclusions. This decision shall be final unless further review is initiated pursuant to
32 §28-41.1-21 within fifteen (15) days after the decision has been mailed to each party's last known
33 address or otherwise delivered to them, provided that that period may be extended for good cause.

34 (b) A decision of the referee of the board of review shall be honored and complied with

1 until or unless modified or overruled by the board or a court of competent jurisdiction.

2 **28-41.1-21. Appeal to and review by board.**

3 Any party in interest, including the director, shall be allowed an appeal to the board of
4 review from the decision of an appeal tribunal. The board on its own motion may initiate a review
5 of a decision or determination of an appeal tribunal within fifteen (15) days after the date of
6 decision. The board may affirm, modify, or reverse the findings or conclusions of the appeal
7 tribunal solely on the basis of previously submitted evidence or upon the basis of such additional
8 evidence as it may direct to be taken.

9 **28-41.1-22. Removal to board of cases pending before appeal tribunals.**

10 The board of review may remove to itself or transfer to another appeal tribunal any
11 appeal pending before an appeal tribunal. An appeal so removed to the board before a fair hearing
12 has been completed shall be given a fair hearing by the board, as required by §28-41.1-17 with
13 respect to proceedings before an appeal tribunal.

14 **28-41.1-23. Conclusiveness of decisions – Reopening in cases of fraud or coercion.**

15 All final determinations and decisions shall be conclusive upon all parties in interest,
16 including the director. The director, appeal tribunal, or board of review shall reopen a
17 determination or decision or revoke permission for withdrawal of an appeal if:

18 (1) They find that a worker or employer has been defrauded or coerced in connection
19 with the determination, decision, or withdrawal of the appeal; and

20 (2) The defrauded or coerced person informs the appropriate officer or body of the fraud
21 or coercion within sixty (60) days after they have become aware of the fraud or within sixty (60)
22 days after the coercion has been removed.

23 **28-41.1-24. Rule of decision – Certification of questions to board.**

24 Final decisions of the board of review and the principles of law declared in their support
25 shall be binding in all subsequent proceedings involving similar questions, unless expressly or
26 impliedly overruled by a later decision of the board or of a court of competent jurisdiction. Final
27 decisions of appeal tribunals and the principles of law declared in their support shall be binding
28 on the director and shall further be persuasive authority in subsequent appeal tribunal
29 proceedings. If in any subsequent proceedings, the director or an appeal tribunal has serious doubt
30 as to the correctness of any principles previously declared by an appeal tribunal or by the board,
31 or if there is an apparent inconsistency or conflict in final decisions of comparable authority, then
32 the findings of fact in that case may be certified, together with the question of law involved, to the
33 board. After giving notice and reasonable opportunity for a hearing upon the law to all parties to
34 the proceedings, the board shall certify to the director or appeal tribunal and the parties in interest,

1 its answer to the question submitted, or the board, in its discretion, may remove to itself the entire
2 proceeding as provided in §28-41.1-21 and render its decision upon the entire case.

3 **28-41.1-25. Denial of appeal to board deemed decision of board.**

4 For the purposes of judicial review, an appeal tribunal's decision from which an
5 application for appeal has been denied by the board of review shall be deemed to be the decision
6 of the board, except that the time for initiating judicial review shall run from the date of the
7 mailing or delivery of the notice of the denial of the application for appeal by the board.

8 **28-41.1-26. Judicial appeals.**

9 Appeals from administrative orders or decisions made pursuant to any provisions of this
10 chapter shall be to the sixth division district court, pursuant to chapter 35 of title 42, the
11 administrative procedures act.

12 **28-41.1-27. Parties to review – Service of petition – Certification of record.**

13 The board of review and all parties to the proceedings before it shall be parties to the
14 review proceedings. If the director is a party respondent, the petition shall be served by leaving
15 with them, or any representative whom they designate for that purpose, as many copies of the
16 petition as there are respondents. Within ten (10) days after filing of the petition, an affidavit of
17 compliance shall be filed with the superior court in which the petition has been filed. The director
18 shall file with the court certified copies of the record of the case together with their petition for
19 review or their answer to the appellant's petition. Upon the filing of a petition for review by the
20 director, or upon service of a petition upon them, the director shall send a copy of the petition by
21 registered or certified mail to each party and that mailing shall constitute service upon the parties.

22 **28-41.1-28. Questions reviewed by court – Additional evidence – Precedence –**
23 **Appeal to supreme court.**

24 The jurisdiction of the reviewing court shall be confined to questions of law and, in the
25 absence of fraud, the findings of fact by the board of review, if supported by substantial evidence
26 regardless of statutory or common law rules, shall be conclusive. Additional evidence required by
27 the court shall be taken before the board, and the board, after hearing that additional evidence,
28 shall file with the court any additional or modified findings of fact or conclusions that it may
29 make, together with transcripts of the additional record. All proceedings under §§28-41.1-25
30 through 28-41.1-28 shall be summarily heard and given precedence over all other civil cases.
31 Appeals involving benefit rights shall be given precedence over all other cases arising under
32 chapters 39.1, 40.1 and 41.1 of this title. An appeal may be taken from the decision of the
33 superior court to the supreme court in the same manner as an appeal is taken under §28-35-30,
34 relating to appeals in cases under the workers' compensation law.

1 **28-41.1-29. Waiver of rights – Agreements to pay employer's contributions.**

2 No agreement by any individual to waive their right to benefits or any other right under
3 chapters 39.1, 40.1 and 41.1 of this title shall be valid. No agreement by any individual in the
4 employ of any person or concern, to pay all or any portion of the contributions required under
5 these chapters from employers, shall be valid. No employer shall make or require or accept any
6 deduction from wages to finance the contributions required of them, or require or accept any
7 waiver by an individual of any right under chapters 39.1, 40.1 and 41.1 of this title. The director
8 shall have power to take any steps necessary or suitable under those chapters to correct or
9 prosecute any violation.

10 **28-41.1-30. Fees charged claimants.**

11 No individual claiming benefits shall be charged fees of any kind by the director or their
12 representative, or by the board of review or its representatives, in any proceeding under chapters
13 39.1, 40.1 and 41.1 of this title. Any individual claiming benefits in any proceeding or court
14 action may be represented by counsel or other duly authorized agent. The director shall have the
15 authority to fix the fees of that counsel or other duly authorized agent, but no counsel or agents
16 shall together be allowed to charge or receive for those services more than ten percent (10%) of
17 the maximum benefits at issue in that proceeding or court action except as specifically allowed by
18 the superior court.

19 **28-41.1-31. Exemption of benefits from assignment or process.**

20 Benefits which are due or may become due under chapters 39.1, 40.1 and 41.1 of this title
21 shall not be assigned, pledged, or encumbered before payment. When awarded, adjudged, or paid,
22 so long as they are not mingled with other funds of the recipient, the benefits shall be exempt
23 from all claims of creditors, and from levy, execution, and attachment or other remedy now or
24 subsequently provided for recovery or collection of debt, which exemption may not be waived.

25 **28-41.1-32. Legal counsel to board of review.**

26 (a) The board of review shall be empowered to appoint and employ a qualified attorney,
27 who shall act in accordance with any instructions that they may receive from the board
28 concerning appeals from its decisions and other related duties, and shall be paid an annual base
29 salary of eleven thousand dollars (\$11,000).

30 (b) Whenever the board becomes a party to court action, the attorney shall represent its
31 interests before the courts.

32 (c) The duly appointed attorney shall serve in this capacity for a term of three (3) years
33 from the date of their appointment by the board, and until their successor is appointed.

34 **28-41.1-33. Temporary caregiver insurance.**

1 The purpose of this chapter is to establish, within the state individualized worker savings
2 account, a temporary caregiver insurance program to provide wage replacement benefits in
3 accordance with the provisions of this chapter, to workers who take time off work to care for a
4 seriously ill child, spouse, domestic partner, parent, parent-in-law, grandparent, or to bond with a
5 new child.

6 Definitions as used in this chapter:

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

8 (2) "Bonding or bond" means to develop a psychological and emotional attachment
9 between a child and their parent(s) or persons who stands in loco parentis. This shall involve
10 being in one another's physical presence.

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

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

15 (5) "Domestic partner" means a party to a civil union as defined by chapter 3.1 of title 15.

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

18 (7) "Grandparent" means a parent of the employee's parent.

19 (8) "Newborn child" means a child under one year of age.

20 (9) "Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian,
21 or other person who stands in loco parentis to the employee or the employee's spouse or domestic
22 partner when they were a child.

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

24 (11) "Person who stands in loco parentis" means those with day-to-day responsibilities to
25 care for and financially support a child or, in the case of an employee, who had such
26 responsibility for the employee when the employee was a child. A biological or legal relationship
27 shall not be required.

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

31 (13) "Spouse" means a party in a common law marriage, a party in a marriage conducted
32 and recognized by another state or country, or in a marriage as defined by chapter 3 of title 15.

33 **28-41.1-34. Benefits.**

34 (a) Subject to the conditions set forth in this chapter, an employee shall be eligible for

1 temporary caregiver benefits for any week in which they are unable to perform their regular and
2 customary work because they are:

3 (1) Bonding with a newborn child or a child newly placed for adoption or foster care with
4 the employee or domestic partner in accordance with the provisions of §28-41.1-35(c)(1); or

5 (2) Caring for a child, a parent, parent-in-law, grandparent, spouse, or domestic partner,
6 who has a serious health condition, subject to a waiting period in accordance with the provisions
7 of §28-41.1-11. Employees may use accrued sick time during the eligibility waiting period in
8 accordance with the policy of the individual's employer.

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

16 (c) Employees cannot file for both temporary caregiver benefits and individualized
17 worker savings account benefits for the same purpose, concurrently, in accordance with all
18 provisions of this act and chapters 39.1, 40.1 and 41.1 of this title.

19 (d) Temporary caregiver benefits may be available to any individual exercising their right
20 to leave while covered by the temporary caregiver insurance program, commencing on or after
21 January 1, 2014, which shall not exceed the individual's maximum benefits in accordance with
22 chapters 39.1, 40.1 and 41.1 of this title. The benefits for the temporary caregiver program shall
23 be payable with respect to the first day of leave taken after the waiting period and each
24 subsequent day of leave during that period of family individualized worker savings accounts.
25 Benefits shall be in accordance with the following:

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

28 (e) In addition, no individual shall be paid temporary caregiver benefits and
29 individualized worker savings account benefits which together exceed thirty (30) times their
30 weekly benefit rate in any benefit year.

31 (f) Any employee who exercises their right to leave covered by temporary caregiver
32 insurance under this chapter shall, upon the expiration of that leave, be entitled to be restored by
33 the employer to the position held by the employee when the leave commenced, or to a position
34 with equivalent seniority, status, employment benefits, pay, and other terms and conditions of

1 employment including fringe benefits and service credits that the employee had been entitled to at
2 the commencement of leave.

3 (g) During any caregiver leave taken pursuant to this chapter, the employer shall maintain
4 any existing health benefits of the employee in force for the duration of the leave as if the
5 employee had continued in employment continuously from the date they commence the leave
6 until the date the caregiver benefits terminate; provided, however, that the employee shall
7 continue to pay any employee shares of the cost of health benefits as required prior to the
8 commencement of the caregiver benefits.

9 (h) No individual shall be entitled to waiting period credit or temporary caregiver benefits
10 under this section for any week beginning prior to January 1, 2014. An employer may require an
11 employee who is entitled to leave under the federal Family and Medical Leave Act, 29 U.S.C.
12 §2611 et seq., and/or the Rhode Island parental and family medical leave act, chapter 41 of title
13 28 et seq., who exercises their right to benefits under the temporary caregiver insurance program
14 under this chapter, to take any temporary caregiver benefits received, concurrently, with any
15 leave taken pursuant to the federal Family and Medical Leave Act and/or the Rhode Island
16 parental and family medical leave act.

17 (i) Temporary caregiver benefits shall be in accordance with federal Family and Medical
18 Leave Act (FMLA), 29 U.S.C. §2611 et seq., and Rhode Island parental and family leave act,
19 chapter 41 of title 28 et seq. An employer may require an employee who is entitled to leave under
20 the federal Family and Medical Leave Act, 29 U.S.C. §2611 et seq., and/or the Rhode Island
21 parental and family medical leave act, chapter 41 of title 28 et seq., who exercises their right to
22 benefits under the temporary caregiver insurance program under this chapter, to take any
23 temporary caregiver benefits received, concurrently, with any leave taken pursuant to the federal
24 Family and Medical Leave Act and/or the Rhode Island parental and family medical leave act.

25 **28-41.1-35. Certification of eligibility for leave.**

26 (a) An individual who exercises their right to leave covered by the temporary caregiver
27 insurance program under this chapter shall file a certificate form with all information required by
28 the department.

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

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

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

34 (3) The probable duration of the condition;

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

3 (5) A statement that the serious health condition warrants the participation of the
4 employee to provide care for their family member. "Warrants the participation of the employee"
5 means and includes, but is not limited to, providing psychological comfort, arranging third-party
6 care for the family member as well as directly providing, or participating in the medical and
7 physical care of the patient;

8 (6) A certificate filed to establish medical eligibility of the serious health condition of the
9 employee's family member shall be made by the family member's treating licensed qualified
10 health care provider; and

11 (7) In the case of a parent, or persons who are in loco parentis caring for the serious
12 health condition of a foster child, the employee shall submit all required information in
13 accordance with this section, with a written request to the department of children, youth and
14 families for the release of medical information by the child's treating licensed qualified health
15 care provider. The department of children, youth and families shall transmit the requested
16 medical information, pending all properly submitted forms, to the department of labor and
17 training, within ten (10) business days of request. In the absence of the requested transmitted
18 medical information by the department of children, youth and families within ten (10) business
19 days, the employee may request the licensed qualified health care provider to directly transmit the
20 medical eligibility of the serious health condition to the department of labor and training.
21 Payment shall not be delayed, in accordance with all provisions of chapters 39.1, 40.1 and 41.1 of
22 this title, as a result of delays by the department of children, youth and families in transmitting
23 medical information.

24 (c) The department shall develop a certificate of eligibility form for leave in the case of
25 bonding as defined herein, for the birth of a newborn child of the employee or the employee's
26 spouse or domestic partner, or the placement of a child with the employee in connection with the
27 adoption or foster care of the child by the employee, or their spouse or domestic partner, or
28 persons in loco parentis. Information shall include the following:

29 (1) A birth certificate, certificate of adoption, or other competent evidence showing the
30 employee or the employee's spouse or domestic partner, or person(s) in loco parentis is the parent
31 of the child within twelve (12) months of the child's adoption, birth or placement for adoption or
32 foster care with the employee.

33 **28-41.1-36. Determination of a claim.**

34 (a) In accordance with §28-41.1-14, upon the filing of a claim, the director shall promptly

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

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

23 **28-41.1-37. Confidential health information.**

24 Information pursuant to any individual's temporary disability claim or temporary
25 caregiver insurance claim shall be held confidential in accordance with chapters 39.1, 40.1 and
26 41.1 of this title, and all applicable state and federal regulations.

27 **28-41.1-38. Powers and duties.**

28 The director of the department of labor and training shall have the following powers and
29 duties:

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

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

34 (3) To disseminate information regarding the program to Rhode Island employers and

1 shall carry out a public education program to inform workers and employers about the availability
2 of benefits under the temporary caregiver insurance program. The director may use a proportion
3 of the funds collected for the temporary caregiver insurance program in a given year to pay for
4 the public education program and/or funding received from other sources for the purpose of
5 educating the public about their benefits. Outreach information shall be available in English and
6 other languages; and

7 (4) To inform Rhode Island employees of their disability insurance rights and benefits
8 due to the employee's own sickness, injury, or pregnancy, or the employee's need to provide care
9 for any sick or injured family member or new child. The notice shall be given by every eligible
10 employer to each new employee hired on or after January 1, 2014, and to each employee taking
11 leave from work on or after January 1, 2014, due to pregnancy or the need to provide care for any
12 sick or injured family member or new child. The director shall require each employer to post and
13 maintain information regarding the program in accordance with §28-41.1-14.

14 **28-41.1-39. Fraud and misrepresentation of benefits.**

15 (a) The temporary caregiver insurance program shall be part of the individualized worker
16 savings account program. If the director finds that any individual falsely certifies the medical
17 condition of any person in order to obtain family individualized worker savings account benefits,
18 with the intent to defraud, whether for the worker or for any other person, the director shall assess
19 a penalty against the individual in the amount of twenty-five percent (25%) of the benefits paid as
20 a result of the false certification. Unless otherwise specified to the contrary, all of the provisions
21 of chapters 39.1, 40.1 and 41.1 of this title shall apply to the temporary caregiver insurance
22 program.

23 (b) If a physician or other qualified health care provider licensed by a foreign country is
24 under investigation by the department for assisting in the filing of false claims and the department
25 does not have the legal remedies to conduct a criminal investigation or prosecution in that
26 country, the department may suspend the processing of all further certifications until the licensed
27 qualified health care provider fully cooperates and continues to cooperate with the investigation.
28 A qualified health care provider licensed by and practicing in a foreign country who has been
29 convicted of filing false claims with the department shall be barred indefinitely from filing a
30 certificate in support of an individualized worker savings accounts or temporary caregiver
31 insurance claim in the state of Rhode Island.

32 **28-41.1-40. Criminal prosecution.**

33 All criminal actions for any violation of chapters 39.1, 40.1 and 41.1 of this title, or any
34 rule or regulation of the department shall be prosecuted by the attorney general, or by any

1 qualified member of the Rhode Island bar, that shall be designated by the director and approved
2 by the attorney general to institute and prosecute that action.

3 **28-41.1-41. Receipt of federal funds.**

4 To the extent that funds are made available by the federal government, under Title III of
5 the Social Security Act, (42 U.S.C. §501 et seq.), or otherwise for such purpose, the expenses of
6 administering chapters 39.1, 40.1 and 41.1 of this title shall be paid from those funds, provided
7 that this section shall not be considered to permit any expenditure of funds from the employment
8 security administration account contrary to §28-42-29. In the event that the Social Security Act is
9 amended to permit funds granted under Title III to be used to pay expenses of administering a
10 sickness compensation law, such as chapters 39.1, 40.1 and 41.1 of this title, then from and after
11 the effective date of that amendment, the expenses of administering those chapters shall be paid
12 out of the employment security administration account or any other account or fund in which
13 funds granted under Title III are deposited.

14 SECTION 7. Sections 1, 2, and 3 shall take effect on December 31, 2018. Sections 4, 5
15 and 6 shall take effect on January 1, 2019. Section 7 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 -- INDIVIDUALIZED WORKER
SAVINGS ACCOUNT PROGRAM ACT

1 This act would abolish the current temporary disability insurance program and replace it
2 with a flexible, expansive and mandatory new program that compensates all workers who become
3 disabled due to non-work related injuries. Completely employee funded, deductions from wages
4 would be based upon the current TDI deductions. The director of the department of labor and
5 training would maintain individualized worker savings accounts for each worker, funded by
6 workers' deductions. Partially based upon the current TDI substantive and procedural guidelines,
7 disabled employees would be allowed to withdraw weekly amounts from their individual
8 accounts during their disability. A limiting factor in the amount and duration of the weekly
9 withdrawal would be the worker's particular account balance.

10 Sections 1, 2, and 3 would take effect on December 31, 2018. Sections 4, 5 and 6 would
11 take effect on January 1, 2019. Section 7 would take effect upon passage.

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