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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO LABOR AND LABOR RELATIONS - WORKERS' COMPENSATION

Introduced By: Senators Ruggerio, Goodwin, Miller, Lanzi, and Doyle

Date Introduced: February 11, 2010

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-29-2 and 28-29-6.1 of the General Laws in Chapter 28-29
2 entitled "Workers' Compensation - General Provisions" are hereby amended to read as follows:

3 **28-29-2. Definitions.** -- In chapters 29 -- 38 of this title, unless the context otherwise
4 requires:

5 (1) "Department" means the department of labor and training.

6 (2) "Director" means the director of labor and training or his or her designee unless
7 specifically stated otherwise.

8 (3) (i) "Earnings capacity" means the weekly straight time earnings which an employee
9 could receive if the employee accepted an actual offer of suitable alternative employment.
10 Earnings capacity can also be established by the court based on evidence of ability to earn,
11 including, but not limited to, a determination of the degree of functional impairment and/or
12 disability, that an employee is capable of employment. The court may, in its discretion, take into
13 consideration the performance of the employee's duty to actively seek employment in scheduling
14 the implementation of the reduction. The employer need not identify particular employment
15 before the court can direct an earnings capacity adjustment. In the event that an employee returns
16 to light duty employment while partially disabled, an earnings capacity shall not be set based
17 upon actual wages earned until the employee has successfully worked at light duty for a period of
18 at least thirteen (13) weeks.

19 (ii) As used under the provisions of this title, "functional impairment" means an

1 anatomical or functional abnormality existing after the date of maximum medical improvement as
2 determined by a medically or scientifically demonstrable finding and based upon the most recent
3 edition of the American Medical Association's Guide to the Evaluation of Permanent Impairment
4 or comparable publications of the American Medical Association.

5 (iii) In the event that an employee returns to employment at an average weekly wage
6 equal to the employee's pre-injury earnings exclusive of overtime, the employee will be presumed
7 to have regained his/her earning capacity.

8 (4) "Employee" means any person who has entered into the employment of or works
9 under contract of service or apprenticeship with any employer, except that in the case of a city or
10 town other than the city of Providence it shall only mean that class or those classes of employees
11 as may be designated by a city, town, or regional school district in a manner provided in this
12 chapter to receive compensation under chapters 29 -- 38 of this title. Any person employed by the
13 state of Rhode Island, except for sworn employees of the Rhode Island State Police, who is
14 otherwise entitled to the benefits of chapter 19 of title 45 shall be subject to the provisions of
15 chapters 29 -- 38 of this title for all case management procedures and dispute resolution for all
16 benefits. The term "employee" does not include any individual who is a shareholder or director in
17 a corporation, general or limited partners in a general partnership, a registered limited liability
18 partnership, a limited partnership, or partners in a registered limited liability limited partnership,
19 or any individual who is a member in a limited liability company. These exclusions do not apply
20 to shareholders, directors and members who have entered into the employment of or who work
21 under a contract of service or apprenticeship within a corporation or a limited liability company.
22 The term "employee" also does not include a sole proprietor, independent contractor, or a person
23 whose employment is of a casual nature, and who is employed other than for the purpose of the
24 employer's trade or business, or a person whose services are voluntary or who performs charitable
25 acts, nor shall it include the members of the regularly organized fire and police departments of
26 any town or city. Whenever a contractor has contracted with the state, a city, town, or regional
27 school district any person employed by that contractor in work under contract shall not be
28 deemed an employee of the state, city, town, or regional school district as the case may be. Any
29 person who on or after January 1, 1999, was an employee and became a corporate officer shall
30 remain an employee, for purposes of these chapters, unless and until coverage under this act is
31 waived pursuant to subsection 28-29-8(b) or section 28-29-17. Any person who is appointed a
32 corporate officer between January 1, 1999 and December 31, 2001, and was not previously an
33 employee of the corporation, will not be considered an employee, for purposes of these chapters,
34 unless that corporate officer has filed a notice pursuant to subsection 28-29-19(b). In the case of a

1 person whose services are voluntary or who performs charitable acts, any benefit received, in the
2 form of monetary remuneration or otherwise, shall be reportable to the appropriate taxation
3 authority but shall not be deemed to be wages earned under contract of hire for purposes of
4 qualifying for benefits under chapters 29 -- 38 of this title. Any reference to an employee who had
5 been injured shall, where the employee is dead, include a reference to his or her dependents as
6 defined in this section, or to his or her legal representatives, or, where he or she is a minor or
7 incompetent, to his or her conservator or guardian. A "seasonal occupation" means those
8 occupations in which work is performed on a seasonal basis of not more than sixteen (16) weeks.

9 (5) "Employer" includes any person, partnership, corporation, or voluntary association,
10 and the legal representative of a deceased employer; it includes the state, and the city of
11 Providence. It also includes each city, town, and regional school district in the state that votes or
12 accepts the provisions of chapters 29 -- 38 of this title in the manner provided in this chapter.

13 (6) "General or special employer":

14 (i) "General employer" includes but is not limited to temporary help companies and
15 employee leasing companies and means a person who for consideration and as the regular course
16 of its business supplies an employee with or without vehicle to another person.

17 (ii) "Special employer" means a person who contracts for services with a general
18 employer for the use of an employee, a vehicle, or both.

19 (iii) Whenever there is a general employer and special employer wherein the general
20 employer supplies to the special employer an employee and the general employer pays or is
21 obligated to pay the wages or salaries of the supplied employee, then, notwithstanding the fact
22 that direction and control is in the special employer and not the general employer, the general
23 employer, if it is subject to the provisions of the Workers' Compensation Act or has accepted that
24 Act, shall be deemed to be the employer as set forth in subdivision (5) of this section and both the
25 general and special employer shall be the employer for purposes of sections 28-29-17 and 28-29-
26 18. However, the special employee shall not be deemed to be the employer for purposes of
27 section 28-29-20.

28 (iv) Effective January 1, 2003, whenever a general employer enters into a contract or
29 arrangement with a special employer to supply an employee or employees for work, the special
30 employer shall require an insurer generated insurance coverage certification, on a form prescribed
31 by the department, demonstrating Rhode Island workers' compensation and employer's liability
32 coverage evidencing that the general employer carries workers' compensation insurance with that
33 insurer with no indebtedness for its employees for the term of the contract or arrangement. In the
34 event that the special employer fails to obtain and maintain at policy renewal and thereafter this

1 insurer generated insurance coverage certification demonstrating Rhode Island workers'
2 compensation and employer's liability coverage from the general employer, the special employer
3 is deemed to be the employer pursuant to the provisions of this section. Upon the cancellation or
4 failure to renew, the insurer having written the workers' compensation and employer's liability
5 policy shall notify the certificate holders and the department of the cancellation or failure to
6 renew and upon notice, the certificate holders shall be deemed to be the employer for the term of
7 the contract or arrangement unless or until a new certification is obtained.

8 (7) (i) "Injury" means and refers to personal injury to an employee arising out of and in
9 the course of his or her employment, connected and referable to the employment.

10 (ii) An injury to an employee while voluntarily participating in a private, group, or
11 employer-sponsored carpool, vanpool, commuter bus service, or other rideshare program, having
12 as its sole purpose the mass transportation of employees to and from work shall not be deemed to
13 have arisen out of and in the course of employment. Nothing in the foregoing provision shall be
14 held to deny benefits under chapters 29 -- 38 and chapter 47 of this title to employees such as
15 drivers, mechanics, and others who receive remuneration for their participation in the rideshare
16 program. Provided, that the foregoing provision shall not bar the right of an employee to recover
17 against an employer and/or driver for tortious misconduct.

18 (8) "Maximum medical improvement" means a point in time when any medically
19 determinable physical or mental impairment as a result of injury has become stable and when no
20 further treatment is reasonably expected to materially improve the condition. Neither the need for
21 future medical maintenance nor the possibility of improvement or deterioration resulting from the
22 passage of time and not from the ordinary course of the disabling condition, nor the continuation
23 of a pre-existing condition precludes a finding of maximum medical improvement. A finding of
24 maximum medical improvement by the workers' compensation court may be reviewed only
25 where it is established that an employee's condition has substantially deteriorated or improved.

26 (9) "Physician" means medical doctor, surgeon, dentist, licensed psychologist,
27 chiropractor, osteopath, podiatrist, or optometrist, as the case may be.

28 (10) "Suitable alternative employment" means employment or an actual offer of
29 employment which the employee is physically able to perform and will not exacerbate the
30 employee's health condition and which bears a reasonable relationship to the employee's
31 qualifications, background, education, and training. The employee's age alone shall not be
32 considered in determining the suitability of the alternative employment.

33 (11) "Independent contractor" means a person who has filed a notice of designation as
34 independent contractor with the director pursuant to section 28-29-17.1 or as otherwise found by

1 the workers' compensation court.

2 (12) "Leased employee" means an employee leased to a special employer by a labor-
3 leasing firm under an agreement between the special employer and the labor-leasing firm, to
4 perform duties related to the conduct of the special employer's business. "Leased employee" does
5 not include a "temporary employee".

6 (13) "Temporary employee" means an employee who is furnished to a special employer
7 to substitute for a "permanent employee" or for a "leased employee" as defined in this section, or
8 to meet seasonal or short-team workload conditions of the special employer.

9 **28-29-6.1. Secondary provision of workers' compensation insurance.** – (a) Whenever
10 a general contractor or a construction manager enters into a contract with a subcontractor for
11 work to be performed in Rhode Island, the general contractor or construction manager shall at all
12 times require written documentation evidencing that the subcontractor carries workers'
13 compensation insurance with no indebtedness for its employees for the term of the contract or is
14 an independent contractor pursuant to the provisions of section 28-29-17.1. In the event that the
15 general contractor or construction manager fails to obtain ~~the written documentation~~ and maintain
16 at policy renewal this insurer generated insurance coverage certification demonstrating Rhode
17 Island workers' compensation and employer's liability coverage from the subcontractor, the
18 general contractor or construction manager shall be deemed to be the employer pursuant to
19 provisions of section 28-29-2. Upon the cancellation or failure to renew, the insurer having
20 written the workers' compensation and employer's liability policy shall notify the certificate
21 holders and the division of workers compensation of the cancellation or failure to renew, and
22 thereafter the certificate holders shall be deemed to be the employer for the duration of the
23 contract or arrangement unless or until a new certificate has been obtained.

24 (b) For the purposes of this section, "construction manager" means an individual
25 corporation, partnership, or joint venture or other legal entity responsible for supervising and
26 controlling all aspects of construction work to be performed on the construction project, as
27 designated in the project documents, in addition to the possibility of performing some of the
28 construction services itself. For the purposes of this section, the construction manager need have
29 no contractual involvement with any of the parties to the construction project other than the
30 owner, or may contract directly with the trade contractors pursuant to its agreement with the
31 owner.

32 (c) This section only applies to a general contractor, subcontractor, or construction
33 manager deemed an employer subject to the provisions of Chapters 29 -- 38 of this title, as
34 provided in section 28-29-6.

1 (d) Whenever the workers' compensation insurance carrier is obligated to pay workers'
2 compensation benefits to the employee of an uninsured subcontractor, the workers' compensation
3 insurance carrier shall have a complete right of indemnification to the extent benefits are paid
4 against either the uninsured subcontractor, uninsured general contractor or uninsured construction
5 manager.

6 SECTION 2. Section 28-33-19 of the General Laws in Chapter 28-33 entitled "Workers'
7 Compensation - Benefits" is hereby amended to read as follows:

8 **28-33-19. Additional compensation for specific injuries.** -- (a) (1) In case of the
9 following specified injuries there shall be paid in addition to all other compensation provided for
10 in chapters 29 to 38 of this title a weekly payment equal to ~~one-half (1/2) of the average weekly~~
11 ~~earnings of the injured employee, but in no case more than ninety dollars (\$90.00) nor less than~~
12 ~~forty five dollars (\$45.00) per week.~~ seventy-five percent (75%) of his or her average weekly
13 spendable base wage, earnings or salary as computed pursuant to the provisions of section 28-33-
14 20, except that said weekly payment shall not be more than sixty percent (60%) of the state
15 average weekly wage of individuals in covered employment under the provisions of the Rhode
16 Island Employment Security Act, as computed and established by the Rhode Island department of
17 labor and training annually on or before May 31st of each year under the provisions of subsection
18 28-44-6(a). Payment made under this section shall be made in a one time payment unless the
19 parties otherwise agree. Payment shall be mailed within fourteen (14) days of the entry of a
20 decree, order, or agreement of the parties:

21 (i) For the loss by severance of both hands at or above the wrist, or for the loss of the
22 arm at or above the elbow or for the loss of the leg at or above the knee, or both feet at or above
23 the ankle, or of one hand and one foot, or the entire and irrecoverable loss of the sight of both
24 eyes, or the reduction to one-tenth (1/10) or less of normal vision with glasses, for a period of
25 three hundred twelve (312) weeks; provided, that for the purpose of this chapter the Snellen chart
26 reading 20/200 shall equal one-tenth (1/10) of normal vision or a reduction of ninety percent
27 (90%) of the vision. Additionally, any loss of visual performance including, but not limited to,
28 loss of binocular vision, other than direct visual acuity may be considered in evaluating eye loss;

29 (ii) For the loss by severance of either arm at or above the elbow, or of either leg at or
30 above the knee, for a period of three hundred twelve (312) weeks;

31 (iii) For the loss by severance of either hand at or above the wrist for a period of two
32 hundred forty-four (244) weeks;

33 (iv) For the entire and irrecoverable loss of sight of either eye, or the reduction to one-
34 tenth (1/10) or less of normal vision with glasses, or for loss of binocular vision for a period of

1 one hundred sixty (160) weeks;

2 (v) For the loss by severance of either foot at or above the ankle, for a period of two
3 hundred five (205) weeks;

4 (vi) For the loss by severance of the entire distal phalange of either thumb for a period of
5 thirty-five (35) weeks; and for the loss by severance at or above the second joint of either thumb,
6 for a period of seventy-five (75) weeks;

7 (vii) For the loss by severance of one phalange of either index finger, for a period of
8 twenty-five (25) weeks; for the loss by severance of at least two (2) phalanges of either index
9 finger, for a period of thirty-two (32) weeks; for the loss by severance of at least three (3)
10 phalanges of either index finger, for a period of forty-six (46) weeks;

11 (viii) For the loss by severance of one phalange of the second finger of either hand, for a
12 period of sixteen (16) weeks; for the loss by severance of two (2) phalanges of the second finger
13 of either hand, for a period of twenty-two (22) weeks; for the loss by severance of three (3)
14 phalanges of the second finger on either hand, for a period of thirty (30) weeks;

15 (ix) For the loss by severance of one phalange of the third finger of either hand, for a
16 period of twelve (12) weeks; for the loss by severance of two (2) phalanges of the third finger of
17 either hand, for a period of eighteen (18) weeks; for the loss by severance of three (3) phalanges
18 of a third finger of either hand, for a period of twenty-five (25) weeks;

19 (x) For the loss by severance of one phalange of the fourth finger of either hand, for a
20 period of ten (10) weeks; for the loss by severance of two (2) phalanges of the fourth finger of
21 either hand, for a period of fourteen (14) weeks; for the loss by severance of three (3) phalanges
22 of a fourth finger of either hand, for a period of twenty (20) weeks;

23 (xi) For the loss by severance of one phalange of the big toe on either foot, for a period
24 of twenty (20) weeks; for the loss by severance of two (2) phalanges of the big toe of either foot,
25 for a period of thirty-eight (38) weeks; for the loss by severance at or above the distal joint of any
26 other toe than the big toe, for a period of ten (10) weeks for each such toe;

27 (xii) For the complete loss of hearing of either ear sixty (60) weeks; for the complete loss
28 of hearing of both ears two hundred (200) weeks; provided, that the loss shall be due to external
29 trauma.

30 (2) Where any bodily member or portion of it has been rendered permanently stiff or
31 useless, compensation in accordance with the above schedule shall be paid as if the member or
32 portion of it had been completely severed; provided, that if the stiffness or uselessness is less than
33 total, then compensation shall be paid for that period of weeks in proportion to the applicable
34 period where the member or portion of it has been completely severed as the instant percentage of

1 stiffness or uselessness bears to the total stiffness or total uselessness of the bodily members or
2 portion of them.

3 (3) In case of the following specified injuries there shall be paid in addition to all other
4 compensation provided for in chapters 29 -- 38 under this title a weekly payment equal to one-
5 half (1/2) of the average weekly earnings of the injured employee, but in no case more than ninety
6 dollars (\$90.00) nor less than forty-five dollars (\$45.00) per week. Payment under this subsection
7 shall be made in a one time payment unless the parties otherwise agree. Payment shall be mailed
8 within fourteen (14) days of the entry of a decree, order, or agreement of the parties:

9 (i) For partial loss by severance for any of the injuries specified in paragraphs(1)(i) --
10 (1)(xii) of this subsection, proportionate benefits shall be paid for the period of time that the
11 partial loss by severance bears to the total loss by severance.

12 (ii) For permanent disfigurement of the body the number of weeks may not exceed five
13 hundred (500) weeks, which sum shall be payable in a one time payment within fourteen (14)
14 days of the entry of a decree, order, or agreement of the parties in addition to all other sums under
15 this section wherever it is applicable.

16 (4) (i) Loss of hearing due to industrial noise is recognized as an occupational disease for
17 purposes of chapters 29 -- 38 of this title and occupational deafness is defined to be a loss of
18 hearing in one or both ears due to prolonged exposure to harmful noise in employment. Harmful
19 noise means sound capable of producing occupational deafness.

20 (ii) Hearing loss shall be evaluated pursuant to protocols established by the workers'
21 compensation medical advisory board. All treatment consistent with this subsection shall be
22 consistent with the protocols established by the workers' compensation medical advisory board
23 subject to section 28-33-5.

24 (iii) If the employer has conducted baseline screenings within one (1) year of exposure to
25 harmful noise to evaluate the extent of an employee's pre-existing hearing loss, the causative
26 factor shall be apportioned based on the employee's pre-existing hearing loss and subsequent
27 occupational hearing loss, and the compensation payable to the employee shall only be that
28 portion of the compensation related to the present work-related exposure.

29 (iv) There shall be payable as permanent partial disability for total occupational deafness
30 of one ear, seventy-five (75) weeks of compensation; for total occupational deafness of both ears,
31 two hundred forty-four (244) weeks of compensation; for partial occupational deafness in one or
32 both ears, compensation shall be paid for any periods that are proportionate to the relation which
33 the hearing loss bears to the amount provided in this subdivision for total loss of hearing in one or
34 both ears, as the case may be. Acuity hearing loss related to a single event, usually trauma (e.g.,

1 in association with a basal skull fracture) or by other mechanism, shall be paid pursuant to this
2 subsection.

3 (v) No benefits shall be granted for tinnitus, psychogenic hearing loss, congenital
4 hearing loss, recruitment or hearing loss above three thousand (3,000) hertz.

5 (vi) The provisions of this subsection and the amendments insofar as applicable to
6 hearing loss shall be operative as to any occupational hearing loss that occurs on or after
7 September 1, 2003, except for acuity hearing loss related to a single event which shall become
8 effective upon passage.

9 (vii) If previous hearing loss, whether occupational or not, is established by an
10 audiometric examination or other competent evidence, whether or not the employee was exposed
11 to assessable noise exposure within one year preceding the test, the employer is not liable for the
12 previous loss, nor is the employer liable for a loss for which compensation has previously been
13 paid or awarded. The employer is liable only for the difference between the percent of
14 occupational hearing loss determined as of the date of the audiometric examination conducted by
15 a certified audiometric technician using an audiometer which meets the specifications established
16 by the American National Standards Institute (ANSI 3.6-1969, r1973) used to determine
17 occupational hearing loss and the percentage of loss established by the baseline audiometric
18 examination. An amount paid to an employee for occupational hearing loss by any other
19 employer shall be credited against compensation payable by the subject employer for the hearing
20 loss. The employee shall not receive in the aggregate greater compensation from all employers
21 for occupational hearing loss than that provided in this section for total occupational hearing loss.
22 A payment shall not be paid to an employee unless the employee has worked in excessive noise
23 exposure employment for a total period of at least one hundred eighty (180) days for the
24 employer for whom compensation is claimed.

25 (viii) No claim for occupational deafness may be filed until six (6) months separation
26 from the type of noisy work for the last employer in whose employment the employee was at any
27 time during the employment exposed to harmful noise.

28 (ix) The total compensation due for hearing loss is recovered from the employer who last
29 employed the employee in whose employment the employee was last exposed to harmful noise
30 and the insurance carrier, if any, on the risk when the employee was last so exposed, and if the
31 occupational hearing loss was contracted while the employee was in the employment of a prior
32 employer, and there was no baseline testing by the last employer, the employer and insurance
33 carrier which is made liable for the total compensation as provided by this section may petition
34 the worker's compensation court for an apportionment of the compensation among the several

1 employers which since the contraction of the hearing loss have employed the employee in a noisy
2 environment.

3 (b) Where payments are required to be made under more than one clause of this section,
4 payments shall be made in a one time payment unless the parties otherwise agree. Payment shall
5 be mailed within fourteen (14) days of the entry of a decree, order, or agreement of the parties.

6 (c) Payments pursuant to this section, except paragraph (a)(3)(ii) of this section, shall be
7 made only after an employee's condition as relates to loss of use has reached maximum medical
8 improvement as defined in section 28-29-2(8) and as found pursuant to section 28-33-18(b).

9 SECTION 3. Sections 28-35-6, 28-35-8, 28-35-32 and 28-35-57 of the General Laws in
10 Chapter 28-35 entitled "Workers' Compensation - Procedure" are hereby amended to read as
11 follows:

12 **28-35-6. Notice of amendments to memorandum of agreement.** -- (a) If the workers'
13 compensation court makes any amendment or addition to the memorandum of agreement, the
14 administrator of the workers' compensation court shall immediately notify the department of the
15 changes in the agreement.

16 (b) If an employer or insurer and an employee and his or her attorney, if represented,
17 reach an agreement, subsequent to the filing of a memorandum of agreement, order, or decree, as
18 to any issue, the parties shall file a written agreement and receipt with the department, signed by
19 the parties, and on a form prescribed by the department. A copy of any agreement and receipt
20 shall be delivered to each of the parties. Upon the filing of the agreement and receipt with the
21 department, it shall be as binding upon both parties as a preliminary determination order or
22 decree.

23 (c) The attorney for an injured worker shall be entitled to a counsel fee reasonably
24 compensating him or her for the services he or she rendered on behalf of the injured worker in
25 securing the relief sought.

26 **28-35-8. Filing of non-prejudicial memorandum of agreement.** -- (a) Notwithstanding
27 section 28-35-1, if the employer files a memorandum of agreement but specifically designates
28 that agreement as a "non-prejudicial" or "without prejudice", the employer may pay weekly
29 compensation benefits not exceeding thirteen (13) weeks. In these cases, the employer shall send
30 a copy of the non-prejudicial memorandum and any amendments to it to the employee and his or
31 her attorney or the representative of the decedent and his or her attorney by certified mail, return
32 receipt requested, at the same time as it is filed with the department in the same manner as if it
33 were a memorandum of agreement. The non-prejudicial memorandum of agreement shall contain
34 all information as directed by section 28-35-1. Having done so, the non-prejudicial memorandum

1 of agreement and any action taken pursuant to it shall be without prejudice to any party
2 subsequently maintaining any position as to employer liability for payments under chapters 29 --
3 38 of this title, maintainable in the absence of an agreement. If at any time within or at the close
4 of the thirteen-week period after payments of compensation have commenced the employer or
5 insurer terminates weekly payments to the employee or to those entitled to payments on account
6 of death of an employee, the employer or insurer shall notify the employee and his or her attorney
7 or the representative of the decedent employee and his or her attorney within ten (10) days on a
8 form prescribed by the department [by certified mail, return receipt requested](#) that:

- 9 (1) Payments have terminated;
- 10 (2) The claim has not been formally accepted; and
- 11 (3) The employee has the right to file a petition, within the two (2) year limitation as set
12 forth in section 28-35-57, to formally establish liability of the employer or insurer.

13 (b) If the employer or insurer makes payments of weekly benefits to the employee or to
14 those entitled to payments on account of death of an employee for more than the thirteen (13)
15 week period, the payments shall constitute a conclusive admission of liability and ongoing
16 incapacity as to the injuries set forth in the non-prejudicial memorandum of agreement. The
17 employer or insurer shall within ten (10) days of making additional payments file a memorandum
18 of agreement pursuant to section 28-35-1.

19 **28-35-32. Costs -- Counsel and witness fees.** – (a) No fee shall be charged by the clerk
20 of any court or by the administrator of the workers' compensation court for the performance of
21 any service required by this chapter, except for certified copies of decrees and copies of
22 transcripts. Notwithstanding any provisions of law to the contrary, the workers' compensation
23 court shall be allowed a filing fee of twenty dollars (\$20.00) for the filing of a petition under
24 chapters 29 -- 38 of this title, and a filing fee of twenty-five dollars (\$25.00) for the filing of an
25 appeal under section 28-35-28, which sums shall be deposited into "the court improvement
26 project fund" established pursuant to chapter 29.1 of title 9. These sums shall be used exclusively
27 for the automated civil information system (ACIS), pursuant to chapter 108 of title 42. In
28 proceedings under this chapter, and in proceeding under chapter 37 of this title, costs shall be
29 awarded, including counsel fees and fees for medical and other expert witnesses including
30 interpreters, to employees who successfully prosecute petitions for compensation, petitions for
31 medical expenses, petitions to amend a preliminary order or memorandum of agreement, and all
32 other employee petitions, except petitions for lump sum commutation, and to employees who
33 successfully defend, in whole or in part, proceedings seeking to reduce or terminate any and all
34 workers' compensation benefits, and to medical services providers who successfully prosecute

1 petitions for the payment of medical expenses except that medical services providers shall not be
2 paid expert witness fees for testimony in support of petitions filed in their behalf. These costs
3 shall be assessed against the employer by a single judge, by an appellate panel and by the
4 supreme court on appeal consistent with the services rendered before each tribunal and shall be
5 made a part of the decree. No employee's attorney shall accept any other or additional fees for his
6 services for the particular petition for which the fees are awarded in each tribunal.

7 [\(b\) Costs, including counsel fees, shall be awarded in the same manner as subsection \(a\)](#)
8 [to reasonably compensate attorneys who successfully secure relief for injured workers pursuant to](#)
9 [section 28-35-1, 28-35-5, 28-35-6 and 28-35-7.1.](#)

10 **28-35-57. Limitation of claims for compensation.** -- (a) An employee's claim for
11 compensation under chapters 29 -- 38 of this title shall be barred unless payment of weekly
12 compensation has commenced, or a petition, as provided for in this chapter, has been filed within
13 two (2) years after the occurrence or manifestation of the injury or incapacity, or in case of the
14 death of the employee, or in the event of his or her physical or mental incapacity, within two (2)
15 years after the death of the employee or the removal of the physical or mental incapacity.

16 (b) The time for filing shall not begin to run in cases of latent or undiscovered physical
17 or mental impairment due to injury including disease until:

18 (1) The person claiming benefits knew, or by exercise of reasonable diligence should
19 have known, of the existence of the impairment and its causal relationship to his or her
20 employment; or

21 (2) After disablement, whichever is later.

22 (c) In any case in which weekly compensation benefits have been paid, pursuant to
23 section 28-35-8, in which the employer or insurer has failed to file the required notices, or has
24 [failed to comply with the requirements thereof regarding the mailing of documents required to be](#)
25 [sent to the employee,](#) the claimant's right to file a petition for compensation benefits shall be
26 preserved without time limitation.

27 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS - WORKERS' COMPENSATION

1 This act would make various amendments to the statutes applicable to workers'
2 compensation.

3 This act would take effect upon passage.

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