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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO LABOR - OMNIBUS FAIR CONTRACTING STANDARDS OF 2011

Introduced By: Representatives Ucci, Williams, Petrarca, Edwards, and Palumbo

Date Introduced: March 16, 2011

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 5-65 of the General Laws entitled "Contractors' Registration and  
2 Licensing Board" is hereby amended by adding thereto to read as follows:

3 **5-65-10. Grounds for discipline – Injunctions.** – (a) The board or commission may  
4 revoke, suspend, or refuse to issue, reinstate, or reissue a certificate of registration if the board or  
5 commission determines after notice and opportunity for a hearing:

6 (1) That the registrant or applicant has violated section 5-65-3.

7 (2) That the insurance required by section 5-65-7 is not currently in effect.

8 (3) That the registrant, licensee or applicant has engaged in conduct as a contractor that is  
9 dishonest or fraudulent that the board finds injurious to the welfare of the public.

10 (4) Has violated a rule or order of the board.

11 (5) That the registrant has knowingly assisted an unregistered person to act in violation of  
12 this chapter.

13 (6) That a lien was filed on a structure under chapter 28 of title 34 because the registrant  
14 or applicant wrongfully failed to perform a contractual duty to pay money to the person claiming  
15 the lien.

16 (7) That the registrant has substantially violated state or local building codes.

17 (8) That the registrant has made false or fraudulent statements on his or her application.

18 (9) That a registrant has engaged in repeated acts in violation of this chapter and the  
19 board's rules and regulations inclusive of substandard workmanship and any misuse of

1 registration.

2 (10) The board may take disciplinary action against a contractor who performed work or  
3 arranged to perform, while the registration was suspended, invalidated or revoked. Deposits  
4 received by a contractor and ordered returned are not considered a monetary award when no  
5 services or supplies have been received.

6 (11) That the registrant breached a contract.

7 (12) That the registrant performed negligent and/or improper work.

8 (13) That the registrant has advertised with a license number instead of using a  
9 registration number.

10 (14) That the registrant has failed to complete a project(s) for construction or a willful  
11 failure to comply with the terms of a contract or written warranty.

12 (15) That the registrant has misrepresented his registration status as valid when said  
13 registration is suspended, revoked, invalidated, inactive or unregistered as required by the board.

14 (16) That the registrant has failed to pay a fine or comply with any order issued by the  
15 board.

16 (17) That the registrant has failed to obtain or maintain the required continuing  
17 education/units required by the board, or failed to sign the affidavit required by the board for  
18 registration or renewal.

19 (18) When a violation for hiring a non-registered contractor, working as a non-registered  
20 contractor, or not maintaining the insurance required is issued, the registration may become  
21 invalidated until the violation is resolved or hearing is requested on this offense.

22 (19) That the registrant has violated any of the provisions of chapters 25-3, 28-3, 28-12,  
23 28-14, 28-36, and/or 37-13 and/or section 42-16.1-5.1.

24 (b) In addition to all other remedies, when it appears to the board that a person has  
25 engaged in, or is engaging in, any act, practice or transaction which violates the provisions of this  
26 chapter, the board may direct the attorney general to apply to the court for an injunction  
27 restraining the person from violating the provisions of this chapter. An injunction shall not be  
28 issued for failure to maintain the list provided for in section 5-65-3(h) unless the court determines  
29 that the failure is intentional.

30 (c) For each first violation of a particular section of this chapter or any rule or regulation  
31 promulgated by the board, a fine not to exceed five thousand dollars (\$5,000) may be imposed  
32 after a hearing by the board. Provided, further, that the board at its discretion may, after a hearing,  
33 impose an additional fine up to but not to exceed the face value of the contract or the actual  
34 damages caused by the contractor, whichever shall be greater. Where the claim is for actual

1 damages the board shall require proof satisfactory to the board indicating said damages. Where  
2 corrective work is completed as ordered by the board, the fine assessed may be reduced as  
3 determined by the board. Fines and decisions on claims or violations inclusive of monetary  
4 awards can be imposed against registered as well as contractors required to be registered by the  
5 board.

6 (2) For each subsequent violation of a particular subsection of this chapter or of a rule or  
7 regulation promulgated by the board, a fine not to exceed ten thousand dollars (\$10,000) may be  
8 imposed after a hearing by the board. All fines collected by the board shall be deposited as  
9 general revenues until June 30, 2008 to be used to enforce the provisions of this chapter.  
10 Beginning July 1, 2008, all fines collected by the board shall be deposited into a restricted receipt  
11 account to be used to enforce the provisions of this chapter.

12 (3) For the first violation of section 5-65-3, only for non-registered contractors, a fine of  
13 up to five thousand dollars (\$5,000) for a first offense and up to ten thousand dollars (\$10,000)  
14 for each subsequent offense shall be imposed.

15 (d) The hearing officer, upon rendering a conclusion may require the registrant, in lieu of  
16 a fine, to attend continuing education courses as appropriate. Failure to adhere to the requirement  
17 could result in immediate revocation of registration.

18 (e) The expiration of a registration by operation of law or by order or decision of the  
19 board or a court, or the voluntary surrender of registration by the registrant, does not deprive the  
20 board of jurisdiction, an action or disciplinary proceeding against the registrant or to render a  
21 decision suspending or revoking a registration.

22 (f) In emergency situations, when a registrant is acting to the detriment of the health,  
23 welfare and safety of the general public, the board's executive director may revoke or suspend a  
24 registration without a hearing for just cause for a period of thirty (30) days.

25 (g) A registrant may petition the board to partially or completely expunge his or her  
26 record provided that notice of said expungment proceedings has been provided to the claimant  
27 who was the subject of the violation. For purposes of this subsection "notice" shall consist of a  
28 mailing to the last known address of the claimant and need not be actual notice.

29 (h) Any person or contractor, registered or not, who uses another contractor's registration,  
30 contractor's registration identification card, or allows another person to use their contractor's  
31 registration fraudulently in any way, will be subject to a fine not exceeding ten thousand dollars  
32 (\$10,000).

33 (i) When the use of fraudulent advertising entices an individual to hire an unregistered  
34 contractor, a fine of up to ten thousand dollars (\$10,000) may be imposed by the board.

1 (j) It shall be unlawful to retain a social security number or copy of the driver's license  
2 from a registrant by a building official as a condition of obtaining a permit.

3 (k) The board is further authorized upon certain findings or violations to:

4 (1) Put a lien on property held by a contractor.

5 (2) Take action on registrant when the continuing education requirements have failed to  
6 be attained as required in rules and regulations.

7 (3) When upon investigation a complaint reveals: serious code infractions; unsatisfied  
8 mechanic's liens; abandonment of a job for a substantial period of time without apparent cause; or  
9 any other conduct detrimental to the public, the board can double the fines.

10 (4) Suspend, revoke or refuse to issue, reinstate or reissue a certificate of registration to  
11 any registrant who has contracted, advertised, offered to contract or submitted a bid when the  
12 contractor's registration is suspended, revoked, invalidated or inactive or unregistered as required  
13 by the board.

14 (l) No person shall register as a contractor with the contractors' registration board for the  
15 purpose of deceiving or circumventing the registration process by enabling a person whose  
16 registration has been suspended or revoked to conduct business. Provided, further, that any person  
17 who, in good faith relies on the board or the contractor's registration website for information  
18 regarding registration status of another shall be exempt from violations pursuant to this section if  
19 the information is not correct. Violators of this section shall be jointly and individually liable for  
20 damages resulting from their activities as contractors pursuant to this chapter. Violations of this  
21 subsection may result in a revocation of registration and/or fines not to exceed ten thousand  
22 dollars (\$10,000) and/or up to one year in jail. Furthermore, the director shall require that all  
23 applicants for registration shall swear by way of affidavit that they are aware of this provision and  
24 its implications.

25 (m) Upon receipt of notice of a final determination, after the exhaustion of all appeals, by  
26 the department of labor and training, consent agreement, or court order that a registered  
27 contractor violated any of the provisions of chapters 25-3, 28-3, 28-12, 28-14, 28-36, and/or 37-  
28 13 and/or section 42-16.1-5.1 and owes any wages, benefits or other sums arising out of such  
29 violation, the board shall immediately suspend the contractor's registration of such contractor in  
30 accordance with this subsection. The suspension shall continue until all wages, benefits, or other  
31 sums owed have been paid or the contractor has entered into a written, binding agreement to pay  
32 the same acceptable to the department of labor and training and is not in default in payment under  
33 such agreement. If the contractor fails to remain current in payment under any such agreement,  
34 the department of labor and training shall notify the contractors' registration board and the

1 suspension shall be imposed or reinstated as the case may be. The foregoing sanction is  
2 mandatory and may be imposed along with such additional terms, conditions and/or sanctions as  
3 the board may determine in accordance with the provisions of this chapter.

4 (n) When the registration of a contractor has been revoked or suspended, neither the  
5 contractor nor any successor entity or sole proprietorship that: (i) Has one or more of the same  
6 principals or officers as the partnership, limited partnership, limited liability partnership, joint  
7 venture, limited liability company, corporation, or sole proprietorship as the subject contractor;  
8 and (ii) Is engaged in the same or equivalent trade or activity shall be qualified to register or  
9 retain a registration as a contractor under this chapter, unless and until the board shall determine  
10 that the basis of the revocation or suspension has been satisfied or removed and that the registrant  
11 or applicant otherwise satisfies the requirements for registration under this chapter.  
12 Notwithstanding the foregoing, a natural person may obtain relief in superior court from the  
13 application and enforcement of this subsection as to him or her, if he or she can establish by clear  
14 and convincing evidence that he or she was not responsible or legally liable for, was not aware of,  
15 and did not acquiesce to the misconduct which is the basis of the revocation, suspension or denial  
16 of registration.

17 SECTION 2. Section 25-3-9 of the General Laws in Chapter 25-3 entitled "Work on  
18 Holidays and Sundays" is hereby amended to read as follows:

19 **25-3-9. Employee's remedies.** - Every employee who is discharged, disciplined, or  
20 discriminated against by any employer in violation of the provisions of this chapter shall be  
21 entitled to reinstatement and other relief against the employer in accordance with the provisions  
22 of sections 28-14-19 or 28-14-19.1. ~~to maintain a civil action in a court of competent jurisdiction.~~  
23 ~~If judgment is rendered in the employee's favor, he or she shall be entitled to reinstatement and~~  
24 ~~double the amount of back pay and allowances lost as a result of the discharge, discipline, or~~  
25 ~~discrimination, together with interest on the amount at the rate provided by law, attorneys fees,~~  
26 ~~and costs and expenses of the action.~~

27 SECTION 3. Section 28-3-18 of the General Laws in Chapter 28-3 entitled "Employment  
28 of Women and Children" is hereby amended to read as follows:

29 **28-3-18. Enforcement of provisions - Prosecution of violations.** - The division of  
30 labor standards has full power to enforce §§ 28-3-1 - 28-3-20, and has all the powers of the  
31 division of compliance inspection insofar as those powers relate to and affect women and  
32 children. All actions, suits, complaints, and prosecutions for the violation of any of the provisions  
33 of these sections, including those seeking the imposition of penalties hereunder, shall be brought  
34 by and in the name of the director of labor and training or the chief of the division of labor

1 standards in the department of labor and training, or by and in the name of any duly authorized  
2 representative of the director of labor and training, in accordance with the provisions of section  
3 28-14-19.

4 SECTION 4. Section 28-12-19 of the General Laws in Chapter 28-12 entitled "Minimum  
5 Wages" is hereby amended to read as follows:

6 **28-12-19. Liability to employee for substandard wages Actions for relief.** – ~~Any~~  
7 ~~employer who pays any employee less than the applicable wage rate to which the employee is~~  
8 ~~entitled under or by virtue of this chapter shall be liable to the affected employee for the full~~  
9 ~~amount of the wage rate, less any amount actually paid to the employee by the employer, and for~~  
10 ~~costs and the reasonable attorney's fees that may be allowed by the court. Any agreement between~~  
11 ~~the employee and the employer to work for less than the wage rate shall be no defense to the~~  
12 ~~action.~~ Any person aggrieved by a violation of this chapter is entitled to relief against the  
13 employer in accordance with the provisions of sections 28-14-19 or 28-14-19.1.

14 SECTION 5. Sections 28-14-1 and 28-14-19 of the General Laws in Chapter 28-14  
15 entitled "Payment of Wages" are hereby amended to read as follows:

16 **28-14-1. Definitions.** – Whenever used in this chapter:

17 (1) "Director" means the director of the department of labor and training or his or her  
18 duly authorized representative.

19 (2) "Employee" means any person employed ~~suffered or permitted to work~~ by an  
20 employer, except that an independent ~~contractors~~ contractor ~~or subcontractor~~ shall not be  
21 considered an employees employee.

22 (3) "Employer" means any individual, firm, partnership, limited partnership, limited  
23 liability partnership, association, joint stock company, trust, limited liability company,  
24 corporation, or any other entity, or a receiver or other like officer appointed by a court of this  
25 state, and any agent or officer of any of the previously mentioned classes, employing any person  
26 in this state, and shall include any person acting directly or indirectly in the interest of an  
27 employer in relation to an employee and includes a public agency, but does not include any labor  
28 organization (other than when acting as an employer) or anyone acting in the capacity of officer  
29 or agent of such labor organization. The foregoing definition shall be interpreted consistent with  
30 the definition of "employer" under 29 U.S.C. 203(d) of the Fair Labor Standards Act.

31 (4) "Wages" means all amounts at which the labor or service rendered is recompensed,  
32 whether the amount is fixed or ascertained on a time, task, piece, commission basis, or other  
33 method of calculating the amount.

34 (5) "Employ" includes to suffer or permit to work.

1 (6) “Independent contractor” shall mean any natural person, business, corporation or  
2 entity of any kind that provides goods or services to another and that does not qualify as an  
3 employee as provided under section 28-42-7.

4 **28-14-19. Enforcement powers and duties of director of labor and training.** - (a) It  
5 shall be the duty of the director to insure compliance with the provisions of ~~this chapter~~ chapters,  
6 25-3, 28-3, 28-12, 28-14, 28-36, and/or 36-13, and/or section 42-16.1-5.1, to investigate any  
7 violations thereof ~~of this chapter,~~ to institute or cause to be instituted ~~action~~ actions for the  
8 collection of wages and to institute ~~action~~ actions for ~~penalties provided under this chapter or~~  
9 other relief under those chapters. The director or his or her authorized representatives are  
10 empowered to hold hearings and he or she shall cooperate with any employee in the enforcement  
11 of a claim against his or her employer in any case whenever, in his or her opinion, the claim is  
12 just and valid.

13 ~~(b) The director is authorized to supervise the payment of amounts due to employees, and~~  
14 ~~the employer may be required to make these payments to the director to be held in a special~~  
15 ~~account in trust for the employees, and paid on order of the director directly to the employee or~~  
16 ~~the employees affected. The employer shall also pay the director an administrative fee equal to~~  
17 ~~twenty five percent (25%) of any payment made directly to the employee or employees or made~~  
18 ~~to the director pursuant to this section and chapters 5-23, 25-3 and 28-12 for the first offense. An~~  
19 ~~additional payment in the amount of fifty percent (50%) shall be assessed for each subsequent~~  
20 ~~violation. The fee shall be deposited in the general fund.~~ Upon receipt of a complaint or when  
21 conducting an inspection under subsection 37-13-13(c), the director or his or her appropriate  
22 departmental designee is authorized to investigate to determine compliance with the above  
23 chapters, with the requirement to secure workers’ compensation under chapters 29 through 38,  
24 with the requirement to register as a contractor under section 5-65-3. In performing the foregoing  
25 functions, the director, or his or her designee, is authorized to utilize the powers and procedures  
26 provided under sections 28-14-12 through 28-14-16 or sections 37-13-12 through 37-13-12.3 or  
27 as otherwise provided under applicable law.

28 ~~(c) The director may institute any action to recover unpaid wages or other compensation~~  
29 ~~under this chapter, including the administrative fee contained in subsection (b) of this section,~~  
30 ~~with or without the consent of the employee or employees affected.~~ If prior to hearing, but after  
31 an investigation conducted under subsection (b) above, the director or his or her designee  
32 determines that an employer is in violation of subsection 28-36-1(a), the director or his or her  
33 designee may immediately issue a stop work order against the employer requiring the cessation of  
34 all business operations of such employer as provided under section 28-36-15(i). Such stop work

1 order shall be issued only against the employer found to be in violation of subsection 28-36-1(a)  
2 and only as to the specific place of business or employment for which the violation exists. Such  
3 order shall be effective when served upon the employer or its registered agent or on any agent of  
4 the employer at the place of business or employment. A stop work order may be served at a place  
5 of business or employment by posting a copy of the stop work order in a conspicuous location at  
6 the place of business or employment. Such order shall remain in effect until the director or his or  
7 her designee issues an order releasing the stop work order upon a finding that the employer has  
8 come into compliance with the requirements of subsection 28-36-1(a), or after a hearing held  
9 pursuant to 28-36-15(i). Stop work orders issued pursuant to this subsection shall be effective  
10 against any successor entity or sole proprietorship that:

11 (1) Has one or more of the same principals or officers as the partnership, limited  
12 partnership, limited liability partnership, joint venture, limited liability company, corporation, or  
13 sole proprietorship against which the stop work order was issued; and

14 (2) Is engaged in the same or equivalent trade or activity. Notwithstanding the foregoing,  
15 a natural person may obtain relief in superior court from the application and enforcement of this  
16 subsection as to him or her, if he or she can establish by clear and convincing evidence that he or  
17 she was not responsible or legally liable for, was not aware of, and did not acquiesce to the  
18 misconduct which is the basis for the issuance of the stop work order.

19 (d) Complaints under chapters 29 through 38 shall proceed under subsection 28-36-15(i).  
20 Complaints or suspected violations of section 5-65 shall be referred to the contractors'  
21 registration board.

22 (e) With respect to all other complaints deemed just and valid, the director or his or her  
23 designee shall order a hearing thereon at a time and place to be specified, and shall give notice  
24 thereof, together with a copy of the complaint or the purpose thereof, or a statement of the facts  
25 disclosed upon investigation, which notice shall be served personally or by mail on any person,  
26 business, corporation, or entity of any kind affected thereby. The person, business, corporation, or  
27 entity shall have an opportunity to be heard in respect to the matters complained of at the time  
28 and place specified in the notice. The hearing shall be conducted by the director or his or her  
29 designee. The hearing officer in the hearing shall be deemed to be acting in a judicial capacity,  
30 and shall have the right to issue subpoenas, administer oaths, and examine witnesses. The  
31 enforcement of a subpoena issued under this section shall be regulated by Rhode Island civil  
32 practice law and rules. The hearing shall be expeditiously conducted and upon such hearing the  
33 hearing officer shall determine the issues raised thereon and shall make a determination and enter  
34 an order within thirty (30) days of the close of the hearing, and forthwith serve a copy of the



1 order, with a notice of the filing thereof, upon the parties to the proceeding, personally or by mail.  
2 The order shall dismiss the complaint or direct payment of any wages and/or benefits found to be  
3 due and/or award such other appropriate relief authorized under chapters 25-3, 28-3, 28-12, 28-  
4 14, and/or 37-13 and/or section 42-16.1-5.1, and may direct payment of reasonable attorneys' fees  
5 and costs to the complaining party. Interest at the rate of twelve percentum (12%) per annum  
6 shall be awarded in the order from the date of the nonpayment or underpayment to the date of  
7 payment.

8 (f) The order shall also require payment of a further sum as a civil penalty in an amount  
9 up to two (2) times the total wages and/or benefits amount found to be due, exclusive of interest.  
10 The penalty shall be paid to the department of labor and training for deposit in the state treasury.

11 (g) The director may institute any action to recover unpaid wages or other compensation  
12 or obtain relief as provided under this section with or without the consent of the employee or  
13 employees affected.

14 (h) No agreement between the employee and employer to work for less than the  
15 applicable wage and/or benefit rate or to otherwise work under terms and/or conditions in  
16 violation of applicable law is a defense to an action brought pursuant to this section.

17 (i) The director shall notify the contractors' registration board of any stop work order  
18 issued or any determination hereunder that an employer has violated chapters 25-3, 28-3, 28-12,  
19 28-14, 28-36, and/or 37-13, and/or section 42-16.1-5.1. The director shall notify the tax  
20 administrator of any determination hereunder that may affect an employer's liability for the  
21 payment of wages and/or payroll taxes.

22 SECTION 6. Sections 28-14-18 and 28-14-18.2 of the General Laws in Chapter 28-14  
23 entitled "Payment of Wages" are hereby repealed.

24 ~~**28-14-18. Protection.** -- An employer shall not discharge, threaten, or otherwise~~  
25 ~~discriminate against an employee regarding the employee's compensation, terms, conditions,~~  
26 ~~location or privileges of employment because:~~

27 ~~(1) The employee, or a person acting on behalf of the employee, reports or is about to~~  
28 ~~report to the department verbally or in writing, a violation which the employee knows or~~  
29 ~~reasonably believes has occurred or is about to occur of a law or regulation or rule promulgated~~  
30 ~~by the department unless the employee knows or has reason to know that the report is false; or~~

31 ~~(2) An employee is requested by the department to participate in an investigation,~~  
32 ~~hearing, or inquiry held by the department or a court action.~~

33 ~~**28-14-18.2. Reinstatement.** -- A court, in rendering a judgment in an action brought~~  
34 ~~under this chapter, shall order, as the court considers appropriate, reinstatement of the employee,~~

~~1 the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual  
2 damages, or any combination of these remedies. A court may also award the complainant all or a  
3 portion of the costs of litigation, if the court determines that the award is appropriate.~~

4 SECTION 7. Chapter 28-14 of the General Laws entitled "Payment of Wages" is hereby  
5 amended by adding thereto the following sections:

6 **28-14-19.1. Misclassification of employees.** -- (a) The misclassification of a worker,  
7 whether performing work as a natural person, business, corporation or entity of any kind, as an  
8 independent contractor as defined under subdivision 28-14-1(6), when the worker should have  
9 been classified as an employee as defined under subdivision 28-14-1(2), shall be considered a  
10 violation of this chapter.

11 (b) In addition to any other relief to which the department or an aggrieved party may be  
12 entitled for such a violation, the employer shall be liable:

13 (1) To the aggrieved party for liquidated damages in an amount equal to two (2) times  
14 the amount of state and federal payroll taxes, employment security contributions, and workers'  
15 compensation premiums for which the employer would have been liable if the employee was  
16 properly classified; and (2) To the department for a civil penalty in the amount of up to five  
17 hundred dollars (\$500) for each misclassified employee for a first offense and up to one thousand  
18 dollars (\$1,000) for any subsequent offense.

19 (c) The department shall notify the contractor's registration board and the tax  
20 administrator of any violation of this section.

21 **28-14-19.2. Private right of action to collect wages or benefits and for equitable**  
22 **relief.** - (a) Any employee or former employee, or any organization representing such an  
23 employee or former employee aggrieved by the failure to pay wages and/or benefits or  
24 misclassification in violation of chapters 25-3, 28-3, 28-12, 28-14, and/or 37-13 and/or section  
25 42-16.1-5.1 may file a civil action in any court of competent jurisdiction to obtain relief. An  
26 aggrieved party shall be entitled to recover any unpaid wages and/or benefits, compensatory  
27 damages, and liquidated damages in an amount equal to two (2) times the amount of unpaid  
28 wages and/or benefits owed, as well as an award of appropriate equitable relief, including  
29 reinstatement of employment, fringe benefits and seniority rights, and reasonable attorneys' fees  
30 and costs, and/or such other appropriate relief authorized under chapters 25-3, 28-3, 28-12, 28-14,  
31 and/or 37-13 and/or section 42-16.1-5.1. Any unpaid fringe benefit contributions owed pursuant  
32 to this section in any form shall be paid to the appropriate benefit fund; however, in the absence  
33 of an appropriate fund, the benefit shall be paid directly to the aggrieved employee.

34 (b) An action instituted pursuant to this section may be brought by one or more

1 employees or former employees individually and/or on behalf of other employees similarly  
2 situated, except that no employee shall be a party plaintiff to any such action unless he/she gives  
3 his/her consent in writing to become such a party and such consent is filed in the court in which  
4 such action is brought.

5 (c) No agreement between the employee and employer to work for less than the  
6 applicable wage and/or benefit rate or to otherwise work under terms and/or conditions in  
7 violation of applicable law is a defense to an action brought pursuant to this section.

8 (d) An employer's responsibility and liability hereunder is solely to its own employees.

9 (e) A civil action filed under this section may be instituted instead of, but not in addition  
10 to, the director of labor and training enforcement procedures authorized by the above referenced  
11 chapters, provided the civil action is filed prior to the date the director of labor and training issues  
12 notice of an administrative hearing.

13 (f) The filing of a civil action under this section shall not preclude the director of labor  
14 and training from investigating the matter and/or referring the matter to the attorney general,  
15 contractors' registration board and/or the tax administrator.

16 (g) Any claim hereunder may be commenced within two (2) years after the cause of  
17 action accrued, and every such action shall be forever barred unless commenced within two (2)  
18 years after the cause of action accrued, except that a cause of action arising out of a willful  
19 violation may be commenced within three (3) years after the cause of action accrued.

20 **28-14-19.3. Protection from retaliation.** - No employer, or any person acting on behalf  
21 of the employer, shall discharge, threaten, or otherwise discriminate or retaliate against an  
22 employee or any other person for asserting, supporting, reporting, or participating in the  
23 investigation or determination of any claim or violation actionable under sections 28-14-19 or 28-  
24 14-19.1. Any person aggrieved by a violation of this section shall be entitled to relief as provided  
25 under chapter 28-50.

26 SECTION 8. Sections 28-29-2 and 28-29-17.1 of the General Laws in Chapter 28-29  
27 entitled "Workers' Compensation -General Provisions" are hereby amended to read as follows:

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

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

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

33 (3) (i) "Earnings capacity" means the weekly straight time earnings which an employee  
34 could receive if the employee accepted an actual offer of suitable alternative employment.

1 Earnings capacity can also be established by the court based on evidence of ability to earn,  
2 including, but not limited to, a determination of the degree of functional impairment and/or  
3 disability, that an employee is capable of employment. The court may, in its discretion, take into  
4 consideration the performance of the employee's duty to actively seek employment in scheduling  
5 the implementation of the reduction. The employer need not identify particular employment  
6 before the court can direct an earnings capacity adjustment. In the event that an employee returns  
7 to light duty employment while partially disabled, an earnings capacity shall not be set based  
8 upon actual wages earned until the employee has successfully worked at light duty for a period of  
9 at least thirteen (13) weeks.

10 (ii) As used under the provisions of this title, "functional impairment" means an  
11 anatomical or functional abnormality existing after the date of maximum medical improvement as  
12 determined by a medically or scientifically demonstrable finding and based upon the Fifth (5th)  
13 edition of the American Medical Association's Guide to the Evaluation of Permanent Impairment  
14 or comparable publications of the American Medical Association.

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

18 (4) "Employee" means any person who has entered into the employment of or works  
19 under contract of service or apprenticeship with any employer, except that in the case of a city or  
20 town other than the city of Providence it shall only mean that class or those classes of employees  
21 as may be designated by a city, town, or regional school district in a manner provided in this  
22 chapter to receive compensation under chapters 29 - 38 of this title. Any person employed by the  
23 state of Rhode Island, except for sworn employees of the Rhode Island State Police, or by the  
24 Rhode Island Airport Corporation who is otherwise entitled to the benefits of chapter 19 of title  
25 45 shall be subject to the provisions of chapters 29 - 38 of this title for all case management  
26 procedures and dispute resolution for all benefits. The term "employee" does not include any  
27 individual who is a shareholder or director in a corporation, general or limited partners in a  
28 general partnership, a registered limited liability partnership, a limited partnership, or partners in  
29 a registered limited liability limited partnership, or any individual who is a member in a limited  
30 liability company. These exclusions do not apply to shareholders, directors and members who  
31 have entered into the employment of or who work under a contract of service or apprenticeship  
32 within a corporation or a limited liability company. The term "employee" also does not include a  
33 sole proprietor, independent contractor, or a person whose employment is of a casual nature, and  
34 who is employed other than for the purpose of the employer's trade or business, or a person

1 whose services are voluntary or who performs charitable acts, nor shall it include the members of  
2 the regularly organized fire and police departments of any town or city; provided, however, that it  
3 shall include the members of the police and aircraft rescue and firefighting (ARFF) units of the  
4 Rhode Island Airport Corporation. Whenever a contractor has contracted with the state, a city,  
5 town, or regional school district any person employed by that contractor in work under contract  
6 shall not be deemed an employee of the state, city, town, or regional school district as the case  
7 may be. Any person who on or after January 1, 1999, was an employee and became a corporate  
8 officer shall remain an employee, for purposes of these chapters, unless and until coverage under  
9 this act is waived pursuant to subsection 28-29-8(b) or section 28-29-17. Any person who is  
10 appointed a corporate officer between January 1, 1999 and December 31, 2001, and was not  
11 previously an employee of the corporation, will not be considered an employee, for purposes of  
12 these chapters, unless that corporate officer has filed a notice pursuant to subsection 28-29-19(b).  
13 In the case of a person whose services are voluntary or who performs charitable acts, any benefit  
14 received, in the form of monetary remuneration or otherwise, shall be reportable to the  
15 appropriate taxation authority but shall not be deemed to be wages earned under contract of hire  
16 for purposes of qualifying for benefits under chapters 29 -- 38 of this title. Any reference to an  
17 employee who had been injured shall, where the employee is dead, include a reference to his or  
18 her dependents as defined in this section, or to his or her legal representatives, or, where he or she  
19 is a minor or incompetent, to his or her conservator or guardian. A "seasonal occupation" means  
20 those occupations in which work is performed on a seasonal basis of not more than sixteen (16)  
21 weeks.

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

26 (6) "General or special employer":

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

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

32 (iii) Whenever there is a general employer and special employer wherein the general  
33 employer supplies to the special employer an employee and the general employer pays or is  
34 obligated to pay the wages or salaries of the supplied employee, then, notwithstanding the fact

1 that direction and control is in the special employer and not the general employer, the general  
2 employer, if it is subject to the provisions of the Workers' Compensation Act or has accepted that  
3 Act, shall be deemed to be the employer as set forth in subdivision (5) of this section and both the  
4 general and special employer shall be the employer for purposes of sections 28-29-17 and 28-29-  
5 18.

6 (iv) Effective January 1, 2003, whenever a general employer enters into a contract or  
7 arrangement with a special employer to supply an employee or employees for work, the special  
8 employer shall require an insurer generated insurance coverage certification, on a form prescribed  
9 by the department, demonstrating Rhode Island workers' compensation and employer's liability  
10 coverage evidencing that the general employer carries workers' compensation insurance with that  
11 insurer with no indebtedness for its employees for the term of the contract or arrangement. In the  
12 event that the special employer fails to obtain and maintain at policy renewal and thereafter this  
13 insurer generated insurance coverage certification demonstrating Rhode Island workers'  
14 compensation and employer's liability coverage from the general employer, the special employer  
15 is deemed to be the employer pursuant to the provisions of this section. Upon the cancellation or  
16 failure to renew, the insurer having written the workers' compensation and employer's liability  
17 policy shall notify the certificate holders and the department of the cancellation or failure to  
18 renew and upon notice, the certificate holders shall be deemed to be the employer for the term of  
19 the contract or arrangement unless or until a new certification is obtained.

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

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

30 (8) "Maximum medical improvement" means a point in time when any medically  
31 determinable physical or mental impairment as a result of injury has become stable and when no  
32 further treatment is reasonably expected to materially improve the condition. Neither the need for  
33 future medical maintenance nor the possibility of improvement or deterioration resulting from the  
34 passage of time and not from the ordinary course of the disabling condition, nor the continuation

1 of a pre-existing condition precludes a finding of maximum medical improvement. A finding of  
2 maximum medical improvement by the workers' compensation court may be reviewed only  
3 where it is established that an employee's condition has substantially deteriorated or improved.

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

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

11 (11) "Independent contractor" means ~~a any natural person who has filed a notice of~~  
12 ~~designation as independent contractor with the director pursuant to section 28-29-17.1, business,~~  
13 ~~corporation or entity of any kind that provides goods or services to another and that does not~~  
14 ~~qualify as an employee under section 28-42-7, subject to the presumption provided under section~~  
15 ~~28-29-17.1, if applicable~~ or as otherwise found by the workers' compensation court.

16 **28-29-17.1. Notice of designation as independent contractor.** – (a) A person will not  
17 be considered an "independent contractor" unless that person files a notice of designation with the  
18 director, ~~as provided under section 42-16.1-5.1, consistent with rules and regulations established~~  
19 ~~by the director, in writing, on a form provided by the director,~~ that the person is an "independent  
20 contractor." The filing of the notice of designation shall ~~be create~~ create a presumption of "independent  
21 contractor" status ~~for purposes of chapters 29 --38 of this title, but it but~~ shall not preclude a  
22 finding of employee status by the court. ~~independent contractor status by the court when the~~  
23 ~~notice is not filed with the director. That designation shall continue in force and effect unless the~~  
24 ~~person withdraws that designation by filing a notice with the director, in writing, on a form~~  
25 ~~provided by the director, that the person is no longer an "independent contractor."~~ Any  
26 designation or withdrawal of designation form shall be deemed public information and the  
27 director shall furnish copies or make available electronically the forms and designations, upon  
28 written request, to any employer or insurer or its authorized representative.

29 (b) The workers' compensation court may, upon petition of an employee, the dependents  
30 of a deceased employee or any other party in interest at any time, vacate any "notice of  
31 designation" if the "notice of designation" has been improperly procured.

32 (c) The provisions of subsections (a) and (b) of this section shall only apply to injuries  
33 occurring on and after January 1, 2001.

34 SECTION 9. Section 28-42-7 of the General Laws in Chapter 28-42 entitled

1 "Employment Security - General Provisions" is hereby amended to read as follows:

2 ~~28-42-7. Independent contractor and employee distinguished~~ **Employee**  
3 **presumption --Independent contractor exception.** - (a) The determination of independent  
4 contractor or employee status for purposes of chapters 42 - 44 of this title and title 44 shall be the  
5 same as those factors used by the Internal Revenue Service in its code and regulations-; provided  
6 that, a person performing any service, except as provided under section 28-42-8, shall be  
7 presumed an "employee" unless:

8 (1) The person is free from control and direction in connection with the performance of  
9 the service, both under his or her contract for the performance of service and in fact; and either:

10 (i) The service is performed either outside the usual course of the business of the procurer  
11 of the service or outside of all the places of business of the procurer of the service; or

12 (ii) The person is engaged in an independently established trade, occupation, profession  
13 or business of the same nature as that involved in the service performed. This requirement is  
14 satisfied, among other ways, where the service performed has historically been recognized as an  
15 independent trade, occupation, profession or business and persons engaged therein have  
16 historically been treated as independent contractors for tax purposes.

17 (b) If the provider of the services furnishes and operates capital machinery and/or a  
18 specialized or heavy commercial vehicle as the major component of the service provided, it shall  
19 be considered a factor demonstrating lack of direction or control by the procurer for purposes of  
20 subsection (a)(1) above.

21 (c) The failure to withhold federal or state income taxes or to pay unemployment  
22 compensation contributions or workers' compensation premiums with respect to a person's  
23 compensation shall not be considered in making a determination under this section.

24 (d) Any person, business, corporation or entity of any kind failing to properly classify a  
25 worker as an employee according to this section shall be subject to liability and penalties as  
26 provided under section 28-14, in addition to any other liability, penalties or relief to which they  
27 may be subject under applicable law.

28 SECTION 10. Section 28-50-7 of the General Laws entitled "The Rhode Island  
29 Whistleblowers' Protection Act" is hereby amended to read as follows:

30 **28-50-4. Relief and damages.** - (a) A person who alleges a violation of this act may  
31 bring a civil action for appropriate injunctive relief, or actual damages, or both within three (3)  
32 years after the occurrence of the alleged violation of this chapter.

33 (b) An action commenced pursuant to subsection (a) of this section may be brought in the  
34 superior court for the county where the alleged violation occurred, the county where the



1 complainant resides, or the county where the person against whom the civil complaint is filed  
2 resides or has their principal place of business.

3 (c) As used in subsection (a) of this section, "damages" means damages for injury or loss  
4 caused by each violation of this chapter.

5 ~~(d) An employee shall show by clear and convincing evidence that he or she or a person  
6 acting on his or her behalf was about to report to a public body, verbally or in writing, a violation,  
7 which the employee knew or reasonably believed had occurred or was about to occur, of a law of  
8 this state, a political subdivision of this state, or the United States.~~

9 SECTION 11. Sections 37-13-6, 37-13-7, 37-13-8, 37-13-11, 37-13-13, 37-13-14.1 and  
10 37-13-17 of the General Laws in Chapter 37-13 entitled "Labor and Payment of Debts by  
11 Contractors" are hereby amended to read as follows:

12 **37-13-6. Ascertainment of prevailing rate of wages and other payments --**  
13 **Specification of rate in call for bids and in contract. --** Before awarding any contract for public  
14 works to be done, the proper authority shall ascertain from the director of labor and training, by  
15 means of the department's website, or such other manner as the director may determine from time  
16 to time, the general prevailing rate of the regular, holiday, and overtime wages paid and the  
17 general prevailing payments on behalf of employees only, to lawful welfare, pension, vacation,  
18 apprentice training, and educational funds (payments to the funds must constitute an ordinary  
19 business expense deduction for federal income tax purposes by contractors) in the city, town,  
20 village, or other appropriate political subdivision of the state in which the work is to be  
21 performed, for each craft, mechanic, teamster, laborer, or type of worker needed to execute the  
22 contract for the public works. The proper authority shall, also, specify in the call for bids for the  
23 contract and in the contract itself the general prevailing rate of the regular, holiday, and overtime  
24 wages paid and the payments on behalf of employees only, to the welfare, pension, vacation,  
25 apprentice training, and education funds existing in the locality for each craft, mechanic,  
26 teamster, laborer, or type of worker needed to execute the contract or work.

27 ~~**37-13-7. Specification in contract of amount and frequency of payment of wages**~~  
28 **Specification in contract of prevailing wage requirements. --** (a) Every call for bids for every  
29 contract in excess of one thousand dollars (\$1,000), to which the state of Rhode Island or any  
30 political subdivision thereof or any public agency or quasi-public agency is a party, for  
31 construction, alteration, and/or repair, including painting and decorating, of public buildings or  
32 public works of the state of Rhode Island or any political subdivision thereof, or any public  
33 agency or quasi-public agency and which requires or involves the employment of employees,  
34 shall contain a provision stating the minimum wages to be paid various types of employees which

1 shall be based upon the wages that will be determined by the director of labor and training to be  
2 prevailing for the corresponding types of employees employed on projects of a character similar  
3 to the contract work in the city, town, village, or other appropriate political subdivision of the  
4 state of Rhode Island in which the work is to be performed. Every contract shall contain a  
5 stipulation that the contractor or his or her subcontractor shall pay all the employees employed  
6 directly upon the site of the work, unconditionally and not less often than once a week, and  
7 without subsequent deduction or rebate on any account, the full amounts accrued at time of  
8 payment computed at wage rates not less than those stated in the call for bids, regardless of any  
9 contractual relationships which may be alleged to exist between the contractor or subcontractor  
10 and the employees, and that the ~~scale of wages to be paid~~ applicable prevailing wage rate  
11 schedule shall be posted by the contractor in a prominent and easily accessible place at the site of  
12 the work; and the further stipulation that there may be withheld from the contractor so much of  
13 the accrued payments as may be considered necessary to pay to the employees employed by the  
14 contractor, or any subcontractor on the work, the difference between the rates of wages required  
15 by the contract to be paid the employees on the work and the rates of wages received by the  
16 employees and not refunded to the contractor, subcontractors, or their agents.

17 (b) The terms "wages", "scale of wages", "wage rates", "minimum wages", and  
18 "prevailing wages" shall include:

19 (1) The basic hourly rate of pay; and

20 (2) The amount of:

21 (A) The rate of contribution made by a contractor or subcontractor to a trustee or to a  
22 third person pursuant to a fund, plan, or program; and

23 (B) The rate of costs to the contractor or subcontractor which may be reasonably  
24 anticipated in providing benefits to employees pursuant to an enforceable commitment to carry  
25 out a financially responsible plan or program which was communicated in writing to the  
26 employees affected, for medical or hospital care, pensions on retirement or death, compensation  
27 for injuries or illness resulting from occupational activity, or insurance to provide any of the  
28 foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or  
29 accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other  
30 similar programs, or for other bona fide fringe benefits, but only where the contractor or  
31 subcontractor is not required by other federal, state, or local law to provide any of the benefits;  
32 provided, that the obligation of a contractor or subcontractor to make payment in accordance with  
33 the prevailing wage determinations of the director of labor and training insofar as this chapter of  
34 this title and other acts incorporating this chapter of this title by reference are concerned may be

1 discharged by the making of payments in cash, by the making of contributions of a type referred  
2 to in subsection (b)(2), or by the assumption of an enforceable commitment to bear the costs of a  
3 plan or program of a type referred to in this subdivision, or any combination thereof, where the  
4 aggregate of any payments, contributions, and costs is not less than the rate of pay described in  
5 subsection (b)(1) plus the amount referred to in subsection (b)(2).

6 (c) The term "employees", as used in this section, shall include employees of contractors  
7 or subcontractors performing jobs on various types of public works including mechanics,  
8 apprentices, teamsters, chauffeurs, and laborers engaged in the transportation of gravel or fill to  
9 the site of public works, the removal and/or delivery of gravel or fill or ready-mix concrete, sand,  
10 bituminous stone, or asphalt flowable fill from the site of public works, or the transportation or  
11 removal of gravel or fill from one location to another on the site of public works, and the  
12 employment of the employees shall be subject to the provisions of subsections (a) and (b).

13 (d) The terms "public agency" and "quasi-public agency" shall include, but not be  
14 limited to, the Rhode Island industrial recreational building authority, the Rhode Island economic  
15 development corporation, the Rhode Island airport corporation, the Rhode Island industrial  
16 facilities corporation, the Rhode Island refunding bond authority, the Rhode Island housing and  
17 mortgage finance corporation, the Rhode Island resource recovery corporation, the Rhode Island  
18 public transit authority, the Rhode Island student loan authority, the water resources board  
19 corporate, the Rhode Island health and education building corporation, the Rhode Island higher  
20 education assistance authority, the Rhode Island turnpike and bridge authority, the Narragansett  
21 Bay water quality management district commission, Rhode Island telecommunications authority,  
22 the convention center authority, the board of governors for higher education, the board of regents  
23 for elementary and secondary education, the capital center commission, the housing resources  
24 commission, the Quonset Point-Davisville management corporation, the Rhode Island children's  
25 crusade for higher education, the Rhode Island depositors economic protection corporation, the  
26 Rhode Island lottery commission, the Rhode Island partnership for science and technology, the  
27 Rhode Island public building authority, and the Rhode Island underground storage tank board.

28 **37-13-8. Investigation and determination of prevailing wages -- Filing of schedule. --**

29 The director of labor and training shall investigate and determine the prevailing wages and  
30 payments made to or on behalf of employees, as set forth in section 37-13-7, paid in the trade or  
31 occupation in the city, town, village, or other appropriate political subdivision of the state and  
32 keep a schedule on file in his or her office of the customary prevailing rate of wages and  
33 payments made to or on behalf of the employees which shall be open to public inspection. In  
34 making a determination, the director of labor may adopt and use such appropriate and applicable

1 prevailing wage rate determinations as have been made by the secretary of labor of the United  
2 States of America in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. section 276a;  
3 provided, however, that each contractor awarded a public works contract after July 1, 2007 shall  
4 ~~contact the department of labor and training~~ on or before July first of each year, for the duration  
5 of such contract, refer to the department's website, or such other source as the director may  
6 determine from time to time to ascertain the prevailing wage rate of wages on a hourly basis and  
7 the amount of payment or contributions paid or payable on behalf of each mechanic, laborer or  
8 worker employed upon the work contracted to be done each year and shall make any necessary  
9 adjustments to such prevailing rate of wages and such payment or contributions paid or payable  
10 on behalf of each such employee every July first.

11 **37-13-11. Posting of prevailing wage rates.** – Each contractor awarded a contract for  
12 public works with a contract price in excess of one thousand dollars (\$1,000), and each  
13 subcontractor who performs work on those public works, shall post in conspicuous places on the  
14 project, where covered workers are employed, posters which contain the ~~current~~ applicable  
15 prevailing rate of wages and the current, prevailing rate of payments to the funds required to be  
16 paid for each craft or type of worker employed to execute the contract as set forth in sections 37-  
17 13-6 and 37-13-7, and the rights and remedies of any employee described in section 37-13-17 for  
18 nonpayment of any wages earned pursuant to this chapter. ~~Posters shall be furnished to~~  
19 ~~contractors~~ Contractors and subcontractors shall download the poster from by the ~~director~~  
20 department of labor and ~~training~~ training's, website. ~~who shall determine the size and context~~  
21 ~~thereof from time to time, at the time a contract is awarded.~~ A contractor or subcontractor who  
22 fails to comply with the provisions of this section shall be deemed guilty of a misdemeanor and  
23 shall pay to the director of labor and training one hundred dollars (\$100) for each calendar day of  
24 noncompliance as determined by him or her. Contracts set forth in this section shall not be  
25 awarded by the state, any city, town, or any agency thereof until the director of labor and training  
26 has prepared and delivered the posters to the division of purchases, if the state or any agency  
27 thereof is the proper authority, or to the city, town, or an agency thereof, if it is the proper  
28 authority, and the contractor to whom the contract is to be awarded.

29 **37-13-13. ~~Furnishing payroll record to director of labor and training~~ Furnishing**  
30 **payroll record to the awarding authority.** -- (a) ~~Every contractor and subcontractor awarded a~~  
31 ~~contract for public works as defined by this chapter shall furnish a certified copy of his or her~~  
32 ~~payroll records of his or her employees employed upon the project to the on a monthly basis for~~  
33 ~~the preceding month's work.~~

34 ~~(b) The director of labor and training may promulgate reasonable rules and regulations to~~

1 ~~enforce the provisions of this section.~~

2 ~~-(e) Any contractor or subcontractor who fails to comply with the provisions of this~~  
3 ~~section shall be deemed guilty of a misdemeanor and shall pay to the director of labor and~~  
4 ~~training five hundred dollars (\$500) for each calendar day of noncompliance as determined by the~~  
5 ~~director of labor and training. Any of those revenues shall be deposited as general revenues. Any~~  
6 ~~person, firm, or corporation found to have willfully made a false or fraudulent representation in~~  
7 ~~connection with reporting their certified payroll records shall be required to pay a civil penalty to~~  
8 ~~the department of labor and training in an amount of no less than one thousand dollars (\$1,000)~~  
9 ~~and not greater than three thousand dollars (\$3,000) per representation. For purposes of this~~  
10 ~~subsection "willfully" shall mean representations that are known to be false, or representations~~  
11 ~~made with deliberate ignorance or reckless disregard for their truth or falsity.~~

12 Every contractor and subcontractor awarded a contract for public works as defined by  
13 this chapter shall furnish a certified copy of his or her payroll records of his or her employees  
14 employed on the project to the awarding authority on a monthly basis for all work completed in  
15 the preceding month on a uniform form prescribed by the director of labor and training.  
16 Notwithstanding the foregoing, certified payrolls for department of transportation public works  
17 may be submitted on the federal payroll form, provided that, when a complaint is being  
18 investigated, the director or his or her designee may require that a contractor resubmit the  
19 certified payroll on the uniform department form.

20 (b) Awarding authorities, contractors and subcontractors shall provide any and all  
21 payroll records to the director of labor and training within ten (10) days of their request by the  
22 director or his designee.

23 (c) In addition, every contractor and subcontractor shall maintain on the site where public  
24 works are being constructed and the general or primary contract is one million dollars  
25 (\$1,000,000) or more, a daily log of employees employed each day on the public works project.  
26 The log shall include, at a minimum, for each employee his or her name, job title, and employer  
27 and shall be kept on a uniform form prescribed by the director of labor and training. Such log  
28 shall be available for inspection on the site at all times by the awarding authority and/or the  
29 director of the department of labor and and/or his or her designee. This subsection shall not apply  
30 to road, highway, or bridge public works projects.

31 (d) The director of labor and training may promulgate reasonable rules and regulations to  
32 enforce the provisions of this section.

33 (e) The awarding authority of any public works project shall withhold the next scheduled  
34 payment to any contractor or subcontractor, who fails to comply with the provisions of

1 subsections (a) or (b) above and shall also notify the director of labor and training. The awarding  
2 authority shall withhold any further payments until such time as the contractor or subcontractor  
3 has fully complied. If it is a subcontractor which has failed to comply, the amount withheld shall  
4 be proportionate to the amount attributed or due to the offending subcontractor as determined by  
5 the awarding authority. The department may also impose a penalty of up to five hundred dollars  
6 (\$500) for each calendar day of noncompliance with this section, as determined by the director of  
7 labor and training. Mere errors and/or omissions in the daily logs maintained under subsection (c)  
8 shall not be grounds for imposing a penalty under this subsection.

9 **37-13-14.1. Enforcement – Hearings.** – (a) The director or his designee may seek relief  
10 against a contractor or subcontractor for a violation of this chapter in accordance with the  
11 provisions of sections 28-14-19.

12 ~~(b) Before issuing an order or determination, the director of labor and training shall order~~  
13 ~~a hearing thereon at a time and place to be specified, and shall give notice thereof, together with a~~  
14 ~~copy of the complaint or the purpose thereof, or a statement of the facts disclosed upon~~  
15 ~~investigation, which notice shall be served personally or by mail on any person, firm, or~~  
16 ~~corporation affected thereby. The person, firm, or corporation shall have an opportunity to be~~  
17 ~~heard in respect to the matters complained of at the time and place specified in the notice, which~~  
18 ~~time shall be not less than five (5) days from the service of the notice personally or by mail. The~~  
19 ~~hearing shall be held within ten (10) days from the order of hearing. The hearing shall be~~  
20 ~~conducted by the director of labor and training or his or her designee. The hearing officer in the~~  
21 ~~hearing shall be deemed to be acting in a judicial capacity, and shall have the right to issue~~  
22 ~~subpoenas, administer oaths, and examine witnesses. The enforcement of a subpoena issued~~  
23 ~~under this section shall be regulated by Rhode Island civil practice law and rules. The hearing~~  
24 ~~shall be expeditiously conducted and upon such hearing the hearing officer shall determine the~~  
25 ~~issues raised thereon and shall make a determination and enter an order within ten (10) days of~~  
26 ~~the close of the hearing, and forthwith serve a copy of the order, with a notice of the filing~~  
27 ~~thereof, upon the parties to the proceeding, personally or by mail. The order shall dismiss the~~  
28 ~~charges or direct payment of wages or supplements found to be due, including interest at the rate~~  
29 ~~of twelve percentum (12%) per annum from the date of the underpayment to the date of payment,~~  
30 ~~and may direct payment of reasonable attorney's fees and costs to the complaining party.~~

31 Notwithstanding the Imitation on civil penalties available under section 28-14-19, the  
32 director and/or his or her designee may impose ~~In addition to directing payment of wages or~~  
33 ~~supplements including interest found to be due, the order shall also require payment of a further~~  
34 ~~sum as~~ a civil penalty in an amount up to three times the total amount found to be due for a

1 violation of this chapter. ~~Further, if the amount of salary owed to an employee pursuant to this~~  
2 ~~chapter but not paid to the employee in violation of thereof exceeds five thousand dollars~~  
3 ~~(\$5,000), it shall constitute a misdemeanor and shall be referred to the office of the attorney~~  
4 ~~general. The misdemeanor shall be punishable for a period of not more than one year in prison~~  
5 ~~and/or fined not more than one thousand dollars (\$1,000). In assessing the amount of the penalty,~~  
6 ~~due consideration shall be given to the size of the employer's business, the good faith of the~~  
7 ~~employer, the gravity of the violation, the history of previous violations and the failure to comply~~  
8 ~~with recordkeeping or other nonwage requirements.~~ The surety of the person, firm, or corporation  
9 found to be in violation of the provisions of this chapter shall be bound to pay any penalties  
10 assessed on such person, firm, or corporation. ~~The penalty~~ Any penalty imposed under this  
11 chapter shall be paid to the department of labor and training for deposit in the state treasury;  
12 provided, however, it is hereby provided that the general treasurer shall establish a dedicated  
13 "prevailing wages enforcement fund" for the purpose of depositing the penalties paid as provided  
14 herein. There is hereby appropriated to the annual budget of the department of labor and training  
15 the amount of the fund collected annually under this section that shall be used at the direction of  
16 the director of labor and training for the sole purpose of enforcing prevailing wage rates as  
17 provided in this chapter.

18 (c) For the purposes of this chapter, each day or part thereof of violation of any provision  
19 of this chapter by a person, firm, or corporation, whether the violation is continuous or  
20 intermittent, shall constitute a separate and succeeding violation.

21 (d) In addition to the above, any person, firm, or corporation found in violation of any of  
22 the provisions of this chapter by the director of labor and training, an awarding authority, or the  
23 hearing officer, shall be ineligible to bid on or be awarded work by an awarding authority or  
24 perform any such work for a period of not less than eighteen (18) months and no more than thirty-  
25 six (36) months from the date of the order entered by the hearing officer. In determining the  
26 duration of the debarment period imposed, the director and/or his or her designee shall consider,  
27 among other things, the willfulness of the violation. Once a person, firm, or corporation is found  
28 to be in violation of this chapter, all pending bids with any awarding authority shall be revoked,  
29 and any bid awarded by an awarding authority prior to the commencement of the work shall also  
30 be revoked.

31 (e) In addition to the above, any person, firm, or corporation found to have committed  
32 two (2) or more willful violations in any period of eighteen (18) months of any of the provisions  
33 of this chapter by the hearing officer, which violations are not arising from the same incident,  
34 shall be ineligible to bid on or be awarded work by an awarding authority or perform any work

1 for a period of sixty (60) months from the date of the second violation.

2 (f) When a contractor becomes ineligible to bid on public works under this chapter,  
3 neither the contractor nor any successor entity or sole proprietorship that: (i) Has one or more of  
4 the same principals or officers as the partnership, limited partnership, limited liability partnership,  
5 joint venture, limited liability company, corporation, or sole proprietorship as the subject  
6 contractor; and (ii) Is engaged in the same or equivalent trade or activity, shall be allowed to bid  
7 on public works projects, unless and until the director or his or her designee shall determine that  
8 the basis of the ineligibility has been satisfied or removed and that the contractor otherwise  
9 satisfies the requirements under this chapter. Notwithstanding the foregoing, a natural person  
10 may obtain relief in superior court from the application and enforcement of this subsection as to  
11 him or her, if he or she can establish by clear and convincing evidence that he or she was not  
12 responsible or legally liable for, was not aware of, and did not acquiesce to the violation or  
13 violations which form the basis of the debarment at issue.

14 ~~(f)~~ (g) The order of the hearing officer shall remain in full force and effect unless stayed  
15 by order of the superior court.

16 ~~(g)~~ (h) The director of labor and training, awarding authority, or hearing officer shall  
17 notify the bonding company of any person, firm, or corporation suspected of violating any section  
18 of this chapter. The notice shall be mailed certified mail, and shall enumerate the alleged  
19 violations being investigated.

20 (i) Any and all officers, if the contractor is a corporation, the manager or any managing  
21 members, if a limited liability company, any partner, if a partnership, any general partner, if a  
22 limited liability partnership, and any and all principals if the contractor is any other form of entity  
23 shall be individually and personally liable for any award or relief issued against the contractor  
24 under subsection (a) above, unless the contractor is a solvent entity whose stock is publicly  
25 traded, in which case this subsection shall not apply. Notwithstanding the foregoing, a natural  
26 person may obtain relief in superior court from the application and enforcement of this subsection  
27 as to him or her, if he or she can establish by clear and convincing evidence that he or she was not  
28 responsible or legally liable for, was not aware of, and did not acquiesce to the violation or  
29 violations which form the basis of the liability imposed.

30 (j) In addition to the above, any person, firm, or corporation found to have willfully made  
31 a false or fraudulent representation on certified payroll records shall be referred to the office of  
32 the attorney general. The false or fraudulent representation shall be considered a misdemeanor  
33 and shall be punishable for a period of not more than one year in prison and/or fined one thousand  
34 dollars (\$1,000). Further, any person, firm, or corporation found to have willfully made a false or



1 fraudulent representation on certified payroll records shall be required to pay a civil penalty to the  
2 department of labor and training in an amount of no less than two thousand dollars (\$2,000) and  
3 not greater than fifteen thousand dollars (\$15,000) per representation. For purposes of this  
4 subsection "willfully" shall mean representations that are known to be false, or representations  
5 made with deliberate ignorance or reckless disregard for their accuracy.

6 **37-13-17. Private right of action to collect wages or benefits.** - (a) Any person  
7 aggrieved by a violation of this chapter is entitled to relief against the employer in accordance  
8 with the provisions of section 28-14-19.1. ~~An employee or former employee, or any organization~~  
9 ~~representing such an employee or former employee, of a contractor or subcontractor may bring a~~  
10 ~~civil action for a violation of section 37-13-7 for appropriate injunctive relief, or actual damages,~~  
11 ~~or both within three (3) years after the occurrence of the alleged violation. An action commenced~~  
12 ~~pursuant to this section, may be brought in the superior court for the county where the alleged~~  
13 ~~violation occurred, the county where the complainant resides, or the county where the person~~  
14 ~~against whom in the civil complaint is filed resides or has their principal place of business. Any~~  
15 ~~contractor or subcontractor who violates the provisions of section 37-13-7 shall be liable to the~~  
16 ~~affected employee or employees in the amount of unpaid wages or benefits, plus interest. A civil~~  
17 ~~action filed in court under this section may be instituted instead of, but not in addition to the~~  
18 ~~director of labor and training enforcement procedures authorized by section 37-13-14.1, provided~~  
19 ~~the civil action is filed prior to the date the director of labor and training issues notice of an~~  
20 ~~administrative hearing.~~

21 ~~(b) An employer's responsibility and liability is solely for its own employees.~~

22 ~~-(c) An action instituted pursuant to this section may be brought by one or more~~  
23 ~~employees or former employees on behalf of himself/herself or themselves and other employees~~  
24 ~~similarly situated, except that no employee shall be a party plaintiff to any such action unless~~  
25 ~~he/she gives his/her consent in writing to become such a party and such consent is filed in the~~  
26 ~~court in which such action is brought.~~

27 ~~-(d) In an action filed under this section in which the plaintiff prevails, the court shall, in~~  
28 ~~addition to any judgment awarded to the plaintiff, require reasonable attorneys' fees and the costs~~  
29 ~~of the action to be paid by the defendant.~~

30 ~~-(e) The court in an action filed under this section shall award affected employees or~~  
31 ~~former employees liquidated damages in an amount equal to two (2) times the amount of unpaid~~  
32 ~~wages or benefits owed. Unpaid fringe benefit contributions owed pursuant to this section in any~~  
33 ~~form shall be paid to the appropriate benefit fund, however, in the absence of an appropriate fund~~  
34 ~~the benefit shall be paid directly to the individual.~~

1 ~~(f) The filing of a civil action under this section shall not preclude the director of labor~~  
2 ~~and training from referring a matter to the attorney general as provided in section 37-13-14.1(b),~~  
3 ~~from prohibiting a contractor or subcontractor from bidding on or otherwise participating in~~  
4 ~~contracts as provided in section 37-13-14.1(d), (e) and (h), or from prohibiting termination of~~  
5 ~~work on failure to pay agreed wages pursuant to section 37-13-16.~~

6 ~~(b) (g)~~ Any person, ~~firm, or~~ business, corporation or entity of any kind found to have  
7 willfully made a false or fraudulent representation in connection with wage obligations owed on a  
8 contract shall be required to pay a civil penalty to the department of labor and training in an  
9 amount of no less than one thousand dollars (\$1,000) and not greater than three thousand dollars  
10 (\$3,000) per representation. Such penalties shall be recoverable in civil actions filed pursuant to  
11 this section. For purposes of this subsection "willfully" shall mean representations that are known  
12 to be false, or representations made with deliberate ignorance or reckless disregard for their truth  
13 or falsity.

14 ~~(h) An employer shall not discharge, threaten, or otherwise discriminate against an~~  
15 ~~employee, or former employee, regarding compensation terms, conditions, locations or privileges~~  
16 ~~of employment because the employee or former employee, or a person or organization acting on~~  
17 ~~his or her behalf:~~

18 ~~(1) Reports or makes a complaint under this section; or otherwise asserts his or her rights~~  
19 ~~under this section; and/or~~

20 ~~(2) Participates in any investigation, hearing or inquiry held by the director of labor and~~  
21 ~~training under section 37-13-14.1. In the event a contractor or subcontractor retaliates or~~  
22 ~~discriminates against an employee in violation of this section, the affected employee may file an~~  
23 ~~action in any court of competent jurisdiction and the court shall order reinstatement and/or~~  
24 ~~restitution of the affected employee, as appropriate, with back pay to the date of the violation, and~~  
25 ~~an additional amount in liquidated damages equal to two (2) times the amount of back pay and~~  
26 ~~reasonable attorneys' fees and costs.~~

27 ~~(i) If any one or more subsections of this section shall for any reason be adjudged~~  
28 ~~unconstitutional or otherwise invalid, the judgment shall not affect, impair, or invalidate the~~  
29 ~~remaining subsections.~~

30 ~~(b) Any person, business, corporation, or entity of any kind found to have willfully made~~  
31 ~~a false or fraudulent representation in connection with wage obligations owed on a contract shall~~  
32 ~~be required to pay a civil penalty to the department of labor and training in an amount of no less~~  
33 ~~than one thousand dollars (\$1,000) and not greater than three thousand dollars (\$3,000) per~~  
34 ~~representation. Such penalties shall be recoverable in civil actions filed pursuant to this section.~~

~~For purposes of this subsection "willfully" shall mean representations that are known to be false, or representations made with deliberate ignorance or reckless disregard for their truth or falsity.~~

SECTION 12. Section 42-16.1-2 of the General Laws in Chapter 42-16.1 entitled "Department of Labor and Training" is hereby amended to read as follows:

**42-16.1-2. Functions of director.** -- The director of labor and training shall: (1) Have all the powers and duties formerly vested by law in the director of labor with regard to factory inspectors and steam boiler inspectors, and such other duties as may be by law conferred upon the department;

(2) Administer the labor laws of this state concerning women and children and be responsible for satisfactory working conditions of women and children employed in industry in this state by a division in the department which shall be known as the division of labor standards;

(3) Administer the act relating to state wage payment and wage collection;

(4) Have all of the powers and duties formerly vested in the director of the department of labor and administer those responsibilities set forth in chapters 29 -- 38, inclusive, of title 28;

(5) Have all the powers and duties formerly vested by law in the director of employment and training and administer those responsibilities set forth in chapters 39 -- 44, inclusive, of title 28 and chapter 102 of title 42.

(6) To provide to other requesting state departments or agencies any labor related information, records or documents, concerning employee misclassification, they deem necessary to review in the fulfillment of their statutory duties, responsibilities and mission, even if deemed confidential under applicable law, provided that confidentiality of such materials shall be maintained by all state departments to which the materials are released and no such information shall be publicly disclosed, except to the extent necessary to enforce applicable law.

SECTION 13. Chapter 42-16.1 of the General Laws entitled "Department of Labor and Training" is hereby amended by adding thereto the following section:

**42-16.1-5.1. Registration of independent contractors.** -- (a) Any natural person, business, corporation, or entity of any kind identifying itself as an independent contractor as defined under subdivision 28-14-1(6) may file a notice of designation as an independent contractor with the director, hereinafter referred to as a "registration." The registration shall identify the registrant as an independent contractor and contain such other information and be submitted on such uniform form and in such manner as may be prescribed by the director and/or his or her designee.

(b) The registration provided under subsection (a) above is mandatory only for a natural person or sole proprietor or any single employee business, corporation, or entity of any kind

1 performing construction in this state, except as provided in subsection (c) below. "Construction"  
2 as used in this section shall mean any public or private work consisting of grading, clearing,  
3 demolition, improvement, completion, repair, alteration, renovation, or construction of any public  
4 or private road or any bridge, or portion thereof, or any public or private building, or portion  
5 thereof, or any heavy construction, or any public works projects of any nature or kind whatsoever.

6 (c) The requirement of subsection (b) shall only apply to: (i) residential construction  
7 projects with five (5) units or more, excluding owner contracted routine maintenance or repair  
8 work; or (ii) Non-residential construction projects valued at one million dollars (\$1,000,000) or  
9 more, including any subcontract, regardless of its value, relating to said project, except for  
10 purposes of voluntary compliance with section 28-29-17.1. Any provider of services which  
11 furnishes and operates capital machinery and/or a specialized or heavy commercial vehicles as  
12 the major component of the service provided is exempt for the requirement of subsection (b).

13 (d) Any natural person, business, corporation, or entity of any kind which is required to  
14 but fails to register with the director under the provisions of this section shall be liable for a civil  
15 penalty in an amount not less than one thousand dollars (\$1,000) and not greater than three  
16 thousand dollars (\$3,000) for each violation, which the department of labor and training is  
17 authorized to enforce under the provisions of section 28-14-19. Notwithstanding the forgoing, no  
18 independent contractor shall be liable for failing to register as an independent contractor; under  
19 this section if that party did not: (i) Hold itself out as or request to be paid as an independent  
20 contractor; and (ii) Receive a written disclosure of engagement as an independent contractor from  
21 the procurer of services performed by the independent contractor as provided in subsection (e)  
22 below. In addition, it shall be a defense to the imposition of any penalties on the independent  
23 contractor under this subsection if the independent contractor was registered with the contractors'  
24 registration board and paying self-employment taxes or estimated taxes at the time of the  
25 violation.

26 (e) Any procurer of services performed by an independent contractor, which has failed to  
27 register when required as provided under subsection (b), shall be jointly and severally liable for  
28 any penalty imposed under subsection (d) above, unless said procurer shall have, prior to work  
29 being performed: (i) Filed a notice of procurement of independent contractor services with the  
30 director; and (ii) Disclosed to the independent contractor in writing of its intention to pay the  
31 party as an independent contractor and not as an employee. Such a filing and written disclosure to  
32 the independent contractor shall immunize the procurer from liability under this section for any  
33 services of the independent contractor performed for the procurer during the calendar year in  
34 which the filing and written disclosure were effectuated. The notice of procurement of

1 independent contractor services required herein shall identify the registrant as a procurer of  
2 independent contractor services and contain such other information and be submitted on such  
3 uniform form and in such manner as may be prescribed by the director and/or his or her designee.  
4 The disclosure of engagement of independent contractor services required herein shall either be  
5 provided using such uniform form as may be prescribed by the director and/or his or her designee  
6 or by including the substance of the disclosure provided in the forgoing form in the contract of  
7 employment or engagement letter procuring the services of the independent contractor.

8 (f) Any registration under subsection (a) or notice under subsection (e) above shall be  
9 provided under oath or affirmation and be considered a public record and shall expire at the end  
10 of each calendar year.

11 (g) The director shall establish such rules and regulations as necessary, consistent with  
12 the purpose of the requirements of this section

13 **42-16.1-5.2. Notice of ramifications of misclassification of employees as independent**  
14 **contractors. – (a) Employers misclassification of employees as independent contractors presents**  
15 **severe economic consequences to the affected employee, to the state and federal government, and**  
16 **to the workers' compensation system. A significant number of hiring entities are improperly**  
17 **classifying employees as "independent contractors" either due to a lack of understanding or**  
18 **knowingly to avoid legal obligations under federal and state labor and tax laws governing**  
19 **payment of wages, unemployment insurance, workers' compensation, and income and social**  
20 **security taxation. The state acknowledges the need to educate workers, the business community**  
21 **and the public on law and ramifications of willful or negligent misclassification of employees.**

22 (b) Liability may be imposed on both an independent contractor and the procurer of  
23 services thereof for failing to properly register under section 42-16.1-5.1. In addition, an  
24 employer is subject to damages and penalties under section 28-14-18 for misclassification of an  
25 employee.

26 (c) The director shall provide for the placement of information on any poster required  
27 under the federal Fair Labor Standards Act, informing all workers of their right to be properly  
28 classified and the specific detrimental consequences of the misclassification of their status. The  
29 director shall adopt regulations to implement the provisions of this section so that all interested  
30 parties are properly notified and educated on this critical issue of the proper classification of  
31 workers.

32 SECTION 14. Section 44-1-2 of the General Laws in Chapter 44-1 entitled "State Tax  
33 Officials" is hereby amended to read as follows:

34 **44-1-2. Powers and duties of tax administrator. --** The tax administrator is required:

1 (1) To assess and collect all taxes previously assessed by the division of state taxation in  
2 the department of revenue and regulation, including the franchise tax on domestic corporations,  
3 corporate excess tax, tax upon gross earnings of public service corporations, tax upon interest  
4 bearing deposits in national banks, the inheritance tax, tax on gasoline and motor fuels, and tax on  
5 the manufacture of alcoholic beverages;

6 (2) To assess and collect the taxes upon banks and insurance companies previously  
7 administered by the division of banking and insurance in the department of revenue and  
8 regulation, including the tax on foreign and domestic insurance companies, tax on foreign  
9 building and loan associations, deposit tax on savings banks, and deposit tax on trust companies;

10 (3) To assess and collect the tax on pari-mutuel or auction mutuel betting, previously  
11 administered by the division of horse racing in the department of revenue and regulation.

12 (4) [Deleted by P.L. 2006, ch. 246, art. 38, section 10].

13 (5) To assess and collect the monthly surcharges that are collected by telecommunication  
14 services providers pursuant to section 39-21.1-14 and are remitted to the division of taxation.

15 (6) To audit, assess and collect all unclaimed intangible and tangible property pursuant  
16 to chapter 21.1 of title 33.

17 (7) To provide to other requesting state departments or agencies any tax information,  
18 records or documents they deem necessary to review in the fulfillment of their statutory duties,  
19 responsibilities and mission, even if deemed confidential under applicable law; provided, that  
20 confidentiality of such materials shall be maintained by all state departments to which the  
21 materials are released and no such information shall be publicly disclosed except to the extent  
22 necessary to enforce applicable law.

23 SECTION 15. This act shall take effect on January 1, 2012.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO LABOR - OMNIBUS FAIR CONTRACTING STANDARDS OF 2011

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1           This act would comprehensively address and clarify in many different legal contexts, the  
2 issue of whether a worker is an employee or independent contractor. It would also increase the  
3 power of the state to penalize businesses that bid to perform public works contracts which do not  
4 follow labor laws.

5           This act would take effect upon passage.

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