



March 30, 2026  
Chair Arthur J. Corvese  
Members of the House Labor Committee

Re: H7773 – Workers’ Compensation Procedure

On behalf of The Beacon Mutual Insurance Company, please accept this letter in opposition to H7773. For the reasons outlined below, we oppose this legislation.

H7773 proposes to amend the Rhode Island Workers' Compensation Act (the “Workers’ Compensation Act”) by completely changing its constitutional underpinnings and eviscerating the long-standing interrelationship between benefits afforded under the Act and tort damages recovered under the Rhode Island and federal judicial systems. RIGL 28-35-58, the controlling statute in this circumstance, is the subject of H7773.

Pursuant to the Workers’ Compensation Act, in addition to workers’ compensation benefits, an injured employee may seek damages from a third-party for any loss or harm due to wrongful or negligent conduct. RIGL 28-35-58. RIGL 28-35-58 grants an employer the right to reimbursement when an employee has received benefits under the Workers' Compensation Act and has also recovered damages for the same injury from a negligent third-party.

Injured employees who recover against a third-party are obligated to reimburse the employer (or the employer's insurance carrier) for any compensation paid as of the date of the judgment or settlement. DiQuinzio v. Panciera Lease Co., Inc., 612 A.2d 40, 43 (R.I. 1992); Colarusso v. Mills, 208 A.2d 381, 386 (R.I. 1965); McArthur v. Dutee W. Flint Oil Co., 146 A. 484, 487 (R.I. 1929); Boucher v. McGovern, 639 A.2d 1369, 1372 (1994); Cf. Travis v. Rialto Furniture Co., 220 A.2d 179, 180 (1966); See Matteson v. The Traveler’s Insurance Company, 738 F.2d 619, 620 (1984). “The employer is given the right of indemnity against the negligent third person with the intention that the final payment for the damage suffered by the employee shall be made not by the employer but by the negligent third person who is responsible for the injury...and the employer's right of indemnity against the third person was conferred...with the intention that ultimate liability should fall on the person responsible for the injury” Colarusso at 383-84. The Rhode Island Supreme Court has time and time again confirmed this right and its grounding in the constitutionality of the Workers’ Compensation Act. The Act is designed to prevent double recovery by an employee or an employer, and to preclude double liability being imposed on a third-party tortfeasor.

H7773 proposes that “any money recovered by judgment, award, or settlement that includes damages for past or future pain and suffering, loss of consortium, loss of society, loss of wages and/or earning capacity or other damages not fully compensated by workers’ compensation, shall not be reimbursed.”

The effect of the proposed legislation would be that the negligent third-party would pay the injured worker, the non-negligent employer would pay the injured worker and the injured worker would recover twice for the same injury. The intended purpose of RIGL 28-35-58 is that the negligent party pay for the damages caused, not that the petitioner recover twice. Passage of H7773 would implicitly make the employer responsible for injuries caused by negligent third parties.



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The rates that employers pay for mandatory workers' compensation insurance in Rhode Island are set by the Department of Business Regulation ("DBR"). DBR's considerations in setting such rates include the expenses associated with the operation of our system and the recovery of third-party liens. Passage of this proposal would add extraordinary expense associated with increased litigation and confusion in coverage, payment and reimbursement of workers' compensation benefits. Denying reimbursement for payment of workers' compensation benefits impacts the viability of the system and the workers' compensation costs and insurance premiums charged to Rhode Island employers, including small business owners and self-insured employers. The workers' compensation system is premised upon the fact that the parties "surrender some rights and receive certain benefits" which are intertwined. Workers' compensation rates would skyrocket thereby exponentially increasing the cost of doing business in Rhode Island.

### **Compensation and Damages are not Synonymous in a No-Fault System**

H7773 proposes to eliminate the employee's obligation to reimburse the non-negligent employer based on the types of damages received from a third-party. This proposal completely ignores the exchange the General Assembly created, as endorsed by multiple Supreme Court decisions, when crafting the Act in acknowledging that the "damages" an injured employee may recover from a tortfeasor are not identical to the elements of loss for which the employee can recover "compensation" from the employer. Accordingly, the terms "damages" and "compensation" as used in the statute are not synonymous.

The worker's compensation system is based on the public policy that the employer, while not actually negligent, should compensate the employee for injury incurred on the job if no other recovery is available. However, when recovery is obtained from the party actually responsible for the employee's injury, fairness and justice require that the employer be reimbursed for payment of the workers' compensation benefits. H7773 attempts to eliminate the employer protections afforded under the Act and allow the injured worker to recover twice for the same injury. At the same time, H7773 eliminates the reimbursement for lost wages when recovered in the third-party action. Workers' compensation benefits are in large part wage replacement. In effect, nothing would be reimbursed.

The legislation goes on to provide that "the amount to be reimbursed shall also be reduced by any percentage of the employee's comparative negligence". It is completely illogical in both a tort and workers' compensation scenario, especially in a no-fault system where the right to proceed is grounded in the fault of a negligent third-party. There is no rational explanation in proposing that the employee's comparative negligence shall apply to the employer's workers' compensation lien.

In addition, the legislation, while eviscerating the Workers' Compensation Act, does not return the affirmative defenses and right to a jury trial that would have otherwise been afforded the employer under the tort system replaced by the workers' compensation system. If passed, this legislation would be swiftly subject to constitutional challenge.

### **Erodes the Jurisdiction and Orderly Functioning of the Workers' Compensation Courts**

H7773 proposes that "Any dispute regarding the appropriate apportionment of the amount to be reimbursed by the employee shall be heard in the court having jurisdiction of the underlying third-party claim." This concept completely ignores the jurisdiction of the Workers' Compensation Court and removes workers' compensation issues to other courts. It would create a parallel cause of action in every third-party action outside of the workers' compensation system.



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Currently, an injured worker who recovers against a negligent third-party found liable for the injury reimburses the employer for the amount of the compensation paid under the Workers' Compensation Act as of the date of the judgment or settlement, reduced by one-third for attorneys' fees and legal expenses. To the extent that the damages received from the third-party exceed the amount of compensation paid, the workers' compensation benefits may be suspended. On a regular basis, the parties in the workers' compensation system follow this process without controversy or concern. In the rare instance where the employer and employee are unable to resolve a dispute relating to the employee's reimbursement obligations, the Workers' Compensation Court, tasked with adjudicating workers' compensation-related disputes, is available to address such issues, often through a low-cost, efficient mediation process. This mediation process, while available to the parties for years, was formally codified through the Omnibus Bill submitted by the Advisory Council and enacted by the Legislature in 2024. By requiring that reimbursement disputes be heard in the third-party litigation, H7773 removes an element of the workers' compensation system outside the Workers' Compensation Court's jurisdiction, adding undue expense, delay and confusion to the current efficient process.

Remarkably, the bill is silent on who determines the damage designation, i.e. pain and suffering, loss of consortium, loss of society, etc. It is patently unconstitutional for an employer who has a lien to be excluded from this process. The injured worker's attorney, presently charged with protecting this lien, would face an inherent and untenable conflict of interest.

For all of these reasons and more, the bill as proposed would insert inapplicable elements of the tort system which would undermine the established benefits of the workers' compensation system and add exponential expense, delay the delivery of benefits to injured workers, and upset a system that is otherwise working to the benefit of the employees and employers of our state.

### **H7773 Threatens the Foundation of the RI Workers' Compensation System to the Detriment of Employers and Employees**

The General Assembly created the workers' compensation system in 1912 as an equitable and predictable no-fault compensation system to compensate employees for work-related injuries, with wage replacement, medical benefits and specific compensation, with a minimum of delay and absent the costs that are usually associated with a trial. *DiQuinzio v. Panciera Lease Co., Inc.*, 612 A.2d 40, 43 (R.I. 1992); *Cacchillo v. H. Leach Machinery Co.*, 111 R.I. 593, 595-96, (R.I. 1973). Under the workers' compensation system's swift adjudication, without having to prove fault, injured workers receive prompt, limited compensation from their employers which is less than the uncertain damages which might have been received under the tort system, and employers are insulated from tort liability. Passage of this bill will imperil this intent.

The Act's constitutionality was and remains rooted in the election of remedies afforded the employee. RIGL 28-29-17 provides that an employee is subject to the Workers' Compensation Act and waives his or her common-law rights unless he or she gives written notice to the employer that the employee is retaining his or her right to sue at common law. In exchange for the benefits they receive under the workers' compensation system, employees and their dependents forgo any rights they might have had at common law against their employer. RIGL 28-29-20. While the employer is protected from common law liability, it is prohibited from raising the typical affirmative defenses in relation to the work-related injury



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and waives its constitutional right to a jury trial. RIGL 28-29-3. It is a no-fault system and the foundation of our Act.

Prior to the enactment of the Act by the General Assembly at its January 1912 session, any worker who sought recovery from the employer for damages in a common-law suit for negligence would be confronted with the almost unassailable defenses of contributory negligence or assumption of the risk or the so-called fellow-servant rule, which provides that an employer is not responsible for injuries caused to an employee by the negligence of his or her fellow worker. Along with the delays associated with civil litigation, injured workers were left without a swift remedy for their lost wages, medical bills and loss of use/disfigurement. While the Workers' Compensation Act remedied this scenario, H7773 threatens the return of the pre-reform process.

### **Conclusion**

In summary, if adopted, this legislation would change the nature of workers' compensation benefits and potentially dismantle the established solutions offered by the workers' compensation system. In addition, it would increase costs exponentially for Rhode Island employers, conflict with the jurisdiction and authority of judicial bodies, and impair rights under existing laws. The workers' compensation system was founded in a "grand bargain" between employers and employees. The proposed changes in H7773 eliminate this bargain relating to some employees and create issues of "fundamental principles of fairness" under the Due Process, Takings, and Contracts Clauses of the U.S. Constitution and the Rhode Island Constitution. For all these reasons and more, we urge you not to pass this bill.

We welcome the opportunity to answer any questions you may have regarding this testimony.

Very truly yours,

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Cc: Speaker Joseph Shekarchi