



# Legislative Activity Report

National Council on Compensation Insurance

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Regulatory Services

March 13, 2015

RLA-2015-10

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State Issues Contacts: Please refer to the list of State Relations Executives at the end of this report.

## LEGISLATIVE ACTIVITY—LEGISLATIVE SESSION UPDATES

*This report contains descriptions and/or excerpts of relevant bills that have passed the first chamber, passed the second chamber, or have been enacted during the specific periods. In addition, a recap of significant legislative and judicial activity impacting the workers compensation system will be included in the first report published each month. This report is issued on a weekly basis throughout the legislative season, and it provides updates on the content of these bills if and when they progress through the legislative process. This report includes bills from states where NCCI provides ratemaking services (see state list under Contact Information) and the US Congress.*

### BILLS ENACTED

There were no bills that were enacted within the one-week period ending March 6, 2015.

### BILLS PASSING SECOND CHAMBER

The following bill passed the second chamber within the one-week period ending March 6, 2015.

#### Utah

##### SB 135 was:

- Passed by the first chamber on February 24, 2015
- Passed by the second chamber on March 4, 2015
- Included in NCCI's March 6, 2015 *Legislative Activity Report* (RLA-2015-09)

**SB 135** adds *section 34A-3-113. Presumption of workers' compensation benefits for firefighters* of the Utah Code Annotated as follows:

##### **34A-3-113. Presumption of workers' compensation benefits for firefighters.**

(1) As used in this section:

(a) (i) "Firefighter" means a member, including a volunteer member, as described in Subsection 67-20-2(5)(b)(ii), or a member paid on call, of a fire department or other organization that provides fire suppression and other fire-related service who is responsible for or is in a capacity that includes responsibility for the extinguishment of fires.

(ii) "Firefighter" does not include a person whose job description, duties, or responsibilities do not include direct involvement in fire suppression.

(b) "Presumptive cancer" means one or more of the following cancers:

(i) pharynx;

(ii) esophagus;

(iii) lung; and

(iv) mesothelioma.

(2) If a firefighter who contracts a presumptive cancer meets the requirements of Subsection (3), there is a rebuttable presumption that:

(a) the presumptive cancer was contracted arising out of and in the course of employment; and

(b) the presumptive cancer was not contracted by a willful act of the firefighter.

(3) To be entitled to the rebuttable presumption described in Subsection (2):

(a) during the time of employment as a firefighter, the firefighter undergoes annual physical examinations;

(b) the firefighter shall have been employed as a firefighter for eight years or more and regularly responded to firefighting or emergency calls within the eight-year period; and

(c) if a firefighter has used tobacco, the firefighter provides documentation from a physician that indicates that the firefighter has not used tobacco for the eight years preceding reporting the presumptive cancer to the employer or division.

(4) A presumption established under this section may be rebutted by a preponderance of the evidence.

(5) If a firefighter who contracts a presumptive cancer is employed as a firefighter by more than one employer and qualifies for the presumption under Subsection (2), and that presumption has not been rebutted, the employer and insurer at the time of the last substantial exposure to risk of the presumptive cancer are liable under this chapter pursuant to Section 34A-3-105.

(6) A cause of action subject to the presumption under this section is considered to arise on the date after May 12, 2015, that the employee:

(a) suffers disability from the occupational disease;

(b) knows, or in the exercise of reasonable diligence should have known, that the occupational disease is caused by employment; and

(c) files a claim as provided in Section 34A-3-108.

## **BILLS PASSING FIRST CHAMBER**

The following bills passed the first chamber within the one-week period ending March 6, 2015.

### **Georgia**

**HB 412** amends the following sections of the Official Code of Georgia Annotated, in part, as follows:

#### **34-9-11. Exclusivity of rights and remedies granted to employee under chapter; immunity granted to construction design professionals**

(a) The rights and the remedies granted to an employee by this chapter shall exclude and be in place of all other rights and remedies of such employee, his or her personal representative, parents, dependents, or next of kin, and all other civil liabilities whatsoever at common law or otherwise, on account of such injury, loss of service, or death; provided, however, that no employee the employer may be liable to the employee for rights and remedies beyond those provided in this chapter by expressly agreeing in writing to specific additional rights and remedies; provided, further, however, that the use of contractual provisions generally relating to workplace safety, generally relating to compliance with laws or regulations, or generally relating to liability insurance requirements shall not be construed to create rights and remedies beyond those provided in this chapter. No employee shall be deprived of any right to bring an action against any third-party tort-feasor, other than an employee of the same employer or any person who, pursuant to a contract or agreement with an employer, provides workers' compensation benefits to an injured employee, notwithstanding the fact that no common-law master-servant relationship or contract of employment exists between the injured employee and the person providing the benefits, and other than a construction design professional who is retained to perform professional services on or in conjunction with a construction project on which the employee was working when injured, or any employee of a construction design professional who is assisting in the performance of professional services on the construction site on which the employee was working when injured, unless the construction design professional specifically assumes by written contract the safety practices for the project. The immunity provided by this subsection to a construction design professional shall not apply to the negligent preparation of design plans and specifications, nor shall it apply to the tortious activities of the construction design professional or the employees of the construction design professional while on the construction site where the employee was injured and where those activities are the proximate cause of the injury to the employee or to any professional surveys specifically set forth in the contract or any intentional misconduct committed by the construction design professional or his or her employees.

#### **34-9-201. Selection of physician from panel of physicians; change of physician or treatment; liability of employer for failure to maintain panel**

...

(b) The employer may satisfy the requirements for furnishing medical care under Code Section 34-9-200 in one of the following manners:

...

~~(2) The employer may maintain a list of physicians in conformity with the guidelines and criteria established and contained in the Rules and Regulations of the State Board of Workers' Compensation. This list shall be known as the 'Conformed Panel of Physicians.' An employee may obtain the services of any physician from the conformed panel and may thereafter also elect to change to another physician on the panel without prior authorization of the board. The physician so selected will then become the primary authorized treating physician in control of the employee's medical care and may arrange for any consultation, referral, and extraordinary or other specialized medical services as the nature of the injury shall require without prior authorization by the board; provided, however, that any of the physicians to whom the employee is referred by the primary authorized treating physician shall not be permitted to arrange for any additional referrals; or~~

...

(c) Consistent with the method elected under subsection (b) of this Code section, the employer shall post the Panel of Physicians ~~or Conformed Panel of Physicians~~ or Managed Care Organization Procedures in prominent places upon the business premises and otherwise take all reasonable measures to ensure that employees:

...

#### **34-9-261. Compensation for total disability**

While the disability to work resulting from an injury is temporarily total, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the employee's average weekly wage but not more than ~~\$525.00~~ \$550.00 per week nor less than \$50.00 per week, except that when the weekly wage is below \$50.00, the employer shall pay a weekly benefit equal to the average weekly wage. The weekly benefit under this Code section shall be payable for a maximum period of 400 weeks from the date of injury; provided, however, that in the event of a catastrophic injury as defined in subsection (g) of Code Section 34-9-200.1,

the weekly benefit under this Code section shall be paid until such time as the employee undergoes a change in condition for the better as provided in paragraph (1) of subsection (a) of Code Section 34-9-104.

**34-9-262. Compensation for temporary partial disability**

Except as otherwise provided in Code Section 34-9-263, where the disability to work resulting from the injury is partial in character but temporary in quality, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the difference between the average weekly wage before the injury and the average weekly wage the employee is able to earn thereafter but not more than ~~\$350.00~~ \$367.00 per week for a period not exceeding 350 weeks from the date of injury.

**34-9-265. Compensation for death resulting from injury and other causes; penalty for death from injury proximately caused by intentional act of employer; payment of death benefits where no dependents found**

...

(d) The total compensation payable under this Code section to a surviving spouse as a sole dependent at the time of death and where there is no other dependent for one year or less after the death of the employee shall in no case exceed ~~\$150,000.00~~ \$220,000.00.

...

**34-9-358. Payment of assessments to fund by insurers and self-insurers; calculations**

...

(b) On ~~or~~ and after January 1, 2010, but prior to January 1, 2016, each insurer and self-insurer under this chapter shall, under regulations prescribed by the board of trustees, make payments to the fund in an amount equal to that proportion of 175 percent of the total disbursement made from the fund during the preceding calendar year as of December 31 of the preceding calendar year which the total workers' compensation claims paid by the insurer or self-insurer bears to the total workers' compensation claims paid by all insurers and self-insurers during the preceding calendar year but not to exceed \$100 million.

(c) On and after January 1, 2016, each insurer and self-insurer under this chapter shall, under regulations prescribed by the board of trustees, make payments to the fund in an amount equal to that proportion of \$100 million the total workers' compensation claims paid by the insurer or self-insurer bears to the total workers' compensation claims paid by all insurers and self-insurers during the preceding calendar year but not to exceed \$100 million.

...

**34-9-368. Reimbursement of self-insured employers or insureds; actuarial study required; dissolution of Subsequent Injury Trust Fund**

...

(c) Upon or in contemplation of the final payment of all claims filed for subsequent injuries for which claims are filed for injuries occurring on and prior to June 30, 2006, the board of trustees shall adopt and implement resolutions providing for the final dissolution of the Subsequent Injury Trust Fund. Such resolutions shall become effective when all claims made for injuries occurring on and prior to June 30, 2006, have been fully paid or otherwise resolved and shall include provisions for:

...

(2) The pro rata refund of assessments previously collected and unexpended, consistent with the provisions of subsection ~~(d)~~ (f) of Code Section 34-9-358;

...

(5) The transfer of the books, records, and property of the fund to the custody of the ~~State Board of Workers' Compensation Insurance Department~~.

Upon the completion of all matters provided for in such resolutions, but not later than ~~December 31, 2020~~ December 31, 2023, the Subsequent Injury Trust Fund and the members of its board of trustees shall be discharged from their duties except for such personnel necessary to administer any remaining claims.

*NCCI estimates that HB 412, if enacted, would increase workers compensation costs for certain claims. NCCI has quantified those provisions which can be reasonably determined. NCCI has also provided comments on the directional impact for those provisions for which the magnitude of the change is not quantifiable. NCCI estimates that HB 412 would have an impact of +1.5% (\$19M) on total system costs in Georgia for the quantifiable provisions. The impact, if any, of the other provisions would be realized in future claims experience and be reflected in subsequent NCCI loss cost filings in Georgia.*

**Idaho**

**SB 1075 amends section 20-412. Compensation—amount—crediting account of prisoner—civil rights—prisoners not employees** of the Idaho Code as follows:

**§ 20-412. Compensation—amount—crediting account of prisoner—civil rights—prisoners not employees**

Each prisoner, who is engaged in productive work ~~in the institution under the jurisdiction of the board of correction as a part of the correctional industries work program as authorized by this chapter~~, may receive for his work such compensation as the board shall determine, to be paid out of any funds available in the correctional industries betterment account. Such compensation, if any, shall be in accordance with a graduated schedule based on quantity and quality of work performed and skill required for its performance. Compensation shall be credited to the account of the prisoner, and paid from the correctional industries betterment account. Nothing in this section or in this act is intended to restore, in whole or in part, the civil rights of any inmate. No inmate who is

compensated under this act shall be considered to be an employee of or employed by the state or, the board of correction, ~~nor shall any or any private agricultural employer that is a party to a contract for inmate labor pursuant to section 20-413A, Idaho Code. No inmate come within any of the provisions of the workmen's~~ engaged in productive work as authorized by this chapter shall be entitled to worker's compensation laws, ~~or be entitled to any benefits thereunder~~ or unemployment compensation under chapter 4 or chapter 13, title 72, Idaho Code, whether on behalf of himself or any other person.

## Maryland

**SB 368** amends *section 19-406. Cancellations by insurer* of the Maryland Insurance Code to increase the number of days within which an insurer is required to provide a specified notice to an employer from at least 30 days to at least 45 days before the insurer may cancel or refuse to renew the employer's workers compensation insurance policy before its expiration for a reason other than nonpayment of a premium.

## New Mexico

**HB 250** amends *sections 52-1-25.1. Temporary total disability; return to work* and *52-1-26. Permanent partial disability* of the New Mexico Statutes Annotated as follows:

### **52-1-25.1. Temporary total disability; return to work.**

A. As used in the Workers' Compensation Act, "temporary total disability" means the inability of a worker, by reason of accidental injury arising out of and in the course of the worker's employment, to perform the duties of that employment prior to the date of the worker's maximum medical improvement.

B. If, prior to the date of maximum medical improvement, an injured worker's health care provider releases the worker to return to work ~~the worker is not entitled to temporary total disability benefits if:~~

~~(1) the employer offers work at the worker's pre-injury wage; or~~

~~(2) the worker accepts employment with another employer at the worker's pre-injury wage and the employer does not offer work at the worker's pre-injury wage, the worker is disabled and shall receive temporary total disability compensation benefits equal to two-thirds of the worker's pre-injury wage.~~

C. If, prior to the date of maximum medical improvement, an injured worker's health care provider releases the worker to return to work and the ~~employer offers~~ worker returns to work at less than the worker's pre-injury wage, the worker is disabled and shall receive temporary total disability compensation benefits equal to two-thirds of the difference between the worker's pre-injury wage and the worker's post-injury wage.

D. ~~If the worker returns to work pursuant to the provisions of Subsection B of this section~~ A worker is not entitled to temporary total disability benefits as set forth in Subsection B or C of this section if:

(1) the employer makes a bona fide work offer, that is reasonable to the employer and the worker, at or above the worker's pre-injury wage within medical restrictions, if any, as stated by the health care provider pursuant to Section 52-1-49 NMSA 1978, and the worker rejects the offered employment;

(2) the worker accepts employment with another employer at or above the worker's pre-injury wage; or

(3) the worker is terminated for misconduct connected with the employment; provided that if an employer terminates the worker for the pretextual reasons of attempting to avoid payment of benefits to the worker or as retaliation against the worker for seeking benefits, the worker shall be entitled to temporary total disability benefits and the employer shall be subject to penalties as set forth in Sections 52-1-28.1 and 52-1-28.2 NMSA 1978.

E. Notwithstanding the provisions of this section, the employer shall continue to provide reasonable and necessary medical care pursuant to Section 52-1-49 NMSA 1978.

### **52-1-26. Permanent partial disability.**

...

C. Permanent partial disability shall be determined by calculating the worker's impairment as modified by ~~his~~ the worker's age, education and physical capacity, pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978; provided that, regardless of the actual calculation of impairment as modified by the worker's age, education and physical capacity, the percentage of disability awarded shall not exceed ninety-nine percent.

D. ~~If, on or after the date of maximum medical improvement, an injured worker returns to work at a wage equal to or greater than the worker's pre-injury wage~~ On or after the date of maximum medical improvement, the worker's permanent partial disability rating shall be equal to ~~his~~ the worker's impairment and shall not be subject to the modifications calculated pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978, if:

(1) the worker returns to work at a wage at or above the worker's pre-injury wage;

(2) the worker accepts employment with another employer at or above the worker's pre-injury wage;

(3) the employer makes a bona fide work offer, that is reasonable to the employer and the worker, at or above the worker's pre-injury wage within medical restrictions, if any, as stated by the health care provider pursuant to Section 52-1-49 NMSA 1978, and the worker rejects the offered employment; or

(4) the worker is terminated for misconduct connected with the employment; provided that if an employer terminates the worker for the pretextual reasons of attempting to avoid payment of benefits to the worker or as retaliation against the worker for seeking benefits, the worker shall be entitled to modifier benefits and the employer shall be subject to penalties as set forth in Sections 52-1-28.1 and 52-1-28.2 NMSA 1978.

...

## Oklahoma

**HB 2205** amends numerous provisions in *Title 85A Administrative Workers' Compensation System* of the Oklahoma Statutes to:

- Clarify that the \$1,000 fee paid by insurers to the Insurance Commission is an annual fee for securing or renewing a license to sell and transact workers compensation insurance.
- Clarify that contagious or infectious diseases contracted through a hospital or sanatorium where the injured employee is treated or cared for is not a noncompensable injury.
- Clarify that self-insured employers under the Oklahoma Employee Injury Benefit Act are also participants in the funding of the Self-Insurance Guaranty Fund.
- Prohibit the Legislature from transferring monies in the Self-Insurance Guaranty Fund to other state funds.
- Provide that the Self-Insurance Guaranty Fund will consist of any unexpended funds in the Oklahoma Option Insured Guaranty Fund and the Oklahoma Option Self-Insured Guaranty Fund.
- Prohibit information submitted to the Insurance Commissioner for application and approval to be a self-insured employer under the Oklahoma Employee Injury Benefit Act to be made public without the written consent by the applicant (provides exceptions in the case of litigation or disclosure to a public insurance regulator from another state).
- Require the Insurance Commissioner to promulgate rules to establish the procedures for being approved as a qualified self-insured employer.
- Clarify that coverage developed by a self-insured employer is only applicable to Oklahoma employees of the employer. Employers with employees working in other states must arrange separate insurance coverage for the nonresident employees.
- Allow two or more employers who are members of a controlled group to apply for approval as a single qualified employer and establish a \$250 fee for each additional participating member of the controlled group.
- Require the Insurance Commission to maintain the deposited securities of a self-insured employer until each claim for benefits is paid and settled or until the Commissioner has determined that the self-insured employer is impaired.
- Provide that the Multiple Injury Trust Fund is not applicable to qualified employers under the Oklahoma Employee Injury Benefit Act or insurance coverage of qualified employers under the Oklahoma Employee Injury Benefit Act.
- Eliminate the Oklahoma Option Self-Insured Guaranty Fund and transfer remaining funds to the Self-Insurance Guaranty Fund.
- Allow a claimant to appeal an adverse benefit determination to a final review officer appointed by the Workers' Compensation Commission.
- Allow any party to appeal a decision made by an administrative law judge within 10 days to the Workers' Compensation Commission. The Commission may revise or modify the decision only if they determine that the decision was against the clear weight of evidence or contrary to law.
- Require appeals proceedings to be recorded by a court reporter.
- Provide that any decision determined by the Workers' Compensation Commission regarding an appeal is final unless an action is brought to the Supreme Court within 20 days of the decision being made.
- Allow the Supreme Court to modify, reverse, remand for rehearing, or set aside a judgment made by the Workers' Compensation Commission only if it was determined to be one of the following:
  - In violation of constitutional provisions
  - In excess of the statutory authority or jurisdiction of the Commission
  - Made on unlawful procedure
  - Affected by other error of law
  - Clearly erroneous in view of the reliable, material, probative and substantial competent evidence
  - Arbitrary or capricious
  - Procured by fraud
  - Missing findings of fact on issues essential to the decision
- Require strict application of the Oklahoma Employee Injury Benefit Act by the Insurance Commissioner, the Workers' Compensation Commission, and any court.
- Repeal Sections 206, 207, and 208 of Title 85A related to the annual fees assessed on insurance carriers, penalties for not paying the annual fee, and the determination of the rate of assessment for collections to the Oklahoma Option Insured Guaranty Fund.

## South Carolina

**HB 3576** adds new *section 41-1-120* to the South Carolina Code of Laws as follows:

**Section 41-1-120.**

(A) Notwithstanding another provision of law, a written agreement between a nonprofit youth sports organization and a coach which specifies that the coach is an independent contractor and not an employee of the nonprofit youth sports organization and also which otherwise satisfies the requirements of this subsection constitutes conclusive evidence that the relationship between the nonprofit youth sports organization and the coach is that of an independent contractor relationship rather than an employment relationship for the purposes of this section, and that the nonprofit youth sports organization consequently is not obligated to:

- (1) secure compensation for the coach pursuant to the workers' compensation law;
- (2) secure unemployment insurance coverage for the coach according to the provisions of this chapter; and

(3) withhold federal and state income taxes from money paid to the coach for services he provides to the organization pursuant to the contract.

(B) A written agreement provided in subsection (A) must contain a conspicuously located disclosure appearing in bold-faced, underlined, or large type. This agreement must be acknowledged by the parties as indicated by their signatures, initials, or other means to evince that the parties have read and understand the disclosure. This disclosure clearly must state that the coach is:

(1) an independent contractor and not an employee of the nonprofit youth sports organization;

(2) not entitled to workers' compensation benefits or unemployment benefits in connection with his or her contract with the nonprofit youth sports organization; and

(3) obligated to pay federal and state income tax on any money paid pursuant to the contract for coaching services, and that as a consequence the nonprofit youth sports organization will not withhold any amounts from the coach for purposes of satisfying the coach's income tax liability.

(C) A written agreement between a nonprofit youth sports organization and a coach formed pursuant to this subsection may not, in and of itself, be construed as conclusive evidence that an independent contractor relationship exists for purposes of any civil action instituted by a third party.

(D) As used in this section, 'nonprofit youth sports organization' means an organization that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and is primarily engaged in conducting organized sports programs for persons under twenty-one years of age.

## West Virginia

**SB 578** amends *sections 23-4-8d. Occupational pneumoconiosis claims never closed for medical benefits with exception of settled claims* and *23-5-7. Compromise and settlement* of the Code of West Virginia as follows:

**§23-4-8d. Occupational pneumoconiosis claims never closed for medical benefits with exception of settled claims.**

Notwithstanding the provisions of subdivision (4), subsection (a), section sixteen of this article, with the exception of claims settled pursuant to article five, section seven of this chapter, a request for medical services, durable medical goods or other medical supplies in an occupational pneumoconiosis claim may be made at any time.

**§23-5-7. Compromise and settlement.**

(a) With the exception of medical benefits for nonorthopedic occupational disease claims, the ~~The~~ claimant, the employer and the Workers' Compensation Commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, may negotiate a final settlement of any and all issues in a claim wherever the claim is in the administrative or appellate processes: Provided, That in the settlement of medical benefits for nonorthopedic occupational disease claims, the claimant shall be represented by legal counsel. If the employer is not active in the claim, the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, may negotiate a final settlement ~~of any and all issues in a claim except for medical benefits for nonorthopedic occupational disease claims~~ with the claimant and ~~said the~~ settlement shall be made a part of the claim record. Except in cases of fraud, no issue that is the subject of an approved settlement agreement may be reopened by any party, including the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable. Any settlement agreement may provide for a lump-sum payment or a structured payment plan, or any combination thereof, or any other basis as the parties may agree. If a self-insured employer later fails to make the agreed-upon payment, the commission shall assume the obligation to make the payments and shall recover the amounts paid or to be paid from the self-insurer employer and its sureties or guarantors or both as provided in sections five and five-a, article two of this chapter.

(b) Each settlement agreement shall provide the toll-free number of the West Virginia State Bar Association and shall provide the injured worker with five business days to revoke the executed agreement. The Insurance Commissioner may void settlement agreements entered into by an unrepresented injured worker which are determined to be unconscionable pursuant to criteria established by rule of the commissioner.

(c) The amendments to this section enacted during the regular session of the Legislature in the year ~~one thousand nine hundred ninety nine~~ shall ~~2015~~ apply to all settlement agreements executed after the effective date.

**Contact Information**

If you have any questions about the legislation or proposals mentioned, please contact the appropriate NCCI state relations executive (listed below) or a representative of your local insurance trade association.

<b>State</b>	<b>State Relations Executive</b>	<b>Phone Number</b>
CT, ME, NH, RI ,VT	Laura Backus Hall	802-454-1800
FL, IA	Chris Bailey	850-322-4047
AL, GA, KY, LA, MS	Cathy Booth	205-655-2699
AZ, CO, NM, NV, UT	Maggie Karpuk	818-707-8374
DC, MD, VA, WV	David Benedict	804-380-3005
AK, HI	Carolyn Pearl	808-524-6239
IN, NC, SC, TN	Amy Quinn	803-356-0851
AR, IL, KS, TX	Terri Robinson	501-333-2835
ID, MT, OR	Mike Taylor	503-892-1858
MO, NE, OK, SD	Susan Schulte	573-392-5553
Federal Issues	Tim Tucker	202-403-8526

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