Legislative Activity Report

National Council on Compensation Insurance

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May 8, 2015 RLA-2015-18

Report Contact: Legislative_Activity@ncci.com 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

The following bills were enacted within the one-week period ending May 1, 2015.

Montana

HB 538 was:

- Passed by the first chamber on February 23, 2015
- Included in NCCI's March 6, 2015 ***Legislative Activity Report*** (RLA-2015-09)
- Amended and passed by the second chamber on April 9, 2015
- Included in NCCI's April 17, 2015 ***Legislative Activity Report*** (RLA-2015-15)
- Enacted on April 27, 2015, with an effective date of July 1, 2015

HB 538 adds the following new section to the Montana Code Annotated to read:

Section 1.

Employer option for extraterritorial coverage.

(1) Notwithstanding 39-71-118(8)(a), an employee of an employer in this state who is employed by the employer to work solely in North Dakota, and who is required by the laws of that state to be covered for workers' compensation purposes while working in that state, is not considered to be an employee in this state covered under title 39, chapter 71, during any time that the employer maintains workers' compensation coverage for the employee in North Dakota. For purposes of this section, "work solely in North Dakota" means the employee does not perform job duties in Montana and coverage is required by the state of North Dakota. Travel that is commuting to and from a job site in North Dakota from a location in Montana does not constitute performing job duties in Montana even if the employer pays for all or a portion of the costs of travel or if the worker is paid for the travel time.

(2) A plan No. 1, 2, or 3 insurer providing coverage to the employer under this chapter may require proof of coverage in North Dakota and records of work in North Dakota. An insurer may use a verification of employment form, developed by the department, to request an attestation by the employer regarding the employees working solely in North Dakota.

(3) (a) This section does not exempt an employee from coverage under this chapter when the employee's usual job duties begin in this state and the employee is otherwise covered under 39-71-407(4)(a).

(b) This section exempts an employee from coverage under this chapter when the employee is engaged in travel while commuting as provided in subsection (1).

Additionally, **HB 538** amends ***section 39-71-401. Employments covered and exemptions—elections—notice*** to read:

Section 2.

39-71-401. Employments covered and exemptions—elections—notice. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3, unless the provisions of [section 1] apply. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

…

HB 538 also includes the following clauses:
Section 3.
Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 1].
…

Section 5.
Termination. [This Act] terminates June 30, 2019.

SB 123 was:
- Passed by the first chamber on February 10, 2015
- Included in NCCI's February 20, 2015 ***Legislative Activity Report*** (RLA-2015-07)
- Passed by the second chamber on April 10, 2015
- Included in NCCI's April 17, 2015 ***Legislative Activity Report*** (RLA-2015-15)
- Enacted on April 27, 2015, with an effective date of January 1, 2016

SB 123 amends various sections of the Montana Code Annotated 2014 to revise the regulatory authority over the Montana State Fund to:
- Provide regulatory and complaint processes under the insurance commissioner that generally are applicable to private workers compensation insurers
- Prevent the insurance commissioner from dissolving or suspending the license of the state fund
- Subject the ratemaking authority of the state fund's board of directors to the same review by the insurance commissioner as experienced by private-sector insurers
- Revise the budgeting and financial reporting functions of the state fund to a calendar year basis
- Provide an enhanced risk-based capital mechanism to alert the insurance commissioner to potential state fund financial instability
- Provide rehabilitation authority to the insurance commissioner for the state fund
- Revise reference to excessive rates as related to market competition
- Remove rate review from the legislative auditor's duties
- Remove budgetary review from the legislative fiscal analyst's duties
- Provide for a transition

Note: This act applies to rates that are effective on or after July 1, 2016, for new and renewal policies.

SB 258 was:
- Passed by the first chamber on February 26, 2015
- Included in NCCI's March 20, 2015 ***Legislative Activity Report*** (RLA-2015-11)
- Amended and passed by the second chamber on April 10, 2015
- Included in NCCI's April 17, 2015 ***Legislative Activity Report*** (RLA-2015-15)
- Enacted on April 29, 2015, with an effective date of October 1, 2015

SB 258 amends ***sections 39-71-117 Employer defined*** and ***39-71-118 Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined*** of the Montana Code Annotated 2014 including, but not limited to, the following:
39-71-117. Employer defined.
(1) "Employer" means:
…
(d) subject to subsection (5), a religious corporation, religious organization, or religious trust receiving remuneration from nonmembers for ~~agricultural production,~~ :
(I) manufacturing~~,~~ or ~~a~~ construction ~~project~~ activities conducted by its members on or off the property ~~of~~ owned or leased by the religious corporation, religious organization, or religious trust; or
(II) agricultural labor and services performed off the property owned or leased by the religious corporation, religious organization, or religious trust.
…
(5) The definition of "employer" in subsection (1)(d) is limited to implementing the administrative purposes of this chapter and may not be interpreted or construed to create an employment relationship in any other context.

39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined.
(1) As used in this chapter, the term "employee" or "worker" means:
…
(i) subject to subsection (11), a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

…
(11) The definition of "Employee" or "Worker" in subsection (1)(i) is limited to implementing the administrative purposes of this chapter and may not be interpreted or construed to create an employment relationship in any other context.

SB 259 was:

- Passed by the first chamber on March 21, 2015
- Included in NCCI's April 3, 2015 ***Legislative Activity Report*** (RLA-2015-13)
- Amended and passed by the second chamber on April 18, 2015
- Included in NCCI's May 1, 2015 ***Legislative Activity Report*** (RLA-2015-17)
- Enacted on April 29, 2015, with an effective date of April 29, 2015, for section 10 of the bill. The remainder of the bill is effective on July 1, 2015.

SB 259 creates a new section and amends various sections of the Montana Code Annotated as follows:
Section 1.
39-71-201. ~~Administration~~ Workers' compensation administration fund. (1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act ~~and the statutory occupational safety and health acts that the department is required to administer~~, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:
(a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337;
~~(b) all penalties assessed under 50-71-119;~~ and
~~(c)~~ (b) all fees paid by an assessment on paid losses, plus administrative fines and interest provided by this section.
…
(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay its proportionate share determined by the paid losses in the preceding calendar year of all costs of administering and regulating the Workers' Compensation Act ~~and the statutory occupational safety acts that the department is required to administer~~, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.
(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment may be up to ~~3%~~ 4% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.
(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment may be up to ~~3%~~ 4% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.
(c) By April 30 of each year, the department shall notify employers described in subsections (5)(a) and (5)(b) of the percentage of the assessment that comprises the compensation plan No. 1 proportionate share of administrative and regulatory costs. ~~Payment of the~~ The assessment provided for by this subsection (5) must be paid by the employer in:
…
(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment may be up to ~~3%~~ 4% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.
(b) ~~Payment of the~~ The assessment must be paid in:
…
(7)(b) The amount to be funded by the premium surcharge may be up to ~~3%~~ 4% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and may be up to ~~3%~~ 4% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.
…
(8) By July 1, an insurer under compensation plan No. 2 that ~~pays~~ paid benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment of up to ~~3%~~ 4% of paid losses paid in the preceding calendar year. The department shall determine and notify the insurer by April 30 of each year of the amount that is due by July 1.
…

Section 2.
39-71-435. Workers' compensation and employers' liability insurance—optional deductibles.
…
(5) For purposes of 39-71-201, ~~and~~ 39-71-915, and [section 8], liability for assessments must be ascertained without regard to application of any deductible, whether the employer or the insurer pays the losses. For all other taxes and assessments based on premium, the amount of premium or assessment must be determined after application of the deductible.

Section 3.
39-71-1050. Assessment for stay-at-work/return-to-work assistance fund—definition.
…
(7)(b) If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge described in 39-71-201 first, then to the assessment premium surcharge described in [section 8], then to the assessment premium surcharge in this section, and then to the surcharge in 39-71-915, with any remaining amount applied to the premium due.
…

Section 4.
50-71-113. Administrative authority—funding.
…
(4) The activities of the department under the provisions of this part are funded by the ~~workers' compensation~~ occupational safety and health administration fund provided for in ~~39-71-201~~ [section 8].
(5) The department may accept, receive, and administer gifts, grants, or other funds from public or private agencies and from the United States for the purpose of carrying out the provisions of this part. Funds received by the department under this subsection must be deposited into the fund provided for in ~~39-71-201~~ [section 8].
…

Section 5.
50-71-119. Report of inspection—violations—penalty—appeal process.
(1)(a) The department shall make a written report of each inspection ~~that it conducts~~ conducted under 50-71-118.
…
(3)(c) Monetary penalties collected pursuant to this subsection (3) must be deposited into the ~~workers' compensation~~ occupational safety and health administration fund provided for in ~~39-71-201~~ [section 8].
…

Section 6.
50-72-106. Safety and industrial health consultation services authorized—recovery of expenses.
…
(3) Expenses recovered pursuant to subsection (2) must be deposited into the occupational safety and health administration fund provided for in [section 8].
…

Section 7.
50-73-107. Safety and industrial health consultation services authorized—recovery of expenses.
…
(3) Expenses recovered pursuant to subsection (2) must be deposited into the occupational safety and health administration fund provided for in [section 8].
…

Section 8.
Occupational safety and health administration fund.
(1) (a) An occupational safety and health administration fund is established, out of which are to be paid upon lawful appropriation all costs incurred by the department on or after July 1, 2016, in administering Title 50, chapters 71, 72, and 73.
(b) The department shall collect and deposit in the state treasury to the credit of the occupational safety and health administration fund:
(i) all penalties assessed under 50-71-119;
(ii) all expenses recovered under 50-72-106 and 50-73-107;
(iii) all fees paid by an assessment on paid losses, plus administrative fines and interest provided by this section; and
(iv) any grants or funds from private entities or the federal government intended for use by the department in defraying occupational safety and health costs.
(2) For the purposes of this section, the term "paid losses" has the meaning provided in 39-71-201.
(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file

annually on March 1 in the form and containing the information required by the department a report of paid losses.
(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay its proportionate share, as determined by the paid losses in the preceding calendar year, of all costs appropriated for the next fiscal year for the purposes of administering Title 50, chapters 71, 72, and 73.
(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment may be up to 2% of the paid losses that were paid in the preceding calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.
(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment may be up to 2% of the paid losses that were paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.
(c) By April 30 of each year, the department shall notify employers described in subsections (5)(a) and (5)(b) of the percentage of the assessment that comprises the compensation plan No. 1 proportionate share of administrative and regulatory costs. The assessment provided for by this subsection (5) must be paid by the employer in:
(i) one installment due on July 1; or
(ii) two equal installments due on July 1 and December 31 of each year.
(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the occupational safety and health administration fund.
(6) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "occupational safety and health regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed on insured employers.
(b) (i)The amount to be funded by the premium surcharge may be up to 2% of the paid losses that were paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and may be up to 2% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (6)(f).
(ii) The amount determined under subsection (6)(b)(i) must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year.
(iii) A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.
(c) On or before April 30 of each year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.
(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the occupational safety and health administration fund.
(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.
(f) The amount actually collected as a premium surcharge in a given year must be compared to the assessment on the paid losses paid in the preceding year. Any excess amount collected must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the assessed amount must be added to the amount to be collected as a premium surcharge in the following year.
(7) By July 1, an insurer under compensation plan No. 2 that paid benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment of up to 2% of the paid losses that were paid in the preceding calendar year. The department shall determine and notify the insurer by April 30 of each year of the amount that is due by July 1.
(8) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.
(9) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of Title 50, chapters 71, 72, and 73, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.
(10) Disbursements from the administration fund must be made after being approved by the department upon claim for disbursement.

(11) The department may assess and collect the occupational safety and health regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this subsection must be deposited in the occupational safety and health administration fund.

SB 259 also includes the following clauses:
Section 9.
Codification instruction. [Section 8] is intended to be codified as an integral part of Title 50, chapter 71, part 1, and the provisions of Title 50, chapter 71, part 1, apply to [section 8].

Section 10.
Transition—contingency provision. If [this act] is passed and approved on or after May 1, 2015, the department of labor and industry:
(1) shall as promptly as feasible prepare and send the billing statements for assessments due on July 1, 2015, according to the provisions of [this act]; and
(2) is exempt for the year 2015 from the April 30 deadline provided for assessments under 39-71-201(7)(c).

SB 347 was:

- Passed by the first chamber on February 26, 2015
- Included in NCCI's March 20, 2015 ***Legislative Activity Report*** (RLA-2015-11)
- Passed by the second chamber on April 11, 2015
- Included in NCCI's April 24, 2015 ***Legislative Activity Report*** (RLA-2015-16)
- Enacted on April 27, 2015, with an effective date of July 1, 2015

SB 347 amends ***section 39-71-118 Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined.*** of the Montana Code Annotated 2014 as follows:
39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined.
(1) As used in this chapter, the term "employee" or "worker" means:
…
(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;
…
(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter a volunteer as defined in subsection (2)(b)~~, a volunteer emergency medical technician as defined in subsection (10),~~ or a volunteer firefighter as defined in 7-33-4510. ~~An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee under the provisions of this chapter a volunteer emergency medical technician.~~
…
(10) (a) ~~With the approval of the insurer, an~~ An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency medical technician who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit. The ambulance service or nontransporting medical unit may purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in this chapter.
(b) ~~In the event of~~ If there is an election under subsection (10)(a), the employer shall report payroll for all volunteer emergency medical technicians for premium and weekly benefit purposes based on the number of volunteer hours of each emergency medical technician, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.
…

BILLS PASSING SECOND CHAMBER

The following bills passed the second chamber within the one-week period ending May 1, 2015.

Alaska

HB 178 was:

- Passed by the first chamber on April 10, 2015
- Included in NCCI's April 17, 2015 ***Legislative Activity Report*** (RLA-2015-15)
- Passed by the second chamber on April 26, 2015

With the passage of **HB 316** in 2014, the Medical Services Review Committee was tasked with creating conversion factors for a fee schedule produced by the Centers for Medicare & Medicaid Services for workers compensation medical billings. **HB 178** postpones the effective date of the new fee schedule from July 1, 2015, to December 1, 2015.

Missouri

HB 615 was:

- Passed by the first chamber on February 19, 2015
- Included in NCCI's February 27, 2015 ***Legislative Activity Report*** (RLA-2015-08)
- Amended and passed by the second chamber on April 29, 2015

HB 615 amends various sections of the Missouri Annotated Statutes to:

- Specify that independent contractors providing application of agricultural materials used in crop dusting, seeding, spraying, or fertilizing operations from an aircraft are not statutory employees for the purposes of workers compensation.
- Exempt veterans' organization volunteers who are not paid wages from coverage under workers compensation statutes.
- Provide that an explanation of benefits delivered with final payment evidencing that the payment is considered to be full payment of the medical charges in a workers' compensation case will serve as a notice of dispute of the charges.
- Allow the Division of Workers' Compensation to continue to pay, on an ongoing basis, Second Injury Fund liabilities for physical rehabilitation payments; medical expenses for injuries to employees of uninsured employers occurring prior to January 1, 2014; and wage loss benefits for wages lost from secondary employment for injuries occurring prior to January 1, 2014, without regard to the priority of other fund liability payments.
- Make changes to the uniform experience rating plan. Currently, the rating plan prohibits an adjustment to the experience modification of an employer if the total medical cost does not exceed $1,000. This bill changes that amount to 20% of the current split point of primary excess losses under the uniform experience rating plan.
- Allow construction employers to submit payroll information to the advisory organization that makes the uniform classification system in order to calculate the premium credit under the Missouri contracting classification premium adjustment program.

HB 615 also amends ***section 287.955*** as follows:

§ 287.955. Insurers to adhere to uniform classification system, plan—director to designate advisory organization, purpose, duties

…

6. ~~(1) A workers' compensation insurer may develop an individual risk premium modification rating plan which prospectively modifies premium based upon individual risk characteristics which are predictive of future loss. Such rating plan shall be filed thirty days prior to use and may be subject to disapproval by the director.~~

~~(2) The rating plan shall establish objective standards for measuring variations in individual risks for hazards or expense or both. The rating plan shall be actuarially justified and shall not result in premiums which are excessive, inadequate, or unfairly discriminatory. The rating plan shall not utilize factors which are duplicative of factors otherwise utilized in the development of rates or premiums, including the uniform classification system and the uniform experience rating plan. The premium modification factors utilized under the rating plan shall be applied on a statewide basis, with no premium modifications based solely upon the geographic location of the employer.~~

~~(3) Within thirty days of a request, the insurer shall clearly disclose to the employer the individual risk characteristics which result in premium modifications. However, this disclosure shall not in any way require the release to the insured employer of any trade secret or proprietary information or data used to derive the premium modification and that meets the definitions of, and is protected by, the provisions of chapter 417.~~

~~(4) (a)~~ Premium modifications ~~under this subsection~~ may be determined by an underwriter assessing the individual risk characteristics and applying premium credits and debits as specified under a schedule rating plan. Alternatively, an insurer may utilize software or a computer risk modeling system designed to identify and assess individual risk characteristics and which systematically and uniformly applies premium modifications to similarly situated employers.

~~(b) Premium modifications resulting from a schedule rating plan, with an underwriter determining individual risk characteristics, shall be limited to plus or minus twenty-five percent. An additional ten percent credit may be given for a reduction in the insurer's expenses.~~

~~(c) Premium modifications resulting from a risk modeling system shall be limited to plus or minus fifty percent. Premium modifications resulting from a risk modeling system shall be reported separately under the uniform statistical plan from premium modifications resulting from a schedule rating plan.~~

~~(d) Premium credits or reductions shall not be removed or reduced unless there is a change in the insurer, the insurer amends or withdraws the rating plan, or unless there is a corresponding change in the insured employer's operations or risk characteristics underlying the credit or reduction.~~

NCCI estimates that proposed Missouri House Bill 615, if enacted in its current form, may result in a negligible impact to workers compensation system costs in Missouri.

SB 282 was:

- Passed by the first chamber on March 12, 2015
- Amended and passed by the second chamber on April 29, 2015

SB 282 amends various sections of the Missouri Annotated Statutes and adds several new sections including, but not limited to, the

following new section:

375.1605. 1. The provisions of this section shall apply to workers' compensation large deductible policies issued by an insurer subject to delinquency proceedings under this chapter. This section shall not apply to first party claims or to claims funded by a guaranty association net of the deductible unless subsection 3 of this section applies. Large deductible policies shall be administered in accordance with their terms except to the extent such terms conflict with this section.

2. For purposes of this section, the following terms shall mean:

(1) "Collateral", any cash, letters of credit, surety bond, or any other form of security posted by the insured or by a captive insurer or reinsurer to secure the insured's obligation under the large deductible policy to pay deductible claims or to reimburse the insurer for deductible claim payments. Collateral may also secure an insured's obligation to reimburse or pay the insurer as may be required for other secured obligations;

(2) "Commercially reasonable", to act in good faith using prevailing industry practices and making all reasonable efforts considering the facts and circumstances of the matter;

(3) "Deductible claim", any claim, including a claim for loss and defense and cost containment expense, unless such expenses are excluded, under a large deductible policy that is within the deductible;

(4) "Large deductible policy", any combination of one or more workers' compensation policies and endorsements issued to an insured and contracts or security agreements entered into between an insured and the insurer in which the insured has agreed with the insurer to:

(a) Pay directly the initial portion of any claim under the policy up to a specified dollar amount, or the expenses related to any claim; or

(b) Reimburse the insurer for its payment of any claim or related expenses under the policy up to the specified dollar amount of the deductible.

The term "large deductible policy" also includes policies which contain an aggregate limit on the insured's liability for all deductible claims in addition to a per-claim deductible limit. The primary purpose and distinguishing characteristic of a large deductible policy is the shifting of a portion of the ultimate financial responsibility under the large deductible policy to pay claims from the insurer to the insured, even though the obligation to initially pay claims may remain with the insurer. A large deductible policy shall include any policy with a deductible of fifty thousand dollars or more. Large deductible policies do not include policies, endorsements, or agreements which provide that the initial portion of any covered claim shall be self-insured and further that the insured shall have no payment obligation within the self-insured retention. Large deductible policies also do not include policies that provide for retrospectively rated premium payments by the insured or reinsurance arrangements or agreements, except to the extent such arrangements or agreements assume, secure, or pay the policyholder's large deductible obligations;

(5) "Other secured obligations", obligations of an insured to an insurer other than those under a large deductible policy, such as those under a reinsurance agreement or other agreement involving retrospective premium obligations, the performance of which is secured by collateral that also secures an insured's obligations under a large deductible policy.

3. Unless otherwise agreed by the responsible guaranty association, all large deductible claims which are also "covered claims" as defined by the applicable guaranty association law including those that may have been funded by an insured before liquidation shall be turned over to the guaranty association for handling. To the extent the insured funds or pays the deductible claim pursuant to an agreement by the guaranty fund or otherwise, the insured's funding or payment of a deductible claim will extinguish the obligations, if any, of the receiver or any guaranty association to pay such claim. No charge of any kind shall be made against the receiver or a guaranty association on the basis of an insured's funding or payment of a deductible claim.

4. To the extent a guaranty association pays any deductible claim for which the insurer would have been entitled to reimbursement from the insured, a guaranty association shall be entitled to the full amount of the reimbursement and available collateral as provided for under this section to the extent necessary to reimburse the guaranty association. Reimbursements paid to the guaranty association under this subsection shall not be treated as distributions under section 375.1218 or as early access payments under section 375.1205. To the extent that a guaranty association pays a deductible claim that is not reimbursed either from collateral or by insured payments, or incurred expenses in connection with large deductible policies that are not reimbursed under this section, the guaranty association shall be entitled to assert a claim for those amounts in the delinquency proceeding. Nothing in this subsection limits any rights of the receiver or a guaranty association that may otherwise exist under applicable law to obtain reimbursement from insureds for claims payments made by the guaranty association under policies of the insurer or for the guaranty association's related expenses such as those affording the guaranty association the right to recover for claims payments made to or on behalf of high net worth insureds or claimants.

5. (1) The receiver shall have the obligation to collect reimbursements owed for deductible claims as provided for herein, and shall take all commercially reasonable actions to collect such reimbursements. The receiver shall promptly bill insureds for reimbursement of deductible claims:

(a) Paid by the insurer prior to the commencement of delinquency proceedings;

(b) Paid by a guaranty association upon receipt by the receiver of notice from a guaranty association of reimbursable payments; or

(c) Paid or allowed by the receiver.

(2) If the insured does not make payment within the time specified in the large deductible policy, or within sixty days after the date of billing if no time is specified, the receiver shall take all commercially reasonable actions to collect any reimbursements owed.

(3) Neither the insolvency of the insurer, nor its inability to perform any of its obligations under the large deductible policy, shall be a defense to the insured's reimbursement obligation under the large deductible policy.

(4) Except for gross negligence, an allegation of improper handling or payment of a deductible claim by the insurer, the receiver, or

any guaranty association shall not be a defense to the insured's reimbursement obligations under the large deductible policy.
6. (1) Subject to the provisions of this subsection, the receiver shall utilize collateral when available to secure the insured's obligation to fund or reimburse deductible claims or other secured obligations or other payment obligations. A guaranty association shall be entitled to collateral as provided for in this subsection to the extent needed to reimburse a guaranty association for the payments of a deductible claim. Any distributions made to a guaranty association under this subsection shall not be treated as distributions under section 375.1218 or as early access payments under section 375.1205.
(2) All claims against the collateral shall be paid in the order received and no claim of the receiver including those described in this subsection shall supersede any other claim against the collateral as described in subdivision (4) of this subsection.
(3) The receiver shall draw down collateral to the extent necessary in the event that the insured fails to:
(a) Perform its funding or payment obligations under any large deductible policy;
(b) Pay deductible claim reimbursements within the time specified in the large deductible policy or within sixty days after the date of the billing if no time is specified;
(c) Pay amounts due the estate for preliquidation obligations;
(d) Timely fund any other secured obligation; or
(e) Timely pay expenses.
(4) Claims that are validly asserted against the collateral shall be satisfied in the order in which such claims are received by the receiver.
(5) Excess collateral may be returned to the insured as determined by the receiver after a periodic review of claims paid, outstanding case reserves, and a factor for incurred but not reported claims.

Note: The version of **SB 282** that was passed by the first chamber did not contain any relevant workers compensation-related language; therefore, it was not included in any previous version of NCCI's ***Legislative Activity Report.***

BILLS PASSING FIRST CHAMBER

The following bills passed the first chamber within the one-week period ending May 1, 2015.

Maine

LD 958 amends ***Section 403*** of the Maine Workers' Compensation Act as follows:

§403. Insurance by assenting employer; requirements as to self-insurers

…

9. Acceptable deposit funds or investments for trust funds.

~~In addition to cash, the deposit funds or permissible investments for trust funds acceptable to the Superintendent of Insurance as a security deposit are bonds, notes and bills that are issued by and are the direct obligation of the United States Treasury; commercial paper rated as either "A-1" or "P-1" by Moody's Investors Service, Inc., Standard and Poor's Corporation or the rating equivalent of Fitch Investors Service, Inc. or any other nationally recognized statistical rating agency; money market funds rated "Aam" or "AAm-G" or better by Standard and Poor's Corporation or the rating equivalent of any other nationally recognized statistical rating agency; certificates of deposit issued by a duly chartered commercial bank or thrift institution in the State protected by the Federal Deposit Insurance Corporation if the bank or institution possesses assets of at least $100,000,000 and maintains a ratio of capital to assets equal to or greater than 6 1/2%; bonds that are issued by United States corporations, corporations acceptable to the superintendent or United States public entities and that are rated "A" or better by Standard and Poor's Corporation, or the rating equivalent of Moody's Investors Service, Inc., Fitch Investors Service, Inc. or any other nationally recognized statistical agency; and other investments specifically approved by the superintendent. If an investment is downgraded so that it no longer meets the requirements of this subsection, its value may not be considered in determining whether a deposit or trust has surplus available for distribution, and the superintendent has discretion to discount or disallow the value of the investment for purposes of determining whether additional security is required.~~

~~Investments must be diversified in a prudent manner to ensure that funds are maintained at a sufficient level to discharge workers' compensation obligations incurred by the employer pursuant to this Title as those obligations become due and payable. At least 30% of the portfolio must consist of cash, direct obligations of the United States Treasury, commercial paper, money market funds or certificates of deposit. No more than 5% of the portfolio, other than cash and direct obligations of the United States, may be concentrated in a single issuer, and the superintendent shall establish standards to limit concentration in a single industry or market sector.~~

The following requirements apply to assets deposited or held in trust as security for an individual or group self-insurer under this section.

A. In addition to cash, the deposit funds or permissible investments for trust funds acceptable to the Superintendent of Insurance as a security deposit are:

(1) Bonds, notes and bills that are issued by and are the direct obligation of the United States Treasury;

(2) Bonds issued or guaranteed by United States government agencies;

(3) Commercial paper rated as "P-1" by Moody's Investors Service, Inc. or "A-1" or better by Standard and Poor's Corporation or the rating equivalent of either by any other nationally recognized statistical rating agency;

(4) Money market funds rated "AAm" or "AAm-G" or better by Standard and Poor's Corporation or the rating equivalent of any other nationally recognized statistical rating agency;

(5) Certificates of deposit issued by a duly chartered commercial bank or thrift institution in the State protected by the Federal Deposit Insurance Corporation if the bank or institution possesses assets of at least $100,000,000 and maintains a Tier 1 capital ratio equal to or greater than 6%;
(6) Bonds that are issued by corporations or municipalities and that are rated "A2" or better by Moody's Investors Service, Inc. or "A" or better by Standard and Poor's Corporation or the rating equivalent of either by any other nationally recognized statistical rating agency; and
(7) Other investments specifically approved by the superintendent.
B. Investments must be diversified in a prudent manner to ensure that funds are maintained at a sufficient level to discharge workers' compensation obligations incurred by the employer pursuant to this Title as those obligations become due and payable. At least 30% of the portfolio, as measured at market value, must consist of cash, direct obligations of the United States Treasury, commercial paper, money market funds or certificates of deposit. No more than 40% of the portfolio, as measured at market value, may be invested in bonds issued or generated by United States government agencies, with no more than 10% of the portfolio invested in a single issuer. No more than 50% of the portfolio, as measured at market value, may be invested in corporate or municipal bonds, with no more than 5% of the portfolio invested in a single issuer. No more than 25% of the corporate bond portion of the portfolio, as measured at market value, may be invested in a single industry, as defined by the North American Industry Classification System of the United States Department of Commerce, United States Census Bureau.
C. If the portfolio no longer meets the requirements of this subsection as a result of a rating downgrade or a change in financial condition or market value, the value may not be considered in determining whether a deposit or trust has surplus available for distribution, and the superintendent has discretion to discount or disallow the value of the investment for purposes of determining whether additional security is required. In the case of a portfolio that no longer meets the diversification requirements of paragraph B, the self-insurer may designate the specific assets to be disallowed, as long as the remaining assets meet the requirements of paragraph B.
…

Missouri

HB 33, in part, amends ***section 287.243 Line of duty compensation—definitions—claim procedure—no subrogation rights for employers or insurers—grievance procedures—sunset date—fund created, use of moneys—rulemaking authority*** of the Missouri Annotated Statutes as follows:

§ 287.243. Line of duty compensation—definitions—claim procedure—no subrogation rights for employers or insurers—grievance procedures—sunset date—fund created, use of moneys—rulemaking authority

…
3. (1) A claim for compensation under this section shall be filed by the spouse, child, or personal representative of the estate of the deceased with the division of workers' compensation not later than one year from the date of death of a law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter. If a claim is made within one year of the date of death of a law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter killed in the line of duty, compensation shall be paid, if the division finds that the claimant is entitled to compensation under this section~~.~~ , as follows:
(a) If there is a surviving spouse but no surviving child of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter, then to such person's surviving spouse;
(b) If there is a surviving spouse and at least one surviving child of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter, then fifty percent to the surviving spouse and fifty percent in equal shares to the surviving child or children;
(c) If there is no surviving spouse and at least one surviving child of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter, then to the surviving child or children in equal shares;
(d) If there is no surviving spouse and no surviving child of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter, then to the decedent's estate.
…

North Carolina

HB 924 amends various sections of the North Carolina General Statutes, in part, as follows:

§ 143-166.14. Payment of salary notwithstanding incapacity; Workers' Compensation Act applicable after two years; duration of payment.

The salary of any eligible person shall be paid as long as the person's employment in that position continues, notwithstanding the person's total or partial incapacity to perform any duties to which the person may be lawfully assigned, if that incapacity is the result of an injury or injuries proximately caused by the heightened risk and special hazards directly related to the violent nature of the eligible person's official duties, except if that incapacity continues for more than two years from its inception, the person shall, during the further continuance of that incapacity, be subject to the provisions of Chapter 97 of the General Statutes pertaining to workers' compensation. Salary paid to an eligible person pursuant to this Article shall cease upon the resumption of the person's regularly assigned duties, retirement, resignation, or death, whichever first occurs, except that temporary return to duty shall not prohibit payment of salary for a subsequent period of incapacity which can be shown to be directly related to the original injury. For purposes of this section, the term "salary" means the total base pay of a person as reflected on the person's salary statement.

§ 143-166.15. Application of § 97-27; how payments made.
Notwithstanding the provisions of G.S. 143-166.14 of this Article, the persons entitled to benefits shall be subject to the provisions of G.S. 97-27 during the two-year period of payment of ~~full salary.~~ total base pay. All payments ~~of salary~~ shall be made at the same time and in the same manner as other ~~salaries are paid~~ payments made to other persons in the same department.

§ 143B-927. Personnel of the State Bureau of Investigation.
The Director of the State Bureau of Investigation may appoint a sufficient number of assistants who shall be competent and qualified to do the work of the Bureau. The Director shall be responsible for making all hiring and personnel decisions of the Bureau. Notwithstanding the provisions of this Chapter, Chapter 143A, and Chapter 143B of the General Statutes, the Director may hire or fire personnel and transfer personnel within the Bureau. If the Director deems it appropriate to hire reserve agents, those reserve agents shall be considered employees of the State Bureau of Investigation for purposes of any workers' compensation claim arising from acts occurring while the reserve agent is performing assigned duties.

SB 694 amends various sections of the North Carolina General Statutes related to employee misclassification. Highlights of the provisions of the bill include, but are not limited to, the following:

- Creates the Employee Fair Classification Act (Act).
- Establishes the Employee Classification Division (Division) in the Office of State Budget and Management to carry out the purposes of the Act.
- Provides that the following be considered when determining whether an individual is an independent contractor:
  - Whether the individual is engaged in an independent business, calling, or occupation
  - Whether the individual is to have the independent use of his or her special skill, knowledge, or training in the execution of the work
  - Whether the individual is doing a specified piece of work at a fixed price or for a lump sum or upon a quantitative basis
  - Whether the individual is not subject to discharge because he or she adopts one method of doing the work rather than another
  - Whether the individual is not in the regular employ of the other contracting party
  - Whether the individual is free to use such assistants as he or she may think proper
  - Whether the individual has full control over such assistants
  - Whether the individual selects his or her own time
- Prohibits employee misclassification.
- Defines employee misclassification as avoiding tax liabilities and other obligations imposed by Chapter 95, Chapter 96, Chapter 97, or Chapter 105 of the General Statutes by misclassifying an employee as an independent contractor.
- Provides for penalties for misclassifying employees
- Establishes and administers a temporary amnesty program to encourage voluntary self-reporting by employers currently engaging in employee misclassification.
- Requires every state occupational licensing board or commission would be required to include on every application for licensure, permit, or certification, a certification that the applicant has read and understands the employee misclassification notice provided by the Division. Every applicant for a license, permit, or certification shall certify that he/she has read and understands the misclassification notice. An occupational licensing board or commission would be required to deny the license, permit, or certification of any applicant who fails to comply with the certification requirement.
- Provides that the records of the Division would not be public records. This does not apply to civil penalty assessments or final orders relating to an appeal of a civil penalty assessment, or other enforcement actions taken by the Division. The records of the Division would be subject to inspection by state and federal agencies as required by other statutory provisions
- Repeals G.S. 97-5.1 under the Workers' Compensation Act, which creates a rebuttable presumption that taxicab drivers are independent contractors
- Authorizes the State Licensing Board for General Contractors to refuse to issue or renew or revoke, suspend, or restrict a certificate of license or take disciplinary action if a civil penalty was imposed on a licensed general contractor pursuant to a violation of the Act.
- Directs the Board to adopt and publish guidelines referencing the prohibition on employee misclassification and providing that a violation of that prohibition is grounds for revocation of a license issued by the Board.
- Makes a vendor ineligible to enter into a contract with an agency of the state government if, within five years of the bid solicitation, the vendor has been assessed a civil penalty for a violation of the Act.
- Deletes a provision from the Workers' Compensation Act that creates a rebuttable presumption that the term "employee" does not include any person performing newspaper or magazine sales under an arrangement where the newspapers or magazines are sold to the ultimate consumers at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person.

Texas

HB 512 adds new ***section 451.0025 Waiver of Immunity; Permission for First Responder to Sue*** and amends ***section 504.002*** of the Texas Workers' Compensation Act as follows:
§ 451.0025. Waiver of Immunity; Permission for First Responder to Sue.

(a) In this section, "first responder" has the meaning assigned by Section 421.095, Government Code.
(b) A first responder who alleges a violation of Section 451.001 by a state or local governmental entity that employs the first responder may sue the governmental entity for the relief provided by this chapter. Sovereign or governmental immunity from suit is waived and abolished to the extent of liability created by this chapter.
(c) To the extent a person has official or individual immunity from a claim for damages, this section does not affect that immunity.

§ 504.002 Application of General Workers' Compensation Laws; Limit on Actions and Damages
(a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:
…
(10) Chapter 451, subject to the limitations of Subsection (a-1).
(a-1) The liability of a political subdivision under Chapter 451 is limited to money damages in a maximum amount of $100,000 for each person aggrieved by a violation of that chapter.

HB 512 also includes the following clause:
The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect on the date the cause of action accrued, and the former law is continued in effect for that purpose.

HB 2771 adds new ***Section 401.026*** to the Texas Workers' Compensation Act as follows:
Sec. 401.026. Applicability to certain emergency response personnel.
For purposes of this subtitle, the travel of a firefighter or emergency medical personnel en route to an emergency call is considered to be in the course and scope of the firefighter's or emergency medical personnel's employment.

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.

State	State Relations Executive	Phone Number
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	Carla Townsend	314-843-4001
Federal Issues	Tim Tucker	202-403-8526

This report is informational and is not intended to provide an interpretation of state and federal legislation.