



# Legislative Activity Report

National Council on Compensation Insurance

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Regulatory Services

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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

The following bills were enacted within the one-week period ending June 12, 2015.

#### New Hampshire

**HB 482** was:

- Passed by the first chamber on March 11, 2015
- Passed by the second chamber on April 30, 2015
- Enacted on June 5, 2015, with an effective date of August 4, 2015

#### **402-B:2 Definition Definitions; Exemption.**

I. “Home state” means the District of Columbia and any state or territory of the United States in which an insurance claims adjuster maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance claims adjuster. If such state does not issue an insurance claims adjuster license for the line of business sought, the insurance claims adjuster may designate as his or her “home state” any state in which the insurance claims adjuster qualifies pursuant to the provisions of RSA 402-B.

II. In this chapter, “insurance claims adjuster” means a person who investigates, negotiates, or settles property, casualty, or workers’ compensation claims whether employed by or contracted by or with an insurer, a claims adjusting company, or a third party administrator.

~~III.~~ III. The provisions of this chapter shall not apply to the following:

...

**Note:** **HB 482** was not included in any previous version of NCCI’s *Legislative Activity Report*.

#### Nevada

**SB 67** was:

- Passed by the first chamber on April 20, 2015
- Included in NCCI’s May 1, 2015 *Legislative Activity Report* (RLA-2015-17)
- Amended and passed by the second chamber on May 22, 2015
- Included in NCCI’s May 29, 2015 *Legislative Activity Report* (RLA-2015-21)
- Enacted on June 10, 2015, with an effective date of July 1, 2015

**SB 67** amends various sections of the Nevada Revised Statutes including, but not limited to, the following:

#### **681B.260. Opinion of qualified actuary: Confidentiality of material provided by insurer to Commissioner.**

1. Except as otherwise provided in this section and NRS 239.0115, and sections 33, 38 and 39 of this act, an opinion, any documents and any other material or information provided by an insurer to the Commissioner, which constitute a memorandum in support of an opinion, and any other material provided to the Commissioner in connection therewith, with such a memorandum, must be kept confidential by the Commissioner, is not open to the public, and is not subject to subpoena, except for the purpose of defending an

action seeking damages from any person by reason of any action required by NRS 681B.200 to 681B.260, inclusive, or by any regulation adopted under those sections.

2. A memorandum or other material may be released by the Commissioner with the written consent of the insurer or to the American Academy of Actuaries or its successor organization upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the Commissioner for preserving the confidentiality of the memorandum or other material.

3. If any portion of a confidential memorandum is cited by the insurer in its marketing or is cited before any governmental agency other than a state commissioner of insurance or is released by an insurer to the public, all portions of the memorandum are no longer confidential.

4. The Commissioner may use the documents, materials and other information described in this section in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

5. Neither the Commissioner nor any other person in receipt of documents, materials or other information obtained while acting under the authority of the Commissioner may be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to this section.

6. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information described in this section shall occur as a result of disclosure to the Commissioner pursuant to this section or as a result of sharing as authorized in subsection 8 of NRS 679B.190.

7. A memorandum in support of an opinion, and any other material provided by the applicable company or insurer to the Commissioner in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this section.

8. Except as otherwise provided in section 39.5 of this act, the provisions of this section apply only before the operative date of the Valuation Manual.

### **683A.08528. Annual report: Requirements; review by Commissioner; fee.**

1. ~~Not later than July 1 of each year, 90 days after the expiration of the fiscal year of the administrator, or within such other period as the Commissioner may allow,~~ each holder of a certificate of registration as an administrator shall file with the Commissioner an annual report for ~~the most recently completed that~~ fiscal year ~~. of the administrator.~~ Each annual report must be verified by at least two officers of the administrator.

2. Each annual report filed pursuant to this section must include all the following:

(a) A financial statement of the administrator that has been reviewed by an independent certified public accountant.

(b) The complete name and address of each person, if any, for whom the administrator agreed to act as an administrator during the ~~most recently completed~~ fiscal year ~~. of the administrator.~~

(c) A statement regarding the total money handled by the administrator on behalf of contracted entities in connection with his or her activities as an administrator. The statement must be on a form prescribed or approved by the Commissioner for the purpose of calculating the amount of the bond required by NRS 683A.0857.

(d) Any other information required by the Commissioner.

3. ~~In~~ Except as otherwise provided in subsection 4, in addition to the information required pursuant to subsection 2, if an annual report is prepared on a consolidated basis, the annual report must include ~~a columnar or combining worksheet~~ supplemental exhibits that:

(a) ~~Includes the amounts shown on the consolidated financial statement accompanying the annual report; Have been reviewed by an independent certified public accountant; and~~

(b) ~~Separately sets forth the amounts for each entity included in the worksheet; and~~

(c) ~~Includes an explanation of each consolidating and eliminating entry included in the worksheet.~~ Include a balance sheet and income statement for each holder of a certificate of registration as an administrator in this State.

4. In lieu of complying with the requirements set forth in paragraphs (a) and (b) of subsection 3, an administrator who is a wholly owned subsidiary of a parent company may submit to the Commissioner:

(a) The financial statement of the parent company that has been audited by an independent certified public accountant; and

(b) A parental guaranty that is signed by an officer of the parent company and which guarantees the financial solvency of the administrator.

5. Each administrator who files an annual report pursuant to this section shall, at the time of filing the annual report, pay a filing fee in an amount determined by the Commissioner.

~~5. 6.~~ The Commissioner shall, for each administrator, review the annual report that is most recently filed by the administrator. As soon as practicable after reviewing the report, the Commissioner shall:

...

### **616B.336. Self-insured employers to furnish annual financial statements to commissioner; commissioner may examine records and interview employees.**

1. Each self-insured employer shall furnish ~~audited~~ financial statements, ~~certified by an auditor licensed to do business in this State, audited by an independent certified public accountant, or foreign equivalent,~~ to the Commissioner annually within 120 days after the expiration of the self-insured employer's fiscal year, ~~or within such other timeframe as the Commissioner may allow.~~

...

**SB 153** was:

- Passed by the first chamber on April 16, 2015.
- Included in NCCI's April 24, 2015 *Legislative Activity Report* (RLA-2015-16).
- Amended and passed by the second chamber on May 22, 2015.
- Included in NCCI's May 29, 2015 *Legislative Activity Report* (RLA-2015-21).
- Enacted on June 8, 2015. Sections 2, 3, and 6 were effective on June 8, 2015. Sections 1.5, 2.5, and 3.5 become effective on January 1, 2017.

**SB 153** amends various sections of the Nevada Revised Statutes related to occupational disease presumptions, in part, as follows:

**Section 1.5.**

**617.454. Physical examinations: Required tests.**

1. Any physical examination administered pursuant to NRS 617.455 or 617.457 must include:

- (a) A thorough test of the functioning of the hearing of the employee; and
- (b) A purified protein derivative skin test to screen for exposure to tuberculosis.

2. Except as otherwise provided in subsection ~~7~~ 8 of NRS 617.457, the tests required by this section must be paid for by the employer

**Section 2.**

**617.455. Lung diseases as occupational diseases of firefighters, police officers and arson investigators.**

...  
5. A disease of the lungs is conclusively presumed to have arisen out of and in the course of the employment of a person who has been employed in a full-time continuous, uninterrupted and salaried occupation as a police officer, firefighter or arson investigator for ~~5~~ 2 years or more before the date of disablement - if the disease is diagnosed and causes the disablement:

(a) During the course of that employment;

(b) If the person ceases employment before completing 20 years of service as a police officer, firefighter or arson investigator, during the period after separation from employment which is equal to the number of years worked; or

(c) If the person ceases employment after completing 20 years or more of service as a police officer, firefighter or arson investigator, at any time during the person's life.

Service credit which is purchased in a retirement system must not be calculated towards the years of service of a person for the purposes of this section.

...  
~~8.~~ A person who files a claim for a disease of the lungs specified in this section after he or she retires from employment as a police officer, firefighter or arson investigator is not entitled to receive any compensation for that disease other than medical benefits.

**Sec 2.5.**

**617.455. Lung diseases as occupational diseases of firefighters, police officers and arson investigators.**

...  
6. Frequent or regular use of a tobacco product within 1 year, or a material departure from a physician's prescribed plan of care by a person within 3 months, immediately preceding the filing of a claim for compensation excludes a person who has separated from service from the benefit of the conclusive presumption provided in subsection 5.

7. Failure to correct predisposing conditions which lead to lung disease when so ordered in writing by the examining physician after a physical examination required pursuant to subsection 2 or 3 excludes the employee from the benefits of this section if the correction is within the ability of the employee.

~~7.~~ 8. A person who is determined to be:

...  
~~8.~~ 9. A person who files a claim for a disease of the lungs specified in this section after he or she retires from employment as a police officer, firefighter or arson investigator is not entitled to receive any compensation for that disease other than medical benefits.

**Section 3.**

**617.457. Heart diseases as occupational diseases of firefighters, arson investigators and police officers.**

1. Notwithstanding any other provision of this chapter, diseases of the heart of a person who, for ~~5~~ 2 years or more, has been employed in a full-time continuous, uninterrupted and salaried occupation as a firefighter, arson investigator or police officer in this State before the date of disablement are conclusively presumed to have arisen out of and in the course of the employment - if the disease is diagnosed and causes the disablement:

(a) During the course of that employment;

(b) If the person ceases employment before completing 20 years of service as a police officer, firefighter or arson investigator, during the period after separation from employment which is equal to the number of years worked; or

(c) If the person ceases employment after completing 20 years or more of service as a police officer, firefighter or arson investigator, at any time during the person's life.

Service credit which is purchased in a retirement system must not be calculated towards the years of service of a person for the purposes of this section.

...

13. A person who files a claim for a disease of the heart specified in this section after he or she retires from employment as a firefighter, arson investigator or police officer is not entitled to receive any compensation for that disease other than medical benefits.

### Section 3.5.

#### **617.457. Heart diseases as occupational diseases of firefighters, arson investigators and police officers.**

...

2. Frequent or regular use of a tobacco product within 1 year, or a material departure from a physician's prescribed plan of care by a person within 3 months, immediately preceding the filing of a claim for compensation excludes a person who has separated from service from the benefit of the conclusive presumption provided in subsection 1.

3. Notwithstanding any other provision of this chapter, diseases of the heart, resulting in either temporary or permanent disability or death, are occupational diseases and compensable as such under the provisions of this chapter if caused by extreme overexertion in times of stress or danger and a causal relationship can be shown by competent evidence that the disability or death arose out of and was caused by the performance of duties as a volunteer firefighter by a person entitled to the benefits of chapters 616A to 616D, inclusive, of NRS pursuant to the provisions of NRS 616A.145 and who, for 5 years or more, has served continuously as a volunteer firefighter in this State by continuously maintaining an active status on the roster of a volunteer fire department.

~~3-4.~~ 5. Each employee who is to be covered for diseases of the heart pursuant to the provisions of this section shall submit to a physical examination, including an examination of the heart, upon employment, upon commencement of coverage and thereafter on an annual basis during his or her employment.

~~4-5.~~ During the period in which a volunteer firefighter is continuously on active status on the roster of a volunteer fire department, a physical examination for the volunteer firefighter is required:

...

~~5-6.~~ The employer of the volunteer firefighter is responsible for scheduling the physical examination. The employer shall mail to the volunteer firefighter a written notice of the date, time and place of the physical examination at least 10 days before the date of the physical examination and shall obtain, at the time of mailing, a certificate of mailing issued by the United States Postal Service.

~~6-7.~~ Failure to submit to a physical examination that is scheduled by his or her employer pursuant to subsection ~~5~~ 6 excludes the volunteer firefighter from the benefits of this section.

~~7-8.~~ The chief of a volunteer fire department may require an applicant to pay for any physical examination required pursuant to this section if the applicant:

...

~~8-9.~~ The volunteer fire department shall reimburse an applicant for the cost of a physical examination required pursuant to this section if the applicant:

(a) ~~Paid for the physical examination in accordance with subsection ~~7~~ 8;~~

...

~~9-10.~~ Except as otherwise provided in subsection ~~7~~ 8, all physical examinations required pursuant to subsections ~~3~~ 4 and ~~4~~ 5 must be paid for by the employer.

~~10-11.~~ Failure to correct predisposing conditions which lead to heart disease when so ordered in writing by the examining physician subsequent to a physical examination required pursuant to subsection ~~3~~ 4 or ~~4~~ 5 excludes the employee from the benefits of this section if the correction is within the ability of the employee.

~~11-12.~~ A person who is determined to be:

...

~~12-13.~~ Claims filed under this section may be reopened at any time during the life of the claimant for further examination and treatment of the claimant upon certification by a physician of a change of circumstances related to the occupational disease which would warrant an increase or rearrangement of compensation.

~~13-14.~~ A person who files a claim for a disease of the heart specified in this section after he or she retires from employment as a firefighter, arson investigator or police officer is not entitled to receive any compensation for that disease other than medical benefits.

**SB 153** also includes the following language:

#### **Section 6**

The amendatory provisions of this act:

1. Apply only to disablement which occurs on or after the effective date of this section; and
2. Do not apply to any person who, on the effective date of this section, has completed at least 20 years of creditable service, not including any service credit purchased in a retirement system, as a police officer, firefighter, volunteer firefighter or arson investigator in this State.

**SB 194** was:

- Passed by the first chamber on April 15, 2015
- Included in NCCI's April 24, 2015 *Legislative Activity Report* (RLA-2015-16)
- Amended and passed by the second chamber on May 22, 2015
- Included in NCCI's May 29, 2015 *Legislative Activity Report* (RLA-2015-21)
- Enacted on June 9, 2015, with an effective date of October 1, 2015

**SB 194** amends *sections 616B.710, 616B.725, and 616B.727* of the Nevada Revised Statutes, in part, as follows:

**616B.710. Establishment and administration of program: Prerequisites; mandatory participation; payments to contractors or subcontractors; commissioner to establish threshold cost for project eligible for program.**

1. A private company, public entity or utility may:

(a) Establish and administer a consolidated insurance program to provide industrial insurance coverage for employees of contractors and subcontractors who are engaged in a construction project or series of projects of which the private company, public entity or utility is the owner or principal contractor, if the estimated total cost of the construction project or series of projects is equal to or greater than ~~the threshold amount established by the Commissioner pursuant to subsection 3; \$50,000,000;~~ and

(b) As a condition precedent to the award of a contract to perform work on the construction project; or any project that is part of the series of projects, require that contractors and subcontractors who will be engaged in the construction of the project or series of projects participate in the consolidated insurance program.

2. If a private company, public entity or utility:

(a) Establishes and administers a consolidated insurance program; and

(b) Pursuant to the contract for the construction of the project; or series of projects, owes a periodic payment to a contractor or subcontractor whose employees are covered under the consolidated insurance program, the private company, public entity or utility shall not withhold such a periodic payment on the basis that the contractor or subcontractor has not signed an employer's report of industrial injury or occupational disease as required pursuant to NRS 616C.045.

~~3. The Commissioner shall establish the threshold amount that the estimated total cost of a construction project must be equal to or greater than before a consolidated insurance program may be established and administered for that project pursuant to this section. The base amount for the threshold must initially be \$150,000,000 and thereafter must be an amount equal to \$150,000,000 as adjusted by the Commissioner on June 30 of each year to reflect the present value of that amount with respect to the construction cost index.~~

~~4. As used in this section:~~

~~(a) "Construction cost index" means the construction cost index published by the Engineering News Record as a measure of inflation.~~

~~(b) "Estimated total cost" means the estimated cost to complete all parts of a construction project; or series of projects, including, without limitation, the cost of:~~

~~(1) Designing the project; or series of projects;~~

~~(2) Acquiring the real property on which the project or series of projects will be constructed;~~

~~(3) Connecting the project or series of projects to utilities;~~

~~(4) Excavating and carrying out underground improvements for the project; or series of projects; and~~

~~(5) Acquiring equipment and furnishings for the project; or series of projects.~~

~~The term does not include the cost of any fees or charges associated with acquiring the money necessary to complete the project; or series of projects.~~

~~(b) "Series of projects" means two or more projects of which the same private company, public entity or utility is the owner or principal contractor and acts as the sponsor under which a consolidated insurance program is established.~~

**616B.725. Safety requirements: Contents of safety program; qualifications and duties of safety coordinators; duties of owner or principal contractor.**

...

3. The owner or principal contractor of the construction project shall hire or contract with two persons to serve as the primary and alternate coordinators for safety for the construction project. The primary and alternate coordinators for safety must:

(a) Possess credentials in the field of safety that the Administrator determines to be adequate to prepare a person to act as a coordinator for safety for a construction project, including, without limitation, credentials issued by ~~the~~:

(1) ~~The Board of Certified Safety Professionals;~~ or

(2) ~~Insurance Institute of America; The Institutes;~~ or

(b) Have at least 3 years of experience in overseeing matters of occupational safety and health in the field of construction that the Administrator determines to be adequate to prepare a person to act as a coordinator for safety for a construction project.

...

~~7. The owner or principal contractor of the construction project shall allow the contractor, employer or subcontractor who employs an employee who is engaged in the construction project to access:~~

~~(a) The site of the construction project for the purpose of ensuring the occupational safety and health of the employees of the contractor, employer or subcontractor; and~~

~~(b) Any documents relating to claims filed by or on behalf of an employee of the contractor, employer or subcontractor who has been injured on the construction project.~~

**616B.727. Administration of claims: Duties of administrator of claims; duties of owner or principal contractor.**

...

2. The owner or principal contractor of the construction project shall hire or contract with a person to serve as the administrator of

claims for industrial insurance for the construction project. ~~Such a person must not serve as an administrator of claims for industrial insurance for another construction project that is covered by a different consolidated insurance program.~~

3. Any policy or contract of insurance providing coverage for a consolidated insurance program must be issued by an insurer who is rated A– or better by A.M. Best with a Financial Size Category of Class VII or larger, or the equivalent as determined by the Commissioner.

...

## Texas

**HB 2771** was:

- Passed by the first chamber on April 28, 2015
- Included in NCCI's May 8, 2015 *Legislative Activity Report* (RLA-2015-18)
- Passed by the second chamber on May 22, 2015
- Included in NCCI's May 29, 2015 *Legislative Activity Report* (RLA-2015-21)
- Enacted on June 9, 2015, with an effective date of September 1, 2015

**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.

## Vermont

**HB 489** was:

- Passed by the first chamber on March 27, 2015.
- Passed by the second chamber on April 30, 2015.
- Enacted on June 11, 2015, with various effective dates. Section 25. Workers' Compensation Rate Of Contribution becomes effective on July 1, 2015.

**HB 489** amends various sections of the Vermont Statutes Annotated including, but not limited to, the following section related to the Workers' Compensation Fund:

**Section 25. Workers' Compensation Rate Of Contribution**

For fiscal year 2016, after consideration of the formula in 21 V.S.A. Section 711(b) and historical rate trends, the General Assembly has established that the rate of contribution for the direct calendar year premium for workers' compensation insurance shall be set at the rate of 1.45 percent established in 2014 Acts and Resolves No. 191, Sec. 7, notwithstanding 21 V.S.A. Section 711(a). The contribution rate for self-insured workers' compensation losses and workers' compensation losses of corporations approved under 21 V.S.A. chapter 9 shall remain at one percent.

**Note:** **HB 489** was not included in any previous version of NCCI's *Legislative Activity Report*.

### BILLS PASSING SECOND CHAMBER

The following bills passed the second chamber within the one-week period ending June 12, 2015.

## Louisiana

**SB 107** was:

- Passed by the first chamber on May 13, 2015
- Included in NCCI's May 22, 2015 *Legislative Activity Report* (RLA-2015-20)
- Passed by the second chamber on June 8, 2015

**SB 107** amends *section 1378. Determination of liability of fund* of the Louisiana Revised Statutes relative to the Second Injury Fund. Present law provides a reimbursement schedule which, for second injuries occurring between July 1, 2010, and July 1, 2015, excludes the first 104 weeks of indemnity benefits and the first \$25,000 of medical benefits from reimbursement. **SB 107** eliminates the end date (July 1, 2015) contained in that section of the reimbursement schedule.

## Oregon

**HB 2764** was:

- Passed by the first chamber on May 5, 2015
- Included in NCCI's May 15, 2015 *Legislative Activity Report* (RLA-2015-19)
- Amended and passed by the second chamber on June 8, 2015

**HB 2764** amends various sections of the Oregon Revised Statutes related to workers compensation attorney fees, as follows:

**Section 1.**

**656.012 Findings and policy.**

...

(2) In consequence of these findings, the objectives of the Workers' Compensation Law are declared to be as follows:

...  
(b) To provide a fair and just administrative system for delivery of medical and financial benefits to injured workers that reduces litigation and eliminates the adversary nature of the compensation proceedings, to the greatest extent practicable, while providing for access to adequate representation for injured workers;  
...

## Section 2.

### **656.262 Processing of claims and payment of compensation; payment by employer; acceptance and denial of claim; penalties and attorney fees; cooperation by worker and attorney in claim investigation; rules.**

...  
(11)(a) If the insurer or self-insured employer unreasonably delays or unreasonably refuses to pay compensation, attorney fees or costs, or unreasonably delays acceptance or denial of a claim, the insurer or self-insured employer shall be liable for an additional amount up to 25 percent of the amounts then due plus any attorney fees assessed under this section. The fees assessed by the director, an Administrative Law Judge, the board or the court under this section shall be ~~proportionate to the benefit to the injured worker~~ reasonable attorney fees. In assessing fees, the director, an Administrative Law Judge, the board or the court shall consider the proportionate benefit to the injured worker. The board shall adopt rules for establishing the amount of the attorney fee, giving primary consideration to the results achieved and to the time devoted to the case. An attorney fee awarded pursuant to this subsection may not exceed ~~\$3,000~~ \$4,000 absent a showing of extraordinary circumstances. The maximum attorney fee awarded under this paragraph shall be adjusted annually on July 1 by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any. Notwithstanding any other provision of this chapter, the director shall have exclusive jurisdiction over proceedings regarding solely the assessment and payment of the additional amount and attorney fees described in this subsection. The action of the director and the review of the action taken by the director shall be subject to review under ORS 656.704.  
...

...  
(14)(a) Injured workers have the duty to cooperate and assist the insurer or self-insured employer in the investigation of claims for compensation. Injured workers shall submit to and shall fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques. Injured workers who are represented by an attorney shall have the right to have the attorney present during any personal or telephonic interview or deposition. If the injured worker is represented by an attorney, the insurer or self-insured employer shall pay the attorney a reasonable attorney fee based upon an hourly rate for actual time spent during the personal or telephonic interview or deposition. After consultation with the Board of Governors of the Oregon State Bar, the Workers' Compensation Board shall adopt rules for the establishment, assessment and enforcement of an hourly attorney fee rate specified in this subsection.  
...

(b) ~~However,~~ If the attorney is not willing or available to participate in an interview at a time reasonably chosen by the insurer or self-insured employer within 14 days of the request for interview and the insurer or self-insured employer has cause to believe that the attorney's unwillingness or unavailability is unreasonable and is preventing the worker from complying within 14 days of the request for interview, the insurer or self-insured employer shall notify the director. If the director determines that the attorney's unwillingness or unavailability is unreasonable, the director shall assess a civil penalty against the attorney of not more than \$1,000.  
...

## Section 3.

### **656.277 Request for reclassification of nondisabling claim; nondisabling claim procedure.**

(1)(a) A request for reclassification by the worker of an accepted nondisabling injury that the worker believes was or has become disabling must be submitted to the insurer or self-insured employer. The insurer or self-insured employer shall classify the claim as disabling or nondisabling within 14 days of the request. A notice of such classification shall be mailed to the worker and the worker's attorney if the worker is represented. The worker may ask the Director of the Department of Consumer and Business Services to review the classification by the insurer or self-insured employer by submitting a request for review within 60 days of the mailing of the classification notice by the insurer or self-insured employer. If any party objects to the classification of the director, the party may request a hearing under ORS 656.283 within 30 days from the date of the director's order.  
...

(b) If the worker is represented by an attorney and the attorney is instrumental in obtaining an order from the director that reclassifies the claim from nondisabling to disabling, the director shall award the attorney a reasonable assessed attorney fee.  
...

## Section 4.

### **656.313 Stay of compensation pending request for hearing or review; procedure for denial of claim for medical services; reimbursement.**

...  
(1)(b) If ultimately found payable under a final order, benefits withheld under this subsection, and attorney fees and costs, shall accrue interest at the rate provided in ORS 82.010 from the date of the order appealed from through the date of payment. The board shall expedite review of appeals in which payment of compensation has been stayed under this section.  
...

## **Section 5.**

### **656.382 Penalties and attorney fees payable by insurer or employer in processing claim.**

(1) If an insurer or self-insured employer refuses to pay compensation, costs or attorney fees due under an order of an Administrative Law Judge, the board or the court, or otherwise unreasonably resists the payment of compensation, costs or attorney fees, except as provided in ORS 656.385, the employer or insurer shall pay to the attorney of the claimant a reasonable attorney fee as provided in subsection (2) of this section. To the extent an employer has caused the insurer to be charged such fees, such employer may be charged with those fees.

(2) If a request for hearing, request for review, appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court is initiated by an employer or insurer, and the Administrative Law Judge, board or court finds that all or part of the compensation awarded to a claimant should not be disallowed or reduced, or, through the assistance of an attorney, that an order rescinding a notice of closure should not be reversed or all or part of the compensation awarded by a reconsideration order issued under ORS 656.268 should not be reduced or disallowed, the employer or insurer shall be required to pay to the attorney of the claimant a reasonable attorney fee in an amount set by the Administrative Law Judge, board or ~~the~~ court for legal representation by an attorney for the claimant at and prior to the hearing, review on appeal or cross-appeal.

(3) If an employer or insurer raises attorney fees, penalties or costs as a separate issue in a request for hearing, request for review, appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court initiated by the employer or insurer under this section, and the Administrative Law Judge, board or court finds that the attorney fees, penalties or costs awarded to the claimant should not be disallowed or reduced, the Administrative Law Judge, board or court shall award reasonable additional attorney fees to the attorney for the claimant for efforts in defending the fee, penalty or costs.

(4) If an employer or insurer initiates an appeal to the board or Court of Appeals and the matter is briefed, but the employer or insurer withdraws the appeal prior to a decision by the board or court, resulting in the claimant's prevailing in the matter, the claimant's attorney is entitled to a reasonable attorney fee for efforts in briefing the matter to the board or court.

~~(3)~~ (5) If upon reaching a decision on a request for hearing initiated by an employer it is found by the Administrative Law Judge that the employer initiated the hearing for the purpose of delay or other vexatious reason or without reasonable ground, the Administrative Law Judge may order the employer to pay to the claimant such penalty not exceeding \$750 and not less than \$100 as may be reasonable in the circumstances.

## **Section 6.**

### **656.385 Attorney fees in cases regarding certain medical service or vocational rehabilitation matters; rules; limitation; penalties.**

(1) In all cases involving a dispute over compensation benefits pursuant to ORS 656.245, 656.247, 656.260, 656.327 or 656.340, where a claimant finally prevails after a proceeding has commenced, the Director of the Department of Consumer and Business Services, ~~or the Administrative Law Judge or the court~~ shall require the insurer or self-insured employer to pay a reasonable attorney fee to the claimant's attorney. In such cases, where an attorney is instrumental in obtaining a settlement of the dispute prior to a decision by the director, ~~or an Administrative Law Judge or the court~~, the director, ~~or Administrative Law Judge or court~~ shall require the insurer or self-insured employer to pay a reasonable attorney fee to the claimant's attorney. The attorney fee must be based on all work the claimant's attorney has done relative to the proceeding at all levels before the department or court. The attorney fee assessed under this section must be proportionate to the benefit to the injured worker. The director shall adopt rules for establishing the amount of the attorney fee, giving primary consideration to the results achieved and to the time devoted to the case. An attorney fee awarded pursuant to this subsection may not exceed ~~\$3,000~~ \$4,000 absent a showing of extraordinary circumstances. The maximum attorney fee awarded under this subsection shall be adjusted annually on July 1 by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any.

(2) If an insurer or self-insured employer refuses to pay compensation due under, or attorney fees related to, ORS 656.245, 656.247, 656.260, 656.327 or 656.340 pursuant to an order of the director, an Administrative Law Judge or the court or otherwise unreasonably resists the payment of such compensation or attorney fees, the insurer or self-insured employer shall pay to the attorney of the claimant a reasonable attorney fee as provided in subsection (3) of this section. To the extent an employer has caused the insurer to be charged such fees, such employer may be charged with those fees.

(3) If a request for a contested case hearing, review on appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court is initiated by an insurer or self-insured employer, and the director, Administrative Law Judge or court finds that all or part of the compensation awarded under ORS 656.245, 656.247, 656.260, 656.327 or 656.340 to a claimant, or attorney fees under this section, should not be disallowed or reduced, the insurer or self-insured employer shall be required to pay to the attorney of the claimant a reasonable attorney fee in an amount set by the director, ~~the Administrative Law Judge or the court~~ for legal representation by an attorney for the claimant at the contested case hearing, review on appeal or cross-appeal.

(4) If upon reaching a final contested case decision where such contested case was initiated by an insurer or self-insured employer it is found that the insurer or self-insured employer initiated the contested case hearing for the purpose of delay or other vexatious reason or without reasonable ground, the director, ~~or Administrative Law Judge or court~~ may order the insurer or self-insured employer to pay to the claimant such penalty not exceeding \$750 and not less than \$100 as may be reasonable in the circumstances.

...

## **Section 7.**

### **656.386 Recovery of attorney fees, expenses and costs in appeal on denied claim; attorney fees in other cases.**

...

(3) If a claimant requests claim reclassification as provided in ORS 656.277 and the insurer or self-insured employer does not respond within 14 days of the request, or if the claimant, insurer or self-insured employer requests a hearing, review, appeal or cross-appeal to the Court of Appeals or petition for review to the Supreme Court and the Director of the Department of Consumer and Business Services, Administrative Law Judge, board or ~~the~~ court finally determines that the claim should be classified as disabling, the director, Administrative Law Judge, board or ~~the~~ court may assess a reasonable attorney fee.

(4) In disputes involving a claim for costs, if the claimant prevails on the claim for any increase of costs, the Administrative Law Judge, board, Court of Appeals or Supreme Court shall award a reasonable assessed attorney fee to the claimant's attorney.

~~(4)~~ (5) In all other cases, attorney fees shall be paid from the increase in the claimant's compensation, if any, except as otherwise expressly provided in this chapter.

#### Section 8.

##### **656.388 Approval of attorney fees required; lien for fees; fee schedule; report of legal service costs.**

(1) No claim or payment for legal services by an attorney representing the worker or for any other services rendered before an Administrative Law Judge or the Workers' Compensation Board, as the case may be, in respect to any claim or award for compensation to or on account of any person, shall be valid unless approved by the Administrative Law Judge or board, or if proceedings on appeal from the order of the board with respect to such claim or award are had before any court, unless approved by such court. In cases in which a claimant finally prevails after remand from the Supreme Court, Court of Appeals or board, then the Administrative Law Judge, board or appellate court shall approve or allow a reasonable attorney fee for services before every prior forum as authorized under ORS 656.307 (5), 656.308 (2), 656.382 or 656.386. No attorney fees shall be approved or allowed for representation of the claimant before the managed care organization or ~~Director of the Department of Consumer and Business Services~~ except for representation at the contested case hearing.

...

(4) The board shall, after consultation with the Board of Governors of the Oregon State Bar, establish a schedule of fees for attorneys representing a worker and representing an insurer or self-insured employer, under this chapter. The Workers' Compensation Board shall review all attorney fee schedules biennially for adjustment.

(5) The board shall, in establishing the schedule of attorney fees awarded under this chapter, consider the contingent nature of the practice of workers' compensation law and the necessity of allowing the broadest access to attorneys by injured workers and shall give consideration to fees earned by attorneys for insurers and self-insured employers.

~~(5)~~ (6) The board shall approve no claim for legal services by an attorney representing a claimant to be paid by the claimant if fees have been awarded to the claimant or the attorney of the claimant in connection with the same proceeding under ORS 656.268.

~~(6)~~ (7) Insurers and self-insured employers shall make an annual report to the Director of the Department of Consumer and Business Services reporting attorney salaries and other costs of legal services incurred pursuant to this chapter. The report shall be in such form and shall contain such information as the director prescribes.

**HB 2764** also includes the following clauses:

**Section 9.** Section 10 of this 2015 Act is added to and made a part of ORS chapter 656.

**Section 10.** The claimant's attorney shall be allowed a reasonable assessed attorney fee if:

(1) The claimant's attorney is instrumental in obtaining temporary disability compensation benefits pursuant to ORS 656.210, 656.212, 656.262, 656.268 or 656.325 prior to a decision by an Administrative Law Judge; or

(2) The claimant finally prevails in a dispute over temporary disability compensation benefits pursuant to ORS 656.210, 656.212, 656.262, 656.268 or 656.325 after a request for hearing has been filed.

**Section 11.** Section 10 of this 2015 Act and the amendments to ORS 656.012, 656.262, 656.277, 656.313, 656.382, 656.385, 656.386 and 656.388 by sections 1 to 8 of this 2015 Act apply to orders issued and attorney fees incurred on or after the effective date of this 2015 Act, regardless of the date on which the claim was filed.

## BILLS PASSING FIRST CHAMBER

The following bill passed the first chamber within the one-week period ending June 12, 2015.

### Rhode Island

**HB 6152 Substitute A** amends various sections of the State of Rhode Island General Laws as follows:

#### **28-30-22. Medical advisory board.**

(a) The chief judge of the workers' compensation court, in consultation with the appropriate medical or professional association, shall appoint a medical advisory board which shall serve at the chief judge's pleasure and consist of eleven (11) members in the following specialties: one orthopedic surgeon; one neurologist; ~~one neurosurgeon~~; one physiatrist; one chiropractor; one physical therapist; one internist; one psychiatrist or psychologist; and ~~three~~ (3) four (4) ad hoc physician members appointed at the discretion of the chief judge. Members of the board shall be reimbursed three hundred dollars (\$300) per day served in the discharge of the board's duties, not to exceed six thousand dollars (\$6,000) per member in any year. The chief judge shall designate the chairperson of the board.

...

**28-33-17.2. Employee's affirmative duty to report earnings—Penalties for failure to provide earnings report—Civil and criminal liability**

...

(c) (1) The department of labor and training, employer, or insurer shall notify any employee receiving weekly workers' compensation benefits, on forms prescribed by the department, of that employee's affirmative duty to report earnings and shall specifically notify the employee that a failure to report earnings may subject him or her to civil or criminal liability.

(2) The notice by the employer or insurer may be satisfied by printing the notice on the employee payee statement (check stub) portion of indemnity checks sent to the employee, or by incorporating said notice in an agreement for electronic fund transfer or use or issuance of an electronic access device, signed by both the employee and the employer or its insurer.

...

**28-33-17.3. Fraud and abuse.**

...

(2) For the purposes of this section, "Statement" includes, but is not limited to, any endorsement of a benefit check, signature on an agreement for electronic fund transfer of compensation benefits or issuance of an electronic access device, application for insurance coverage, oral or written statement, proof of injury, bill for services, diagnosis, prescription, hospital or provider records, x-rays, test results, or other documentation offered as proof of, or in the absence of, a loss, injury, or expense.

...

**28-33-18.3. Continuation of benefits—Partial incapacity.**

(a)(1) For all injuries occurring on or after September 1, 1990, in those cases where the employee has received a notice of intention to terminate partial incapacity benefits pursuant to Section 28-33-18, the employee, or his or her duly authorized representative, may file with the workers' compensation court a petition for continuation of benefits on forms prescribed by the workers' compensation court. In any proceeding before the workers' compensation court on a petition for continuation of partial incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence that his or her partial incapacity poses a material hindrance to obtaining employment suitable to his or her limitation, partial incapacity benefits shall continue. For injuries on and after July 1, ~~2018~~ 2021, "material hindrance" is defined to include only compensable injuries causing a greater than sixty-five percent (65%) degree of functional impairment and/or disability. Any period of time for which the employee has received benefits for total incapacity shall not be included in the calculation of the three hundred and twelve-week (312) period.

(2) The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1, ~~2018~~ 2021.

...

**28-35-39. Payment of compensation.**

Compensation under chapters 29–38 of this title shall be paid by check as defined in Section 6A-3-104(f) and not by draft, or if mutually agreed upon by both the employee and the employer or its insurer in accordance with Section 28-35-40, by electronic fund transfer, or by electronic access device, at no cost to the employee, with the exception of any third-party transactional fees incurred by the employee and shall be paid promptly and directly to the person entitled to it. The check shall contain the following language: "I understand that endorsement hereon or deposit to my accounts constitutes my affirmation that I am receiving these workers' compensation benefits pursuant to law, that I have made no false claims or statements or concealed any material fact, in order to receive these benefits and that doing so would make me liable for civil and criminal penalties, including jail". If paid by electronic fund transfer or by electronic access device said notice shall be satisfied in accordance with Section 28-33-17.2(c)(2). The insurer/employer and/or its third-party administrator shall not have or be entitled to gain access to the details of electronic transactions, without the express written consent of the employee or court order from a court of competent jurisdiction.

**28-35-40. Mailing of weekly compensation Delivery of weekly compensation.**

Whenever the employee is entitled to weekly compensation under chapters 29–38 of this title, the employer, and/or insurance carrier, until further order of the workers' compensation court, shall cause to be paid by electronic fund transfer or, issued as an electronic access device, or mailed first class mail to the employee, addressed to his or her last known residence, each week the amount of compensation payable to the employee as it may be due. Electronic fund transfer payments or issuance of an electronic access device shall be permitted if mutually agreed upon by the employee and the employer or its insurer on forms provided by the department of labor and training, which may be rescinded at will by either party on forms provided by the department of labor and training and filed with the department.

**28-53-2. Establishment—Sources—Administration.**

(a) There shall be established within the department of labor and training a special restricted receipt account to be known as the Rhode Island uninsured employers fund. The fund shall be capitalized from excise taxes assessed against uninsured employers pursuant to the provisions of Section 28-53-9 of this chapter and from general revenues appropriated by the legislature. Beginning in state fiscal year ending June 30, ~~2016~~ 2017, the legislature may appropriate up to two million dollars (\$2,000,000) in general revenue funds annually for deposit into the Rhode Island uninsured employers fund.

...

**28-53-7. Payments to employees of uninsured employers.**

- (a) Where it is determined that the employee was injured in the course of employment while working for an employer who fails to maintain a policy of workers' compensation insurance as required by Rhode Island general laws Section 28-36-1, et seq., the uninsured employers fund shall pay the benefits to which the injured employee would be entitled pursuant to chapters 29 to 38 of this title subject to the limitations set forth herein.
- (b) The workers' compensation court shall hear all petitions for payment from the fund pursuant to Rhode Island general laws Section 28-30-1, et seq., provided, however, that the uninsured employers fund and the employer shall be named as parties to any petition seeking payment of benefits from the fund.
- (c) Where an employee is deemed to be entitled to benefits from the uninsured employers fund, the fund shall pay benefits for disability and medical expenses as provided pursuant to chapters 29 to 38 of this title except that the employee shall not be entitled to receive benefits for loss of function and disfigurement pursuant to the provisions of Rhode Island general laws Section 28-33-19.
- (d) The fund shall pay cost, counsel and witness fees as provided in Rhode Island general laws Section 28-35-32 to any employee who successfully prosecutes any petitions for compensation, petitions for medical expenses, petitions to amend a pretrial order or memorandum of agreement and all other employee petitions and to employees who successfully defend, in whole or in part, proceedings seeking to reduce or terminate any and all workers' compensation benefits; provided, however, that the attorney's fees awarded to counsel who represent the employee in petitions for lump sum commutation filed pursuant to Rhode Island general laws Section 28-33-25 or in the settlement of disputed cases pursuant to Rhode Island general laws Section 28-33-25.1 shall be limited to the maximum amount paid to counsel who serve as court appointed attorneys in workers' compensation proceedings as established by rule or order of the Rhode Island supreme court.
- (e) In the event that the uninsured employer makes payment of any monies to the employee to compensate the employee for lost wages or medical expenses, the fund shall be entitled to a credit for all such monies received by or on behalf of the employee against any future benefits payable directly to the employee.
- (f) This section shall apply to injuries that occur on or after January 1, ~~2016~~ 2017.

**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.