



# Legislative Activity Report

National Council on Compensation Insurance

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Regulatory Services

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RLA-2015-25

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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 19, 2015.

#### Oregon

**HB 2644** was:

- Passed by the first chamber on March 18, 2015
- Included in NCCI's March 27, 2015 *Legislative Activity Report* (RLA-2015-12)
- Passed by the second chamber on June 3, 2015
- Included in NCCI's June 12, 2015 *Legislative Activity Report* (RLA-2015-23)
- Enacted and effective on June 16, 2015

**HB 2644** allows claims for wrongful death against the state that are typically barred by ORS 30.265(6)(a) in a narrow set of circumstances. The claim for wrongful death is only allowable against the state and not against local public bodies. The death must have occurred in the scope and course of the decedent's employment, it must have occurred as a result of the conduct of another person who is subsequently convicted of murder or found guilty except for insanity of murder, and the decedent was not employed by a public body at the time of death. The measure would only apply to wrongful death claims based on a crime of murder committed on or after May 1, 2012, and is repealed on January 2, 2017. If the measure revives a claim that was barred under ORS 30.265(6)(a) before the effective date of HB 2644, the claimant must begin the action within one year after the effective date of HB 2644.

#### Rhode Island

**HB 6152 Substitute A** and **SB 874 Substitute A** are identical bills.

**HB 6152 Substitute A** was:

- Passed by the first chamber on June 11, 2015
- Included in NCCI's June 19, 2015 *Legislative Activity Report* (RLA-2015-24)
- Passed by the second chamber on June 17, 2015
- Enacted and effective on June 19, 2015

**SB 874 Substitute A** was:

- Passed by the first chamber on May 21, 2015
- Included in NCCI's May 29, 2015 *Legislative Activity Report* (RLA-2015-21)
- Passed by the second chamber on June 17, 2015
- Enacted and effective on June 19, 2015

**HB 6152 Substitute A/SB 874 Substitute A** amend 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.

**Texas**

**HB 1094** was:

- Passed by the first chamber on May 4, 2015
- Included in NCCI's May 15, 2015 *Legislative Activity Report* (RLA-2015-19)
- Amended and passed by the second chamber on May 26, 2015
- Included in NCCI's June 5, 2015 *Legislative Activity Report* (RLA-2015-22)
- Enacted on June 19, 2015, with an effective date of September 1, 2015

**HB 1094** amends *section 408.183. Duration of Death Benefits* of the Texas Statutes as follows:

**§ 408.183. Duration of Death Benefits**

...

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by commissioner rule.

(b-1) Notwithstanding Subsection (b), an eligible spouse who remarried is eligible for death benefits for life if the employee was a first responder, as defined by Section 504.055, who suffered death in the course and scope of employment or while providing services as a volunteer.

...

**HB 1094** also includes the following clause:

The change in law made by this Act to Section 408.183, Labor Code, applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date of this Act. A claim based on a compensable injury that occurs before that date is governed by the law as it existed on the date the compensable injury occurred, and the former law is continued in effect for that purpose.

**HB 1170** was:

- Passed by the first chamber on May 8, 2015
- Included in NCCI's May 15, 2015 *Legislative Activity Report* (RLA-2015-19)
- Amended and passed by the second chamber on May 27, 2015
- Included in NCCI's June 5, 2015 *Legislative Activity Report* (RLA-2015-22)
- Enacted and effective on June 19, 2015

**HB 1170** adds new *section 12.1058. Applicability of Other Laws* to Subchapter D, Chapter 12, Education Code of the Texas Statutes as follows:

**Sec. 12.1058. Applicability of Other Laws.**

(a) An open-enrollment charter school is considered to be:

(1) a local government for purposes of Chapter 791, Government Code;

(2) a local government for purposes of Chapter 2259, Government Code, except that an open-enrollment charter school may not issue public securities as provided by Section 2259.031(b), Government Code;

(3) a political subdivision for purposes of Chapter 172, Local Government Code; and

(4) a local governmental entity for purposes of Subchapter I, Chapter 271, Local Government Code.

(b) An open-enrollment charter school may elect to extend workers' compensation benefits to employees of the school through any method available to a political subdivision under Chapter 504, Labor Code. An open-enrollment charter school that elects to extend workers' compensation benefits as permitted under this subsection is considered to be a political subdivision for all purposes under Chapter 504, Labor Code. An open-enrollment charter school that self-insures either individually or collectively under Chapter 504, Labor Code, is considered to be an insurance carrier for purposes of Subtitle A, Title 5, Labor Code.

(c) Notwithstanding Subsection (a) or (b), an open-enrollment charter school operated by a tax exempt entity as described by Section 12.101(a)(3) is not considered to be a political subdivision, local government, or local governmental entity unless the applicable statute specifically states that the statute applies to an open-enrollment charter school.

**SB 1227** was:

- Passed by the first chamber on May 20, 2015
- Passed by the second chamber on May 27, 2015
- Enacted and effective on June 19, 2015

**SB 1227** amends *section 462.202. Claim for Unearned Premiums* of the Texas Insurance Code, related to the Texas Property and Casualty Insurance Guaranty Association, as follows:

**§ 462.202. Claim for Unearned Premiums**

(a) A claim for unearned premiums is a covered claim. A covered claim for unearned premiums may not exceed \$25,000.

(b) With respect to a covered claim for unearned premiums, a person has a covered claim under this chapter if the person is a resident of this state at the time:

(1) the policy is issued; or

(2) the insurer is determined to be an impaired insurer.

(c) A person has a covered claim under this chapter if the person holds a valid assignment of a covered claim for unearned premiums under Subsections (a) and (b).

**Note:** **SB 1227** was not included in any previous version of NCCI's *Legislative Activity Report*.

## **BILLS PASSING SECOND CHAMBER**

The following bill passed the second chamber within the one-week period ending June 19, 2015.

### **Maine**

**LD 1119** was passed by the first and second chambers on June 17, 2015.

**LD 1119** makes various changes to the Maine Workers' Compensation Act of 1992 to:

- Provide that an employer may report wages of an employee to the Workers' Compensation Board in the same manner as the employee is paid and adds that an employer is not required to report lost time to the Workers' Compensation Board beyond 14 days for an injured employee who has returned to work and subsequently attended medical appointments if the employee did not lose wages for attending such appointments
- Require the Workers' Compensation Board to inform the Maine Insurance Guaranty Association of the association's responsibilities under the Maine Workers' Compensation Act of 1992 within 180 days
- Change the job title of hearing officer to administrative law judge, except for any hearing officer currently serving who is not admitted to the practice of law in Maine
- Require the Workers' Compensation Board to develop rules in regards to the timing and deadlines for independent medical examiner examinations and directs the Workers' Compensation Board to annually report data regarding these examinations to the Legislature

## BILLS PASSING FIRST CHAMBER

There were no bills that passed the first chamber within the one-week period ending June 19, 2015.

### 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

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