Legislative Activity Report

National Council on Compensation Insurance

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LEGISLATIVE ACTIVITY—LEGISLATIVE SESSION UPDATES

This report contains descriptions and/or excerpts of relevant bills that passed the first chamber, passed the second chamber, or were 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 workers compensation-related bill was enacted within the one-week period ending February 19, 2016.

South Dakota

HB 1084 was:

- Passed by the first chamber on February 2, 2016
- Included in NCCI's February 12, 2016 ***Legislative Activity Report*** (RLA-2016-05)
- Passed by the second chamber on February 10, 2016
- Included in NCCI's February 19, 2016 ***Legislative Activity Report*** (RLA-2016-06)
- Enacted on February 18, 2016, with and effective date of July 1, 2016

HB 1084 adds and amends various sections of the South Dakota Codified Laws related to when concurrent employment may be used to calculate earnings in workers compensation cases. The bill amends the following sections to read:

58-20-3.1. Premiums on wages for vacations, holidays, or sick leave prohibited.

Premiums for workers' compensation insurance may not be based on wages paid to employees while they are on vacation, holidays, or sick leave or on wages received from employment not performed for the insured employer.

62-1-1 Definitions

…

(6) "Earnings," the amount of compensation for the number of hours commonly regarded as a day's work for the employment in which the employee was ~~engaged~~ working at the time of ~~his~~ the employee's injury. It includes payment for all hours worked, including overtime hours at straight-time pay, and does not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed by ~~him~~ the employee by the nature of ~~his~~ the employment; wherever allowances of any character made to an employee in lieu of wages are specified as a part of the wage contract, ~~they~~ the allowances shall be deemed a part of ~~his~~ the employee's earnings;…

A new section is added to ***Chapter 62-1*** to read:

For a workers' compensation claim arising before May 6, 2015, an employee's earnings up to the claimed date of injury are calculated exclusively on the wages earned at the place of employment where the injury occurred.

For a workers' compensation claim arising after May 5, 2015, if an employee was working for more than one employer, the employee's earnings used to calculate the employee's average weekly wage in §§ 62-4-24, 62-4-25, or 62-4-26 shall include the amount of compensation for the number of hours commonly regarded as a day's work for each employer in which the person was concurrently employed at the time of the person's injury; however, an employee's earnings from concurrent employment are aggregated only if the injury occurred when the employee was actively working in the concurrent employment and when the injury prevents the employee from performing the employee's duties at the employee's other concurrent employment.

A new section is added to ***Chapter 62-6*** to read:
An employer which complies with this title shall produce, if demanded by any employer or insurer against whom an injured employee has made a workers' compensation claim, the work-related records referring to its employee available for the fifty-two weeks preceding the employee's claimed dates of injury, such as:
(1) The weeks in which the employee performed services;
(2) The earnings the employee received for the services, as defined in subdivision 62-1-1(6);
(3) Interruptions in employment if the employee was rehired or seasonally employed;
(4) Changes in the employee's grade of employment;
(5) The employee's job description; and
(6) Federal or state tax deductions.

The employer receiving this demand shall produce the employee's work-related records in ten business days, and may charge a fee for the production of the records. The fee for the production of the employee's work-related records may not exceed fifteen dollars.

An employee waives any right to privacy to these work-related records when the employee makes a claim for workers' compensation benefits and the employee consents to the release of these work-related records to the employer or insurer against which the employee is making a claim for workers' compensation benefits.

A new section is added to ***Chapter 62-2*** to read:
The Workers' Compensation Advisory Council shall include in its annual report data about the average amount of disability or fatality benefits paid for a claim over the most recent calendar years, the ratio of disability and fatality benefits to overall benefits paid, and any changes in premium base rates directly attributable to including concurrent earnings in benefits. It shall report to the 2019 Legislature the impact of this Act.

HB 1084 also includes the following language:
The Legislature finds that the aggregation of wages from concurrent employment was not within the Legislature's intent when it enacted the definition of earnings in subdivision 62-1-1(6). Therefore, the holding in Wheeler v. Cinna Baker LLC, 2015, 864 N.W. 2d, regarding the aggregation of wages is abrogated.

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending February 19, 2016.

New Mexico

SB 214 was passed by the first and second chamber on February 17, 2016.

SB 214 amends ***sections 52-1-11. Injuries due to intoxication, willfulness or intention of worker are noncompensable*** and ***52-1-12.1. Reduction in compensation when alcohol or drugs contribute to injury or death*** and repeals ***section 52-1-12. Compensation prohibited when worker under influence of certain drugs*** of the New Mexico Statutes Annotated as follows:
52-1-11. Injuries ~~due to intoxication~~ caused by the willfulness or intention of worker are noncompensable
No compensation shall become due or payable from any employer under the terms of the Workers' Compensation Act in the event such injury was ~~occasioned by the intoxication of such worker or~~ willfully suffered by ~~him~~ the worker or intentionally inflicted by ~~himself~~ the worker.

52-1-12.1. Reduction in compensation when alcohol or drugs contribute to injury or death
~~The compensation otherwise payable a worker pursuant to the Workers' Compensation Act shall be reduced ten percent in cases in which the injury to or death of a worker is not occasioned by the intoxication of the worker as stated in Section 52-1-11 NMSA 1978 or occasioned solely by drug influence as described in Section 52-1-12 NMSA 1978, but voluntary intoxication or being under the influence of a depressant, stimulant or hallucinogenic drug as defined in the New Mexico Drug, Device and Cosmetic Act or under the influence of a narcotic drug as defined in the Controlled Substances Act, unless the drug was dispensed to the person upon the prescription of a practitioner licensed by law to prescribe the drug or administered to the person by any person authorized by a licensed practitioner to administer the drug, is a contributing cause to the injury or death. Test results used as evidence of intoxication or drug influence shall not be considered in making a determination of intoxication or drug influence unless the test and testing procedures conform to the federal department of transportation "procedures for transportation workplace drug and alcohol testing programs" and the test is performed by a laboratory certified to do the testing by the federal department of transportation.~~
A. As used in this section, "intoxication" or "influence" means a temporary state or condition of impaired physical, mental or cognitive function by means of alcohol, a drug, a controlled substance or a combination of two or more substances at the time of injury or death. "Drug" or "controlled substance" pursuant to this section does not include medications prescribed to a worker by the worker's licensed health care provider and taken in accordance with directions of the prescribing health care provider or dispensing pharmacy, unless such medication is combined with alcohol or a non-prescribed drug or controlled substance to cause intoxication or influence.
B. Compensation benefits otherwise due and payable from an employer to the worker under the terms of the Workers' Compensation

Act shall be reduced by the degree to which the intoxication or influence contributes to the worker's injury or death; provided that the reduction shall be a minimum of ten percent but no more than ninety percent, subject to the other requirements of this section.
C. Test results relied on as evidence of a worker's intoxication or influence shall not be considered in making a reduction in compensation determination unless the test and testing procedures conform with standard testing procedures generally accepted in the medical community and the test is performed by a laboratory certified to do the testing by an organization nationally recognized to do such certification. Testing may include testing methods for urine, breath or blood.
D. The director shall adopt rules regarding tests, testing and the cutoff levels for intoxication or influence.
E. If a post-accident test pursuant to Subsection C of this section is required of a worker and the worker refuses to submit to the test or to release the post-accident test results to the employer, no compensation otherwise payable from an employer under the terms of the Workers' Compensation Act shall be paid to the worker claiming compensation.
F. Testing shall be at the employer's expense and shall not be used as evidence in a criminal proceeding against the worker. Test samples shall be taken as a split sample. One part of the sample shall be held by the testing facility for twelve months from the date of the original test. Within this twelve-month period, the worker has the right to request a second test of the original sample at the worker's expense.
G. An employer shall be barred from claiming a reduction in compensation pursuant to this section if the employer fails to implement a written policy that declares a drug- and alcohol-free workplace, which may include post-accident testing in accordance with this section, and that gives its employees notice that workers' compensation benefits may be reduced in the event intoxication or influence contributes to a workplace injury.
H. Reduction or denial of compensation benefits authorized under this section shall not affect payment of medical benefits provided for pursuant to Section 52-1-49 NMSA 1978.
I. Reduction or denial of compensation benefits authorized under this section shall not affect payments of benefits to the dependents of a deceased worker pursuant to Section 52-1-46 NMSA 1978.

~~**52-1-12 . Compensation prohibited when worker under influence of certain drugs.**~~
~~No compensation is payable from any employer under the provisions of the Workers' Compensation Act [52-1-1 NMSA 1978] if the injury to the person claiming compensation was occasioned solely by the person being under the influence of a depressant, stimulant or hallucinogenic drug as defined in the New Mexico Drug, Device and Cosmetic Act [26-1-1 NMSA 1978] or under the influence of a narcotic drug as defined in the Controlled Substances Act [30-31-1 NMSA 1978] unless the drug was dispensed to the person upon the prescription of a practitioner licensed by law to prescribe the drug or administered to the person by any person authorized by a licensed practitioner to administer the drug.~~

Utah

SB 127 was:

- Passed by the first chamber on February 11, 2016
- Included in NCCI's February 19, 2016 ***Legislative Activity Report*** (RLA-2016-06)
- Passed by the second chamber on February 19, 2016

SB 127 amends ***sections 34A-2-416. Additional benefits in special cases*** and ***34A-2-703. Payments from Employers' Reinsurance Fund.*** of the Utah Code Annotated as follows:

34A-2-416. Additional benefits in special cases
~~(1)~~ Benefits received by a wholly dependent person under this chapter or Chapter 3, Utah Occupational Disease Act, extend indefinitely if at the termination of the benefits:
~~(a)~~ (1) the wholly dependent person is still in a dependent condition; and
~~(b)~~ (2) under all reasonable circumstances the wholly dependent person should be entitled to additional benefits.
~~(2) If benefits are extended under Subsection (1):~~
~~(a) the liability of the employer or insurance carrier involved may not be extended; and~~
~~(b) the additional benefits allowed shall be paid out of the Employers' Reinsurance Fund created in Subsection 34A-2-702(1).~~

34A-2-703. Payments from Employers' Reinsurance Fund.
If an employee, who has at least a 10% whole person permanent impairment from any cause or origin, subsequently incurs an additional impairment by an accident arising out of and in the course of the employee's employment during the period of July 1, 1988, to June 30, 1994, inclusive, and if the additional impairment results in permanent total disability, the employer or its insurance carrier and the Employers' Reinsurance Fund are liable for the payment of benefits as follows:
….
(4) If it is determined that the employee is permanently and totally disabled, the employer or its insurance carrier shall be given credit for all prior payments of temporary total, temporary partial, and permanent partial disability compensation made as a result of the industrial accident. ~~Any~~ An overpayment by the employer or its insurance carrier shall be reimbursed by the Employers' Reinsurance Fund under Subsection (5).
(5) (a) (i) Upon receipt of a duly verified petition, the Employers' Reinsurance Fund shall reimburse the employer or its insurance carrier for the Employers' Reinsurance Fund's share of medical benefits and compensation paid to or on behalf of an employee.
(ii) A request for Employers' Reinsurance Fund reimbursements shall be accompanied by satisfactory evidence of payment of the medical or disability compensation for which the reimbursement is requested. ~~Each~~

(iii) A request is subject to review as to reasonableness by the administrator. The administrator may determine the manner of reimbursement.
(b) A decision of the administrator under Subsection (5)(a) may be appealed in accordance with Part 8, Adjudication.
(c) An employer or its insurance carrier shall submit to the Employers' Reinsurance Fund, by June 30, 2018, a request for reimbursement related to medical benefits or compensation paid on or before July 1, 2016.
(d) An employer or its insurance carrier shall submit to the Employers' Reinsurance Fund a request for reimbursement related to medical benefits or compensation paid after July 1, 2016, within 24 months of the later of:
(i) the date the benefits or compensation are paid by the employer or its insurance carrier; or
(ii) the date the Employers' Reinsurance Fund is determined to be liable.
(e) Requests for reimbursement not submitted in accordance with Subsection (5)(c) or (5)(d) are considered untimely and the Employers' Reinsurance Fund may not reimburse the benefits or compensation paid.
…

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending February 19, 2016.

Arizona

HB 2240 amends, in part, ***sections 23-941. Hearing rights and procedure, 23-1044. Compensation for partial disability; computation***, ***23-1062. Medical, surgical, hospital benefits; translation services; commencement of compensation; method of compensation***, and ***23-1070.01. Request for early hearing; stipulation; action of commission***, and adds ***sections 23-941.02. Vexatious litigants; designation; definitions*** and ***23-954. Payment of interest on awards*** of the Arizona Revised Statutes, as follows:

23-941. Hearing rights and procedure

A. Subject to ~~the provisions of~~ section 23-947, any interested party may file a request for a hearing concerning a claim.
B. A request for a hearing shall be made in writing, be signed by or on behalf of the interested party and ~~including his~~ include the interested party's address, ~~stating~~ state that a hearing is desired~~,~~ and be filed with the commission.
C. The commission shall refer the request for the hearing to the administrative law judge division for determination as expeditiously as possible. The presiding administrative law judge may dismiss a request for hearing ~~when~~ if it appears to ~~his~~ the presiding administrative law judge's satisfaction that the disputed issue or issues have been resolved by the parties. Any interested party who objects to such dismissal may request a review pursuant to section 23-943.
D. At least twenty days' prior notice of the time and place of the hearing shall be given to all parties in interest by mail at their last known address. In the case of a hearing concerning suspension of benefits, pursuant to section 23-1026, 23-1027 or 23-1071, only ten days' prior notice ~~need be given~~ is required. Hearings shall be held in the county where the workman resided at the time of the injury or ~~such other~~ another place selected by the administrative law judge.
E. A record of all proceedings at the hearing shall be made but need not be transcribed unless a party applies to the court of appeals for a writ of certiorari pursuant to section 23-951. The record of the proceedings if not transcribed, shall be kept for at least two years but may be destroyed after ~~such~~ that time if a transcription is not requested.
F. Except as otherwise provided in this section and rules ~~or~~ of procedure established by the commission, the administrative law judge is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure and may conduct the hearing in any manner that will achieve substantial justice.
G. Any party shall be entitled to issuance and service of subpoenas under ~~the provisions of~~ section 23-921. Any party or ~~his~~ the party's representative may serve such subpoenas.
H. Any interested party or ~~his~~ the interested party's authorized agent shall be entitled to inspect any claims file of the commission, provided that such authorization is filed in writing with the commission.
I. Any interested party is entitled to one change of administrative law judge as a matter of right. To exercise the right to a change of administrative law judge, the interested party shall file a notice of change of administrative law judge. The notice of change of administrative law judge shall:
1. Be signed by the interested party or the interested party's authorized agent.
2. State the name of the administrative law judge to be changed.
3. Certify that the interested party or the interested party's authorized agent has timely filed the notice of change of administrative law judge. A notice of change of administrative law judge as a matter of right is timely if filed not more than thirty days after the date of the notice of hearing or not more than thirty days after a new administrative law judge is assigned to the claim if another interested party or the interested party's authorized agent has filed a notice of change of administrative law judge as a matter of right.
4. Certify that the interested party or the interested party's authorized agent has not previously been granted a change of administrative law judge as a matter of right for the claim.
~~I.~~ J. ~~Within thirty days after the date of notice of hearing~~ Any interested party to a hearing before the commission or the interested party's authorized agent may file an affidavit for change of administrative law judge for cause against ~~any hearing officer of the commission hearing such matters or commencing to hear such matter, setting~~ a presiding administrative law judge that sets forth any of the grounds as provided in subsection ~~J~~ K of this section. ~~, and~~ The chief administrative law judge shall immediately transfer the matter to another ~~officer of the commission who shall preside therein. not more than one change of administrative law judge shall be granted to any one party.~~ administrative law judge. An affidavit for change of administrative law judge for cause shall be filed within

the time frames provided in subsection i of this section.
~~J.~~ K. Grounds ~~which~~ that may be alleged as provided in subsection ~~I~~ J of this section for change of administrative law judge for cause are:
1. That the administrative law judge has been engaged as counsel in the hearing ~~prior to~~ before appointment as administrative law judge.
2. That the administrative law judge is otherwise interested in the hearing.
3. That the administrative law judge is of kin or otherwise related to a party to the hearing.
4. That the administrative law judge is a material witness in the hearing.
5. That the party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice~~,~~ or interest of the administrative law judge ~~he~~ the administrative law judge cannot obtain a fair and impartial hearing.
L. For the purposes of subsections I and J of this section, the employer and the employer's insurance carrier are considered a single party unless the employer's and the employer's insurance company's interests are in conflict.
~~K.~~ M. After final disposition of the proceedings in which they are used, exhibits marked for identification or introduced as evidence at hearings or proceedings ~~which~~ that cannot be readily copied, photocopied, mechanically reproduced or otherwise preserved as a document for inclusion in the record of the proceedings may be disposed of in the following manner:
1. By written notice, the attorneys of record, or if none, the parties, shall be notified that the counsel or the party introducing ~~such~~ the exhibit may claim it at the industrial commission within sixty days.
2. After sixty days following notification, any ~~such~~ exhibit remaining in the custody of the industrial commission shall be disposed of as state surplus property pursuant to the direction of the department of administration~~, surplus property division~~. A written description of ~~any such~~ the exhibit shall be included in the record to preserve ~~its~~ the exhibit's identity.

23-941.02. Vexatious litigants; designation; definitions
A. In a workers' compensation case before the commission, on the motion of a party, the chief administrative law judge or an administrative law judge designated by the chief administrative law judge may designate a pro se litigant a vexatious litigant. The pro se litigant shall respond within thirty days after the motion. The chief administrative law judge, or administrative law judge if designated by the chief administrative law judge, shall issue an order within thirty days after the pro se litigant's response is received or the time for response has elapsed.
B. A pro se litigant who is designated a vexatious litigant may not file a new request for hearing, pleading, motion or other document without prior leave of the chief administrative law judge or the administrative law judge designated by the chief administrative law judge.
C. A designation of vexatious litigant:
1. Applies only to the claim at issue before the chief administrative law judge or the administrative law judge designated by the chief administrative law judge.
2. Is suspended during the period in which the litigant is represented by legal counsel.
D. A pro se litigant is a vexatious litigant if the commission finds the pro se litigant engaged in vexatious conduct.
E. For the purposes of this section:
1. "Vexatious conduct" includes any of the following:
(a) repeated filing of requests for hearing, pleadings, motions or other documents solely or primarily for the purpose of harassment.
(b) unreasonably expanding or delaying commission proceedings.
(c) bringing or defending claims without substantial justification.
(d) engaging in abuse of discovery or conduct in discovery that has resulted in the imposition of sanctions against the pro se litigant.
(e) a pattern of making unreasonable, repetitive and excessive requests for information.
(f) repeated filing of documents or requests for relief that have been the subject of previous rulings by the commission in the same claim.
2. "without substantial justification" has the same meaning prescribed in section 12-349.

23-954. Payment of interest on awards
Interest on the payment of benefits shall be paid at a rate of interest at the lesser of ten percent per annum or a rate per annum that is equal to one percent plus the prime rate as published by the board of governors of the federal reserve system in statistical release h.15 or any publication that may supersede it on the date benefits are paid. Interest shall be paid only in the following instances:
1. On an award entered by the commission or by notice of claim status awarding permanent partial disability benefits pursuant to section 23-1044, subsection b or c or permanent total disability benefits pursuant to section 23-1045, subsection b or c, if benefits are not paid within ten days after the date the award or notice becomes final.
2. On a claim for dependent benefits, if the claim is denied and subsequently accepted or found compensable by award of the commission, from the date the claim for benefits was filed.

23-1044. Compensation for partial disability; computation
A. For temporary partial disability there shall be paid during the period thereof sixty-six and two-thirds ~~per cent~~ percent of the difference between the wages earned before the injury and the wages ~~which~~ that the injured person is able to earn thereafter. Unemployment benefits received during the period of temporary partial disability ~~and fifty per cent of retirement and pension benefits received from the insured or self-insured employer during the period of temporary partial disability~~ shall be considered

wages able to be earned.
…

23-1062. Medical, surgical, hospital benefits; translation services; commencement of compensation; method of compensation
A. Promptly, on notice to the employer, every injured employee shall receive medical, surgical and hospital benefits or other treatment, nursing, medicine, surgical supplies, crutches and other apparatus, including artificial members, reasonably required at the time of the injury, and during the period of disability. Such benefits shall be termed "medical, surgical and hospital benefits."
B. Medical, surgical and hospital benefits include translation services, if needed. A carrier, self-insurance pool or employer that does not direct care pursuant to section 23-1070 may choose the translator if the translator is certified by an outside agency and is not an employee of the carrier, self-insurance pool or employer. If the carrier, self-insurance pool or employer is unable to locate a certified translator for the particular language or dialect needed, the parties may agree on a translator who is not a certified translator.
…

23-1070.01. Request for early hearing; stipulation; action of commission
A. If a request for hearing filed in connection with a change of physician under section 23-1070 alleges, by affidavit, that immediate and irreparable injury, loss or damage will result if ~~such~~ the hearing is not held ~~prior to~~ before the times otherwise prescribed by article 3 of this chapter or if all interested parties, in person or by counsel, stipulate in ~~such~~ the request for hearing that ~~such~~ the hearing should be held ~~prior to~~ before the times otherwise prescribed by article 3 of this chapter, the commission shall:
1. Immediately issue a notice to all parties setting a hearing date not more than fifteen days later.
2. Require that the administrative law judge, who shall not be subject to the notice or affidavit for change prescribed by section 23-941, subsection I or J, determine the matter and make an award, if any, within five days after completion of the hearing.
B. All other procedures prescribed for subsequent actions with regard to ~~such~~ the hearing or award shall be as otherwise prescribed by law.

Georgia

HB 818 amends numerous sections of the Official Code of Georgia Annotated as follows:
§ 34-9-47. Trial division and appellate division created; composition; sessions
…
(c) The trial division shall be composed of administrative law judges appointed by the board who shall serve as hearing officers and exercise judicial functions in implementing this chapter. ~~Administrative law judges~~ An administrative law judge shall have the power to subpoena witnesses and administer oaths and may take testimony in those cases brought before the board. An administrative law judge hearing a case shall make an award, subject to review and appeal as provided in this chapter. An administrative law judge shall be subject to the Georgia Code of Judicial Conduct.
…

§ 34-9-121. Duty of employer to insure in licensed company or association or to deposit security, indemnity, or bond as self-insurer, application to out-of-state employers, and membership in mutual insurance company
(a) Unless otherwise ordered or permitted by the board, every employer subject to the provisions of this chapter relative to the payment of compensation shall secure and maintain full insurance against such employer's liability for payment of compensation under this article, such insurance to be secured from some person, corporation, association, or organization licensed by law to transact the business of workers' compensation insurance in this state or from some mutual insurance association formed by a group of employers so licensed; or such employer shall ~~furnish~~ provide the board with sufficient information for the board to make an adequate assessment of the employer's workers' compensation exposure and liabilities and shall further provide evidence satisfactory ~~proof~~ to the board of such employer's financial ability to pay the compensation directly in the amount and manner and when due, as provided for in this chapter. In the latter case, the board may, in its discretion, require the deposit of acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred; provided, however, that it shall be satisfactory proof of the employer's financial ability to pay the compensation directly in the amount and manner when due, as provided for in this chapter, and the equivalent of acceptable security, indemnity, or bond to secure the payment of compensation liabilities as they are incurred, if the employer shall show the board that such employer is a member of a mutual insurance company duly licensed to do business in this state by the Commissioner of Insurance, as provided by the laws of this state, or of an association or group of employers so licensed and as such is exchanging contracts of insurance with the employers of this and other states through a medium specified and located in their agreements with each other, but this proviso shall in no way restrict or qualify the right of self-insurance as authorized in this Code section. Nothing in this Code section shall be construed to require an employer to place such employer's entire insurance in a single insurance carrier.
…

§ 34-9-261. Compensation for total disability
While the disability to work resulting from an injury is temporarily total, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the employee's average weekly wage but not more than ~~$550.00~~ $575.00 per week nor less than $50.00 per week, except that when the weekly wage is below $50.00, the employer shall pay a weekly benefit equal to the average weekly wage. The weekly benefit under this Code section shall be payable for a maximum period of 400 weeks from the date of injury; provided, however, that in the event of a catastrophic injury as defined in subsection (g) of Code Section 34-9-200.1,

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

§ 34-9-262. Compensation for temporary partial disability
Except as otherwise provided in Code Section 34-9-263, where the disability to work resulting from the injury is partial in character but temporary in quality, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the difference between the average weekly wage before the injury and the average weekly wage the employee is able to earn thereafter but not more than ~~$367.00~~ $383.00 per week for a period not exceeding 350 weeks from the date of injury.

§ 34-9-265. Compensation for death resulting from injury and other causes, penalty for death from injury proximately caused by intentional act of employer, and payment of death benefits where no dependents found …
(d) The total compensation payable under this Code section to a surviving spouse as a sole dependent at the time of death and where there is no other dependent for one year or less after the death of the employee shall in no case exceed ~~$220,000.00~~ $230,000.00.
…

§ 34-9-380. Purpose of article
It is the purpose of this article through the establishment of a guaranty trust fund to provide for the continuation of workers' compensation benefits due and unpaid, excluding penalties, fines, and attorneys' fees assessed against a participant, when ~~a self-insured employer becomes insolvent~~ such participant becomes an insolvent self-insurer.

§ 34-9-381. Definitions
As used in this article, the term:
(1) 'Applicant' means an employee entitled to workers' compensation benefits.
(2) 'Board' means the State Board of Workers' Compensation.
(3) 'Board of trustees' means the board of trustees of the fund.
(4) 'Company' means a corporation, association, partnership, proprietorship, firm, or other form of business organization.
~~(4)~~ (5) 'Fund' means the Self-insurers Guaranty Trust Fund established by this article.
~~(5)~~ (6) 'Insolvent self-insurer' means a self-insurer:
(A) ~~a self-insurer who~~ Who files for relief under the federal Bankruptcy Act, a ;
(B) ~~self-insurer against~~ Against whom involuntary bankruptcy proceedings are filed, a ;
(C) ~~self-insurer for~~ For whom a receiver is appointed in a federal or state court of this state or any other jurisdiction, ~~or a self-insurer who~~ ;
(D) Who is in default on workers' compensation obligations; or
(E) Who is determined by the board to be in ~~default of its~~ noncompliance with workers' compensation obligations or requirements ~~according to~~ under the laws of this state and the rules and regulations ~~promulgated by the board of trustees and approved by~~ of the board.
~~(6)~~ (7) 'Participant' means a self-insurer who is a member of the fund ~~and exclusive of those entities described in Article 5 of this chapter~~.
~~(7)~~ (8) 'Self-insurer' means a private employer, including any hospital authority created pursuant to the provisions of Article 4 of Chapter 7 of Title 31, the 'Hospital Authorities Law,' that has been authorized to self-insure its payment of workers' compensation benefits pursuant to this chapter~~, except any~~ . The term 'self-insurer' shall not mean or include any of the following:
(A) Any governmental ~~self-insurer or other~~ employer authorized by the board to self-insure;
(B) Any employer who elects to group self-insure pursuant to Code Section 34-9-152, ~~captive ;~~
(C) Captive insurers as provided for in Chapter 41 of Title 33~~, or employers~~ ;
(D) Any employer who, pursuant to any reciprocal agreements or contracts of indemnity executed prior to March 8, 1960, created funds for the purpose of satisfying the obligations of self-insured employers under this chapter; or
(E) Any individual or company who:
(i) Enters into a contract or agreement with an employer under which the employer outsources its workers' compensation risks, responsibilities, obligations, or liabilities to such individual or company; and
(ii) Pursuant to such contract or agreement, is required to provide workers' compensation benefits to an injured employee even though no common-law master-servant relationship or contract of employment exists between the injured employee and the individual or company providing the benefits.
~~(8)~~ (9) 'Trustee' means a member of the Self-insurers Guaranty Trust Fund board of trustees.

§ 34-9-382 Establishment of Self-insurers Guaranty Trust Fund, use of fund, and application to be accepted in fund
(a) There is established a Self-insurers Guaranty Trust Fund for the sole purpose of making payments in accordance with this article. The fund shall be administered by an administrator appointed by the chairperson of the board of trustees with the approval of the board of trustees. All moneys in the fund shall be held in trust and shall not be money or property of the state or the participants and shall be exempt from levy, attachment, garnishment, or civil judgment for any claim or cause of action other than for not making payments in accordance with this article. ~~The board of trustees shall be authorized to invest the moneys of the fund in the same manner as provided by law for investments in government backed securities~~ The fund assets shall be invested only in obligations

issued or guaranteed by the United States government.
…
(c) As a condition of self-insurance, all private employers, except ~~any governmental self-insurer or other employer who elects to group self-insure pursuant to Code Section 34-9-152, captive insurers as provided for in Chapter 41 of Title 33, or employers who, pursuant to any reciprocal agreements or contracts of indemnity executed prior to March 8, 1960, created funds for the purpose of satisfying the obligations of self-insured employers under this chapter, must~~ those precluded from membership in the fund pursuant to subsection (d) of this Code section, shall make application to and be accepted in the Self-insurers Guaranty Trust Fund.
(d) Membership in the fund shall not be permitted for any of the following:
(1) Any governmental employer authorized by the board to self-insure;
(2) Any employer who elects to group self-insure pursuant to Code Section 34-9-152;
(3) Captive insurers as provided for in Chapter 41 of Title 33;
(4) Any employer who, pursuant to any reciprocal agreements or contracts of indemnity executed prior to March 8, 1960, created funds for the purpose of satisfying the obligations of self-insured employers under this chapter; or
(5) Any individual or company who:
(A) Enters into a contract or agreement with an employer under which the employer outsources its workers' compensation risks, responsibilities, obligations, or liabilities to such individual or company; and
(B) Pursuant to such contract or agreement, is required to provide workers' compensation benefits to an injured employee even though no common-law master-servant relationship or contract of employment exists between the injured employee and the individual or company providing the benefits.

§ 34-9-384. General powers of board of trustees
…
(2)(A) The board of trustees shall meet not less than quarterly and shall meet at other times upon the call of the chairperson, issued to the trustees in writing not less than 48 hours prior to the day and hour of the meeting, or upon a request for a meeting presented in writing to the chairperson not less than 72 hours prior to the proposed day and hour of the meeting and signed by at least a majority of the trustees, whereupon the chairperson shall provide notice issued in writing to the trustees not less than 48 hours prior to the meeting and shall convene the meeting at the time and place stated in the request~~;~~ .
(B) Any trustee may participate in a meeting of the board of trustees by telephone conference or similar communications technology which allows all individuals participating in the meeting to hear and speak with each other. Participation in a meeting pursuant to this subparagraph shall constitute presence in person at such meeting.
…

§ 34-9-385. Bankruptcy of participants
(a) Any participant who files for relief under the federal Bankruptcy Act or against whom bankruptcy proceedings are filed or for whom a receiver is appointed shall file written notice of such fact with the board and the board of trustees within 30 days of the occurrence of such event.
(b) Any ~~person~~ individual who files an application for adjustment of a claim against a participant who ~~is in default or has filed for relief under the federal Bankruptcy Act or against whom bankruptcy proceedings have been filed or for whom a receiver has been appointed must~~ or becomes an insolvent self-insurer shall file a written notice of such ~~fact~~ participant's status with the board and the board of trustees within 30 days of such ~~person's~~ individual having knowledge of the ~~event~~ participant becoming an insolvent self-insurer.
(c) Upon receipt of any notice as provided in subsection (a) or (b) of this Code section, the board shall determine whether the participant is an insolvent ~~or in default according to procedures established by the board of trustees and approved by the board~~ self-insurer. Such determination shall be made within a reasonable time after the date the board and board of trustees receive notification as provided in subsection (a) or (b) of this Code section.
(d) When a participant is determined to be ~~in default or~~ an insolvent self-insurer, the board of trustees is empowered to and shall assume on behalf of the participant its outstanding workers' compensation obligations excluding penalties, fines, and claimant's attorneys' fees assessed against the participant pursuant to subsection (b) of Code Section 34-9-108 and shall take all steps necessary to collect, recover, and enforce all outstanding security, indemnity, insurance, or bonds furnished by such participant guaranteeing the payment of compensation provided in this chapter for the purpose of paying outstanding and continuing obligations of the participant. The board of trustees shall convert and deposit into ~~the fund~~ a separate account established within the fund such security and any amounts received under agreements of surety, guaranty, insurance, or otherwise on behalf of the participant. Any amounts remaining from such security, indemnity, insurance, bonds, guaranties, and sureties, following payment of all compensation costs and related administrative expenses and fees of the board of trustees including attorneys' fees, and following collection of all amounts assessed and received pursuant to subsections (a) and (d) of Code Section 34-9-121 and any applicable rule of the board may be refunded by the fund as directed by the board of trustees, subject to the approval of the board, to the appropriate party one year from the date of final payment and closure of all claims, provided no outstanding self-insured liabilities remain against the fund and ~~the~~ all applicable ~~statute~~ statutes of ~~limitations has~~ limitation have run.
…

§ 34-9-386. Assessment of participants, liability of fund and participants for claims, and revocation of participant's authority

to be self-insured
…
(5) Funds obtained by such assessments shall be used only for the purposes set forth in this article and shall be deposited upon receipt by the board of trustees into the fund. If payment of any assessment, penalty, or fine made under this article is not made within 30 days of the sending of the notice to the participant, the board of trustees is authorized to do any or all of the following:
(A) Levy fines or penalties;
(B) Proceed in court for judgment against the participant, including the amount of the assessment, fines, penalties, the costs of suit, interest, and reasonable attorneys' fees;
(C) Proceed directly against the security pledged by the participant for the collection of same; or
(D) Seek revocation of the participant's ~~insured~~ self-insured status.
(b)(1) The fund shall be liable for claims arising out of injuries occurring after January 1, 1991; provided, however, that no claim may be asserted against the fund until the funding level has reached $1.5 million.
(2) All active participants shall be required to maintain surety bonds or the board of trustees may, in its discretion, accept ~~any~~ an irrevocable letter of credit ~~or other acceptable forms of security~~ in the amount of no less than $250,000.00. In addition, each active participant shall be required to purchase excess insurance for statutory limits with a self-insured retention specified by the board, and the excess policy shall include the bankruptcy endorsement required by the board and board of trustees. For participants who are no longer active, security in an amount commensurate with their remaining exposure, as determined by the board, shall be required until all self-insured claims have been closed and all applicable statutes of limitation have run.
(c) A participant who ceases to be a self-insurer shall be liable for any and all assessments, penalties, and fines made pursuant to this Code section for so long as indemnity or medical benefits are paid for claims which originated when the participant was a self-insurer. Assessments of such a participant shall be based on the indemnity and medical benefits paid by the participant during the previous calendar year.
(d) Upon refusal to pay assessments, penalties, or fines to the fund or upon refusal to comply with a board order ~~increasing security~~, the fund may treat the self-insurer as being in default with this chapter and the self-insurer shall be subject to revocation of its board authorization to self-insure and forfeiture of its security.

§ 34-9-387. Reimbursement and security deposit from participant for compensation obligations …
(c) The board of trustees shall be a party in interest in any action or proceeding to obtain the security deposit of a participant for the payment of the participant's compensation obligations, in any action or proceeding under the participant's excess insurance policy, and in any other action or proceeding to enforce an agreement of any security deposit or captive or excess insurance carrier and from any other guarantee to satisfy such obligations. The fund is authorized to file a claim against ~~a bankrupt~~ an insolvent participant or the participant's agents and seek reimbursement for any payments made by the fund on behalf of the participant pursuant to this chapter. The fund is subrogated to the claim of any employee whose benefits are paid by the fund. Further, the fund shall have a lien against any reimbursement payments the participant is entitled to from the Subsequent Injury Trust Fund in an amount equal to the payments made by the fund to satisfy the participant's liability for workers' compensation benefits.

§ 34-9-388. Reports of participant's insolvency, participant's audits, review of applications for self-insurance and recommendations thereon
…
(b) The board shall, at the inception of a participant's self-insured status and at least annually thereafter, so long as the participant remains self-insured, furnish the board of trustees with a complete, original bound copy of each participant's ~~audit~~ audited annual financial statement performed in accordance with generally accepted accounting standards by an independent certified public accounting firm, three to five years of loss history, name of the ~~person~~ individual or company to administer claims, and any other pertinent information submitted to the board to authenticate the participant's self-insured status. The board of trustees may contract for the services of a qualified certified public accountant or firm to review, analyze, and make recommendations on these documents. All financial information submitted by a participant shall be considered confidential and not public information.

HB 818 also contains the following clause:
All laws and parts of laws in conflict with this Act are repealed.

*NCCI estimates that if enacted, **HB 818**, which proposes increases in specified maximum benefits, would result in an impact of +1.5% ($20M) on total workers compensation system costs in Georgia.*

Kentucky

SB 151 amends ***section 342.730 Determination of income benefits for disability—Survivors' rights—Termination—Offsets—Notification of return to work*** of the Kentucky Revised Statutes as follows:
342.730 Determination of income benefits for disability—Survivors' rights—Termination—Offsets—Notification of return to work.
(1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:
…
(7) Income benefits otherwise payable pursuant to this chapter for temporary total disability during the period the employee has returned in a light duty or other alternative job position shall be offset by the payment of wages paid to the employee by his or her

employer during the period of light duty work performed.
(8) If an employee receiving a permanent total disability award returns to work, that employee shall notify the employer, payment obligor, insurance carrier, or special fund as applicable.

Utah

SB 76 adds new ***section 34A-2-104.5. Nongovernment entity volunteers*** to the Utah Code Annotated to read as follows:

34A-2-104.5. Nongovernment entity volunteers.

(1) As used in this section:
(a) (i) "Intern" means a student or trainee who works without pay at a trade or occupation in order to gain work experience.
(ii) Notwithstanding Subsection (1)(a)(i), "intern" does not include an intern described in Section 53A-29-103 or 53B-16-403.
(b) "Nongovernment entity" means an entity or individual that:
(i) is an employer as provided in Section 34A-2-103; and
(ii) is not a government entity.
(c) "Utah minimum wage" means the highest wage designated as Utah's minimum wage under Title 34, Chapter 40, Utah Minimum Wage Act.
(d) (i) "Volunteer" means an individual who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising nongovernment entity.
(ii) "Volunteer" includes an intern of a nongovernment entity.
(iii) "Volunteer" does not include an individual participating in human subjects research to the extent that the participation is governed by federal law or regulation inconsistent with this chapter.
(2) A volunteer for a nongovernment entity is not an employee of the nongovernment entity for purposes of this chapter and Chapter 3, Utah Occupational Disease Act, unless the nongovernment entity elects in accordance with this section to provide coverage under this chapter and Chapter 3, Utah Occupational Disease Act.
(3) (a) A nongovernment entity may elect to secure coverage for all of the nongovernment entity's volunteers by obtaining coverage for the volunteers in accordance with Section 34A-2-201 under the same policy it uses to cover the nongovernment entity's employees.
(b) If a nongovernment entity obtains coverage under Section 34A-2-201 for the nongovernment entity's volunteers, for purposes of receiving benefits under this chapter and Chapter 3, Utah Occupational Disease Act:
(i) a volunteer is considered an employee of the nongovernment entity; and
(ii) these benefits are the exclusive remedy of the volunteer in accordance with Section 34A-2-105 for an industrial injury or disease covered by this chapter and Chapter 3, Utah Occupational Disease Act.
(4) A nongovernment entity shall keep sufficient records of the nongovernment entity's volunteers and the volunteers' duties to determine compliance with this section.
(5) To compute the disability compensation benefits under Subsection (3), the disability compensation shall be calculated in accordance with Part 4, Compensation and Benefits, with the average weekly wage of the nongovernment volunteer assumed to be the Utah minimum wage at the time of the industrial accident or occupational disease that is the basis for the volunteer's workers' compensation claim.
(6) A workers' compensation insurer shall calculate the premium for a nongovernment entity's volunteer on the basis of the Utah minimum wage on the actual hours the volunteer provides service to the nongovernment entity, except that a workers' compensation insurer may assume 30 hours worked per week if the nongovernment entity does not provide a record of actual hours worked. The imputed wages shall be assigned to the class code on the policy that best describes the volunteer's duties.
(7) The failure or refusal of a nongovernment entity to make an election under this section in regard to volunteers does not alter, have an effect on, or give rise to any implication or presumption regarding:
(a) the nongovernment entity's duties or liabilities with respect to volunteers; or
(b) the rights of volunteers.
(8) A nongovernment entity shall notify a volunteer of an election under Subsection (3)(a) by posting:
(a) printed notices where volunteers are likely to see the notices in conspicuous places about the nongovernment entity's place of business; and
(b) notices on a website that the nongovernment entity uses to recruit or provide information to volunteers.

HB 96 creates new ***Chapter 3*** in ***Title 63F*** of the Utah Code Annotated to read:

Chapter 3. Single Sign-On Database

63F-3-101. Title.

This chapter is known as "Single Sign-On Database."

63F-3-102. Definitions.

As used in this chapter:
(1) "Business data" means data collected by the state about a person doing business in the state.
(2) "Business database" means the database described in Subsection 63F-3-103(1).
(3) "Database" means an electronic means of storing information.
(4) "Single sign-on web portal" means the web portal described in Subsection 63F-3-103(2).
(5) "Web portal" means an Internet webpage that can be accessed by an individual where the individual enters the individual's unique user information in order to access secure information.

63F-3-103. Single sign-on database—Creation.
(1) The department shall, in consultation with the entities described in Subsection (4), design and create a prototype of a single database, and associated data entry screens, that stores business data agreed upon by the entities described in Subsection (4) that is:
(a) secure;
(b) centralized; and
(c) interconnected.
(2) The department shall create a web portal that allows a person doing business in the state to access, at a single point of entry, all relevant state-collected business data about the person, including information related to:
(a) business registration;
(b) workers' compensation;
(c) tax liability and payment; and
(d) other information collected by the state that the department determines is relevant to a person doing business in the state.
(3) The department shall develop the business database and the single sign-on web portal:
(a) using an open platform that:
(i) facilitates participation in the database and web portal by a state entity; and
(ii) allows for optional participation by a political subdivision of the state; and
(b) in a manner that anticipates expanding the database and web portal to include:
(i) a database for data collected by the state on an individual; and
(ii) a web portal for an individual to access all relevant data collected by the state on the individual.
(4) In developing the business database and the single sign-on web portal, the department shall consult with:
(a) the Department of Commerce;
(b) the State Tax Commission;
(c) the Labor Commission;
(d) the Department of Workforce Services;
(e) the Governor's Office of Management and Budget;
(f) the Utah League of Cities and Towns;
(g) the Utah Association of Counties; and
(h) the business community that is likely to use the business database and single sign-on web portal.

63F-3-104. Report.
The department shall report to the Public Utilities and Technology Interim Committee:
(1) no later than November 30, 2016, with an initial design and prototype of the business database and the single sign-on web portal, together with a minimum two-year plan, including projected cost, for the initial implementation phase of the project; and
(2) before November 30 of each year beginning in 2017 until the development of the business database and the single sign-on web portal is complete, regarding the progress the department has made in developing the business database and the single sign-on web portal.

Virginia

HB 44 amends ***section 65.2-105. Presumption that certain injuries arose out of and in the course of employment*** of the Code of Virginia as follows:

§ 65.2-105. Presumption that certain injuries arose out of and in the course of employment.
In any claim for compensation, where the employee (i) is physically or mentally unable to testify as confirmed by competent medical evidence, (ii) dies with there being no evidence that he ever regained consciousness after the accident, (iii) dies at the accident location or nearby, or (iv) is found dead where he is reasonably expected to be as an employee, and where the factual circumstances are of sufficient strength from which the only rational inference to be drawn is that the accident arose out of and in the course of employment, it shall be presumed the accident arose out of and in the course of employment, unless such presumption is overcome by a preponderance of competent evidence to the contrary.

HB 378 makes various changes to the Code of Virginia, as it relates to workers compensation medical fee schedules, as described below:

- Directs the Workers' Compensation Commission (the Commission) to adopt regulations that will become effective January 1, 2018. It establishes fee schedules setting the maximum pecuniary liability of the employer for medical services provided to an injured person pursuant to the Virginia Workers' Compensation Act, in the absence of a contract under which the provider has agreed to accept a specified amount for the medical service.
- The Commission is required to retain a firm to assist it in establishing the initial fee schedules. It will set amounts based on a reimbursement objective constituting the average of all amounts paid to providers in the same category of providers for the medical service in the same medical community.
- Reimbursements for medical services provided to treat traumatic injuries and serious burns are excluded from the fee schedules, and liability for their treatment costs will be based, absent a contract, on 80% of the provider's charges. However, the required reimbursement will be 100% of the provider's charges if the employer unsuccessfully contests the compensability of the claim.
- The Commission is required to review and revise the fee schedules in the year after they become effective and biennially

thereafter.

- The liability of the employer for certain medical services not included in a fee schedule will be set by the Commission.
- A stop-loss feature allows hospitals to receive payments or reimbursements that exceed the fee schedule amount for certain claims when the total charges exceed a charge outlier threshold, which initially is 150% of the maximum fee for the service set forth in the applicable fee schedule. Providers are prohibited from using a different charge master or schedule of fees for any medical service provided for workers compensation patients than the provider uses for health care services provided to patients who are not claimants.
- When determining whether the employee's attorney's work, with regard to a contested claim, resulted in an award of benefits that inure to the benefit of a third-party insurance carrier or health care provider (and in determining the reasonableness of the amount of any fee awarded to an attorney), the measure requires the Commission:
  - To consider only the amount paid by the employer or insurance carrier to the third-party insurance carrier or health care provider for medical services rendered to the employee through a certain date
  - Not to consider additional amounts previously paid to a health care provider or reimbursed to a third-party insurance carrier
- The Commission shall have an independent, peer-reviewed study conducted every two years. The existing peer review provisions are repealed.
- The regulations setting fee schedules are exempt from the Administrative Process Act if the Commission utilizes a regulatory advisory panel to assist in the development of such regulations and provides an opportunity for public comment on the regulations prior to adoption.
- The measure prohibits certain practices involving the use by third parties of contracts, such as:
  - When a provider agrees to accept payment of less than the fee scheduled amount—including restricting the sale, lease, or other dissemination of information regarding the payment amounts or terms of a provider contract—without the express written consent and prior notification of all parties to the provider contract
  - When an employer shops for the lowest discount for a specific provider among the provider contracts held in multiple preferred provider organization networks
- The regulatory advisory panel is directed to make recommendations to the Commission prior to July 1, 2017, on workers compensation issues relating to:
  - Pharmaceutical costs not previously included in the fee schedules
  - Durable medical equipment costs not previously included in the fee schedules
  - Certain awards of attorney fees
  - Peer review of medical costs
  - Prior authorization for medical services
  - Other issues that the Commission assigns to it

Note: HB 378 is similar, but not identical to **SB 631**, which passed the first chamber on February 5, 2016, and was included in NCCI's February 12, 2016 ***Legislative Activity Report*** (RLA-2016-05).

HB 1108 amends ***sections 2.2-4302.1. Process for competitive sealed bidding*** and ***2.2-4302.2. Process for competitive negotiation*** of the Code of Virginia as follows:

§ **2.2-4302.1. Process for competitive sealed bidding.**

The process for competitive sealed bidding shall include the following:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. No Invitation to Bid for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;

…

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

For the purposes of subdivision 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of Section 38.2-1913.

Section 2.2-4302.2. Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for

Proposal for construction ~~services~~ authorized by this chapter shall condition a successful offeror's eligibility on having a specified experience modification factor;
…
For the purposes of subdivision A 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of Section 38.2-1913.

In addition, **HB 1108** adds the following new section to read:
§ 11-9.8. Construction of certain terms of offer to contract; use of experience modification factor prohibited.
A. As used in this section:
"Contract" means an agreement for the provision of construction services under which the contractor will be required to have and maintain a policy of insurance as defined in Section 38.2-119.
"Experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of Section 38.2-1913.
"Offer to contract" means a solicitation of bids, Request for Proposals, or similar invitation to enter into a contract that is extended to potential contractors for construction services.
"Person" means any individual; firm; cooperative; association; corporation; limited liability company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy; club, society, or other group or combination acting as a unit; or public body, including but not limited to (i) the Commonwealth; (ii) any other state; and (iii) any agency, department, institution, political subdivision, or instrumentality of the Commonwealth or any other state.
B. A term of an offer to contract issued that requires that the successful bidder have a specified experience modification factor is prohibited.
C. Any contract or offer to contract that requires the contractor or bidder responding to the offer to contract to have a specified experience modification is prohibited.
…

HB 1108 also contains the following clause:
That the provisions of this act shall apply to any offer to contract, as defined in § 11-9.8 of the Code of Virginia, as created in this act; Invitation to Bid; or Request for Proposal for construction services issued on or after July 1, 2016.

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
HI	Carolyn Pearl	808-524-6239
IN, NC, SC, TN	Amy Quinn	803-356-0851
AR, IL, KS, TX	Terri Robinson	501-333-2835
AK, ID, MT, OR	Jessica Epley	503-892-8919
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.