



Legislative Activity Report

National Council on Compensation Insurance

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Regulatory Services

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RLA-2016-15

Report Contact: Legislative_Activity@ncci.com

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

LEGISLATIVE ACTIVITY—LEGISLATIVE SESSION UPDATES

This report contains descriptions and/or excerpts of relevant bills that 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 bills were enacted within the one-week period ending April 15, 2016.

Maine

LD 1553 was:

- Passed by the first chamber on March 17, 2016
- Included in NCCI's March 25, 2016 *Legislative Activity Report* (RLA-2016-11)
- Passed by the second chamber on April 12, 2016
- Enacted on April 14, 2016, with an effective date of July 19, 2016*

LD 1553 makes various changes to the Maine Workers' Compensation Act of 1992 to:

- Increase the Workers' Compensation Board's assessment cap starting in fiscal year 2017–18 to \$13 million
- Establish that appeals to the Law Court from the Workers' Compensation Board are from decisions of the Workers' Compensation Board's Appellate Division and not an individual administrative law judge
- Require the Workers' Compensation Board to study the current system for independent contractor predeterminations and report any recommended legislation to the joint standing committee of the legislature having jurisdiction over labor matters
- Require the Workers' Compensation Board to consider an employer's efforts to comply with the coverage requirements of the Maine Workers' Compensation Act of 1992 when imposing a monetary penalty
- Establish that criminal prosecution may be pursued only if the employer has committed a knowing violation
- Establish that revocation of authority to operate pursuant to the Maine Revised Statutes, Title 39-A, section 324, subsection 3, paragraph C may be pursued only if the employer has committed a knowing violation, has failed to pay a penalty assessed pursuant to that subsection, or continues to operate without required workers compensation insurance coverage after a penalty has been assessed pursuant to that subsection

* Ninety days after the statutory adjournment date of April 20, 2016.

Maryland

HB 1408 was:

- Passed by the first chamber on March 17, 2016
- Included in NCCI's March 25, 2016 *Legislative Activity Report* (RLA-2016-11)
- Passed by the second chamber on March 30, 2016
- Included in NCCI's April 8, 2016 *Legislative Activity Report* (RLA-2016-13)
- Enacted on April 12, 2016, with an effective date of October 1, 2016

HB 1408 amends *section 27-608 Premium increase for commercial insurance—Notice required* of the Maryland Insurance Code by:

- Exempting a commercial or workers compensation insurer from being required to send notice to the named insured and

insurance producer, if any, when the insurer intends to increase a renewal policy premium, if the renewal policy premium is increasing by 15% or less

- Repealing an exemption from the notice requirement for insurers if the renewal policy premium is greater than \$1,000 and increasing by 3% or \$300, whichever is less
- Specifying that an insurer may not be required to comply with the notice requirement if a separate notice containing specified information is sent
- Repealing a provision that considers the notice requirement to have been met when an insurer sends this separate notice

The proposed amendments apply to all policies of commercial insurance and workers compensation insurance issued, delivered, or renewed in the state on or after October 1, 2016.

Tennessee

SB 2563 was:

- Passed by the first and second chamber on March 31, 2016
- Included in NCCI's April 8, 2016 *Legislative Activity Report* (RLA-2016-13)
- Enacted and effective on April 14, 2016

SB 2563 amends various sections of the Tennessee Workers' Compensation Law to:

- Add members of limited liability companies to the definition of employee for the purposes of workers compensation law
- Require workers compensation settlement agreements to be reduced to writing and approved by the Court of Workers' Compensation Claims
- Clarify the procedures for approval of settlements by the Court of Workers' Compensation Claims
- Provide that the Court of Workers' Compensation Claims will determine the right of an employee to receive compensation from the Second Injury Fund
- Require a lump-sum settlement under Tenn. Code Ann. § 50-6-229 to be approved by the Court of Workers' Compensation Claims and not chancery, circuit, or criminal courts
- Provide that any current or retired Tennessee judge or chancellor, workers compensation judge, or the governor of Tennessee may swear in judges of the Court of Workers' Compensation Claims
- Require costs of administering claims for benefits under Tenn. Code Ann. § 50-6-801 to be paid from the Uninsured Employers Fund

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending April 15, 2016.

Arizona

HB 2652 was:

- Passed by the first chamber on March 2, 2016
- Included in NCCI's March 11, 2016 *Legislative Activity Report* (RLA-2016-09)
- Amended and passed by the second chamber on April 12, 2016

HB 2652 adds new *Chapter 10 Employment Relationships* to the Arizona Revised Statutes to read:

Chapter 10

Employment Relationships

Article 1. General Provisions

23-1601. Qualified marketplace contractors; definitions

A. A qualified marketplace contractor shall be treated as an independent contractor for all purposes under state and local laws, regulations and ordinances, including employment security laws prescribed in chapter 4 of this title and workers' compensation laws prescribed in chapter 6 of this title, if all of the following apply:

1. All or substantially all of the payment for the services performed by the qualified marketplace contractor is related to the performance of services or other output.

2. The services performed by the qualified marketplace contractor are governed by a written contract executed between the qualified marketplace contractor and a qualified marketplace platform.

3. The written contract required by paragraph 2 of this subsection provides for all of the following:

(a) That the qualified marketplace contractor is providing services as an independent contractor and not as an employee.

(b) That, pursuant to paragraph 1 of this subsection, all or substantially all of the payment paid to the contractor shall be based on the performance of services or other output.

(c) That the qualified marketplace contractor is allowed to work any hours or schedules the qualified marketplace contractor chooses. If the qualified marketplace contractor elects to work specified hours or schedules, a contract may require the qualified marketplace contractor to perform work during the selected hours or schedules.

(d) That the qualified marketplace contract does not restrict the contractor's ability to perform services for other parties.

(e) That the qualified marketplace contractor bears all or substantially all of the qualified marketplace contractor's own expenses that

are incurred by the qualified marketplace contractor in performing the services.

(f) That the qualified marketplace contractor is responsible for the taxes on the qualified marketplace contractor's own income.

(g) That the contract and the association created by the contract may be terminated without cause by either party to the contract at any time on reasonable notice given to the other party.

B. For services performed by a qualified marketplace contractor before the effective date of this section, the qualified marketplace contractor shall be treated as an independent contractor for all purposes under state and local laws, regulations and ordinances, including employment security laws prescribed in chapter 4 of this title and workers' compensation laws prescribed in chapter 6 of this title, if both of the following apply:

1. All or substantially all of the payment for the services performed by the qualified marketplace contractor is related to the performance of services or other output.

2. The services performed by the qualified marketplace contractor are governed by a written contract executed between the qualified marketplace contractor and a qualified marketplace platform that conforms to the requirements of subsection A, paragraph 3 of this section.

C. Compliance with this section is not mandatory in order to establish the existence of an independent contractor relationship. The exclusion of any contractor or digital platform from this section does not create any presumptions and is not admissible to deny the existence of an independent contractor relationship.

D. This section does not apply to:

1. Service performed in the employ of a state, or any political subdivision of the state, or in the employ of an Indian tribe, or any instrumentality of a state, any political subdivision of a state or any Indian tribe that is wholly owned by one or more states or political subdivisions or Indian tribes, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act (26 United States Code sections 3301 and 3306(c)(7)).

2. Service performed in the employ of a religious, charitable, educational or other organization that is excluded from employment as defined in the Federal Unemployment Tax Act (26 United States Code sections 3301 through 3311), solely by reason of 26 United States Code section 3306(c)(8).

E. For the purposes of this section:

1. "Qualified marketplace contractor" means any person or organization, including an individual, corporation, limited liability company, partnership, sole proprietor or other entity, that enters into an agreement with a qualified marketplace platform to use the qualified marketplace platform's digital platform to provide services to third-party individuals or entities seeking those services. Qualified marketplace contractor does not include any contractor when the services performed consist of transporting freight, sealed and closed envelopes, boxes or parcels or other sealed and closed containers for compensation.

2. "Qualified marketplace platform" means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor or any other entity, that both:

(a) Operates a digital website or digital smartphone application that facilitates the provision of services by qualified marketplace contractors to individuals or entities seeking such services.

(b) Accepts service requests from the public only through its digital website or digital smartphone application, and does not accept service requests by telephone, by facsimile or in person at physical retail locations.

Qualified marketplace platform does not include any digital website or smartphone application where the services facilitated consist of transporting freight, sealed and closed envelopes, boxes or parcels or other sealed and closed containers for compensation.

Hawaii

HB 2363 HD1 SD1 was:

- Passed by the first chamber on March 3, 2016
- Included in NCCI's March 11, 2016 *Legislative Activity Report* (RLA-2016-09)
- Amended and passed by the second chamber on April 12, 2016

HB 2363 HD1 SD1 amends various provisions of the Hawaii Revised Statutes related to workers compensation and temporary disability insurance coverage to:

- Exclude sole proprietors, individual partners of a partnership, partners of a limited liability partnership with a transferable interest of at least 50%, individual members of a limited liability company with a distributional interest of at least 50%, or individuals owning at least 50% of a corporation from providing temporary disability insurance coverage for services they provide for themselves
- Authorize the Director of Labor and Industrial Relations to receive electronic copies of injury and other reports required under the workers compensation law
- Increase the maximum penalty for employers or insurance carriers who fail to make correct or timely workers compensation benefit payments or terminate such benefits without approval or statutory cause from \$2,500 to \$5,000
- Increase the maximum penalty for physicians who fail to timely file workers compensation injury and treatment reports from \$250 to \$500
- Increase the maximum penalty for employers who fail to furnish workers compensation medical reports or to allow inspection and copying of requested medical depositions from \$1,000 to \$5,000
- Increase the penalty for employers who fail to provide workers compensation coverage for employees from the greater of at least \$250 or \$10 per employee per day of failure, to the greater of at least \$500 or \$100 per employee per day of failure

- Increase the maximum penalty for employers who deduct workers compensation premium payments from an employee's wages from \$2,500 to \$5,000
- Increase the penalty for employers who fail to provide temporary disability insurance coverage for employees from the greater of at least \$25 or \$1 per employee per day of failure, to the greater of at least \$500 or \$100 per employee per day of failure

Maryland

SB 505 was:

- Passed by the first chamber on March 15, 2016
- Included in NCCI's March 25, 2016 *Legislative Activity Report* (RLA-2016-11)
- Passed by the second chamber on April 9, 2016

SB 505 amends *section 11-329. Workers' compensation insurers* of the Maryland Insurance Code as follows:

§ 11-329. Workers' compensation insurers

...

(f) Basis for premium adjustment.—

(1) Except as provided in ~~paragraph (2)~~ paragraphs (2) and (3) of this subsection, the uniform experience rating plan shall be the exclusive means of providing prospective premium adjustment based on measurement of the loss-producing characteristics of an individual insured.

(2) In addition to any premium adjustment allowed under paragraph (1) of this subsection and pursuant to a filing made by a rating organization and approved by the Commissioner, an insurer may file a rating plan with the Commissioner that provides for prospective premium adjustments up to 25% based upon characteristics of a risk that are not reflected in the uniform experience rating plan.

(3) (1) Except as provided in subparagraph (ii) of this paragraph, in addition to any premium adjustment allowed under paragraphs (1) and (2) of this subsection and pursuant to a filing made by a rating organization and approved by the commissioner, an insurer may file a rating plan with the commissioner that provides for a premium discount for appropriate classifications or subclassifications of a risk of up to 4% to an insured that has an alcohol- and drug-free workplace policy that may include one or more of the following programs:

1. An alcohol and drug testing program;

2. An employee education program on alcohol and drug abuse;

3. A supervisor education program on alcohol and drug abuse;

4. An employee assistance program that includes referrals of employees for appropriate diagnosis, treatment, and assistance;

5. A program requiring an employee who has caused or contributed to an accident while at work to undergo alcohol or drug testing;
and

6. Any other program that the insurer deems effective to encourage an alcohol- and drug-free workplace.

(ii) an insurer is not required to provide a premium discount under this paragraph if the insured is required under federal or state law to test its employees for drugs or otherwise provide an alcohol- and a drug-free workplace.

(4) An insurer may file a rating plan that provides for retrospective premium adjustments based on an insured's past experience.

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending April 15, 2016.

Illinois

HB 6225 amends sections *215 ILCS 113/25 Record keeping and reporting requirement* and *215 ILCS 113/30 Responsibility for policy issuance and continuance* of the Illinois Compiled Statutes Annotated as follows:

215 ILCS 113/25 Record keeping and reporting requirement

(a) A lessor shall maintain accounting and employment records relating to all employee leasing arrangements for a minimum of 4 calendar years. A lessor shall maintain the address of each office it maintains in this State, at its principal place of business.

(b) A lessor shall maintain sufficient information in a manner consistent with a licensed rating organization's data submission requirements to permit the rating organization licensed under Section 459 of the Illinois Insurance Code to calculate an experience modification factor for the lessee.

(c) Upon written request of a lessee with an annual payroll attributed to it in excess of \$200,000, the lessor shall provide the lessee's experience modification factor to the lessee within 30 days of the request.

(d) Upon request of a lessee with an annual payroll attributed to it of less than \$200,000, the lessor shall provide the loss information required to be maintained by this Section to the lessee within 30 days of the request.

(e) Nothing in this Section shall preclude a licensed rating organization from calculating the experience modification factor for each lessee nor an insurer from maintaining and furnishing on behalf of the lessor, such information as required by this Section.

(f) In the event that a lessee's experience modification factor exceeds the lessor's experience modification factor by 50% at the inception of the employee leasing arrangement, the lessee's experience modification factor shall be utilized to calculate the premium or costs charged to the lessee for workers' compensation coverage for a period of 2 years. Thereafter, the premium charged by the insurer for inclusion of a lessee under a lessor's policy may be calculated on the basis of the lessor's experience modification factor.

(g) A lessor that does not provide workers' compensation insurance coverage for leased employees of a lessee under an employee leasing arrangement shall not be subject to compliance with subsections (b) through (f) of this Section.

215 ILCS 113/30 Responsibility for policy issuance and continuance

(a) Either a lessor or lessee may provide workers' compensation insurance coverage for leased employees under an employee leasing arrangement. When a workers' compensation policy written to cover leased employees is issued to the lessor as the named insured, the lessee shall be identified thereon by the attachment of an appropriate endorsement indicating that the policy provides coverage for leased employees. The endorsement shall, at a minimum, provide for the following:

- (1) Coverage under the endorsement shall be limited to the named insured's employees leased to the lessees.
- (2) The experience of the employees leased to the particular lessee shall be separately maintained by the lessor as provided in Section 25.

...

(f) When the lessee provides workers' compensation coverage for leased employees under an employee leasing arrangement, the lessor shall notify the Department in a manner specified by the Department to ensure proper and timely notification of coverage to the Department.

South Carolina

SB 1064 amends *section 38-73-525 Filing of multiplier for expenses by insurers writing workers' compensation* and *section 38-73-1210 Members of rating organization not required to file individually; rates for members in first year; collection, compilation and dissemination of premium data* of the South Carolina Code of Laws as follows:

Section 38-73-525 Filing of multiplier for expenses by insurers writing workers' compensation

(A) Each insurer writing workers' compensation insurance shall adopt the most recent loss costs within sixty days after approval of these loss costs. This loss costs adoption must become effective no later than one hundred twenty days after the effective date of the approved loss costs. An insurer must notify the department of its adoption of the most recently approved loss costs by filing a notification on a form and in a manner prescribed by the director or his designee. The notification filing required by this subsection does not constitute a rate filing and is not subject to prior approval.

(B)(1) At least ~~thirty~~ sixty days ~~prior to~~ before using a new rates, every multiplier for expenses, assessments, profits, and contingencies, each insurer writing workers' compensation ~~must~~ shall file its multiplier for expenses, assessments, profit, and contingencies and any information relied upon by the insurer to support the multiplier and any modifications to loss costs. A copy of the filing must be provided simultaneously to the consumer advocate.

(2) ~~The filing~~ Filings submitted pursuant to item (1) must be filed on a form and in the manner prescribed by the director or his designee and must contain, at a minimum, the following information: commission expense; other acquisition expense; general expense; expenses associated with recoveries from the Second Injury Fund; guaranty fund assessments; other assessments; premium taxes; miscellaneous taxes, licenses, or fees; ~~and a~~ a provision for profit and contingencies, and the date of approval of the loss costs to which the multiplier is applied, which must be the most recently approved loss costs.

(3) ~~Rate~~ Filings submitted pursuant to item (1) are subject to approval of the director or his designee and must be reviewed by an actuary employed or retained by the department who is a member of the American Academy of Actuaries or an associate or fellow of the Casualty Actuarial Society.

(4)(a) Within the ~~thirty-day~~ sixty-day period, if the director or his ~~or her~~ designee believes the information filed is not complete, the director or his ~~or her~~ designee must shall notify the insurer of additional information to be provided. Within fifteen days of receipt of the notification, the insurer must shall provide the requested information or file for a hearing challenging the reasonableness of the director's or his ~~or her~~ designee's request. The burden is on the insurer to justify the denial of the additional information.

(b) Unless a hearing ~~has been~~ is requested, upon expiration of the ~~thirty-day~~ sixty-day period or the fifteen-day period, whichever is later, the insurer may use the rates developed using the multiplier of expenses, assessments, profit, and contingencies multiplier for expenses, assessments, profit, and contingencies.

Section 38-73-1210 Members of rating organization not required to file individually; rates for members in first year; collection, compilation and dissemination of premium data

(A)(1) This item applies to property and casualty insurance but does not apply to workers' compensation insurance. An insurer may satisfy its obligation to make required filings by becoming a member of, or a subscriber to, a licensed rating organization which makes filings and by authorizing the director or his designee to accept the filings on its behalf. However, notwithstanding ~~any other provisions~~ another provision of this article, ~~no~~ a member or subscriber ~~may~~, within twelve months after its membership or subscribership, ~~may not file to adopt~~ any a rate approved for use for the rating organization if the rate is more than the rate in use by the member or subscriber ~~prior to~~ before its membership or subscribership in the rating organization. Further, notwithstanding the provisions of Sections 38-73-1300, and 38-73-1310, ~~and 38-73-1320, no~~ a member or subscriber, within twelve months after its membership or subscribership, ~~may not~~ be granted an upward deviation from its rate in use when becoming a member or subscriber. However, if a rate increase for the rating organization is approved within twelve months after an insurer becomes a member or subscriber, the member or subscriber may increase its rates by the same percentage of increase granted the rating organization. Nothing contained in this chapter may be construed ~~as requiring any~~ to require an insurer to become a member of or a subscriber to ~~any~~ a rating organization.

(2) This item applies to workers' compensation insurance. An insurer may satisfy its obligation to make required filings by becoming a member of, or a subscriber to, a licensed rating organization that makes filings and by authorizing the director or his designee to accept the filings on its behalf. However, a licensed rating organization may not satisfy the insurer's obligation to make filings required pursuant to Section 38-73-525.

(B) In addition to other activities not prohibited by this chapter, a rating organization may collect, compile, and disseminate to insurers compilations of past and current premiums of insurers.

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

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