Legislative Activity Report

National Council on Compensation Insurance

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May 20, 2016 RLA-2016-19

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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 bills were enacted within the one-week period ending May 13, 2016.

Arizona

HB 2114 was:

- Passed by the first chamber on February 4, 2016
- Included in NCCI's February 12, 2016 ***Legislative Activity Report*** (RLA-2016-05)
- Amended and passed by the second chamber on March 29, 2016
- Included in NCCI's April 8, 2016 ***Legislative Activity Report*** (RLA-2016-13)
- Enacted on May 12, 2016, with an effective date of August 6, 2016

HB 2114 adds ***sections 23-1601. Declaration of independent business status*** and ***23-1602. Determination of employment relationship; prohibition*** to the Arizona Revised Statutes as follows:

23-1601. Declaration of independent business status

A. Compliance with this chapter and the execution of a declaration of independent business status in compliance with this section are not mandatory in order to establish the existence of an independent contractor relationship between an employing unit and an independent contractor. The failure of a party to execute a declaration in compliance with this section does not create any presumptions and is not admissible to deny the existence of an independent contractor relationship.

B. Any employing unit contracting with an independent contractor may prove the existence of an independent contractor relationship for the purposes of this title by the independent contractor executing a declaration of independent business status, as provided by this section, and by the employing unit acting in a manner substantially consistent with the declaration. Compliance with this section creates a rebuttable presumption of an independent contractor relationship between the independent contractor and the employing unit with whom the independent contractor contracts. Any declaration of independent business status shall be signed by the independent contractor, be dated and substantially comply with the following form:

This declaration of independent business status is made by (contractor) in relation to services performed by the contractor for or in connection with (contracting party). The contractor states and declares the following:

1. The contractor acknowledges that the contractor operates the contractor's own independent business and is providing services for or in connection with the contracting party as an independent contractor.

2. The contractor acknowledges that the contractor is not an employee of the contracting party and the services rendered for or in connection with the contracting party do not establish any right to unemployment benefits or any other right arising from an employment relationship.

3. The contractor is responsible for all tax liability associated with payments received from or through the contracting party and the contracting party will not withhold any taxes from payments to the contractor.

4. The contractor is responsible for obtaining and maintaining any required registration, licenses or other authorization necessary for the services rendered by the contractor.

5. The contractor acknowledges at least six of the following:

(a) that the contractor is not insured under the contracting party's health insurance coverage or workers' compensation insurance

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coverage.
(b) That the contracting party does not restrict the contractor's ability to perform services for or through other parties and the contractor is authorized to accept work from and perform work for other businesses and individuals besides the contracting party.
(c) That the contractor has the right to accept or decline requests for services by or through the contracting party.
(d) That the contracting party expects that the contractor provides services for other parties.
(e) That the contractor is not economically dependent on the services performed for or in connection with the contracting party.
(f) That the contracting party does not dictate the performance, methods or process the contractor uses to perform services.
(g) That the contracting party has the right to impose quality standards or a deadline for completion of services performed, or both, but the contractor is authorized to determine the days worked and the time periods of work.
(h) That the contractor will be paid by or through the contracting party based on the work the contractor is contracted to perform and that the contracting party is not providing the contractor with a regular salary or any minimum, regular payment.
(i) That the contractor is responsible for providing and maintaining all tools and equipment required to perform the services performed.
(j) That the contractor is responsible for all expenses incurred by the contractor in performing the services.
6. The contractor acknowledges that the terms set forth in this declaration apply to the contractor, the contractor's employees and the contractor's independent contractors.
C. Subsections A and B of this section do not apply to any employing unit that is licensed or is required to be licensed pursuant to title 32, chapter 10 unless the employing unit is contracting with an independent contractor to perform services that do not require a license pursuant to title 32, chapter 10 for or in connection with the employing unit.
D. Execution of a declaration of independent business status under this section is optional and this section does not require an independent contractor to execute a declaration of independent business status to be considered an independent contractor. Any employing unit or independent contractor may rely on any provision in this title for the purposes of establishing an employment or independent contractor relationship.
E. The execution of a declaration of independent business status and substantial compliance with the declaration pursuant to this section does not operate to the same effect as or otherwise act as a substitute for a written agreement executed pursuant to section 23-902, subsection D.

23-1602. Determination of employment relationship; prohibition
Except for the enforcement of chapter 2, article 10 of this title, any supervision or control exercised by an employing unit to comply with any statute, rule or code adopted by the federal government, this state or a political subdivision of this state or any requirement of licensing, professional or ethical standards may not be considered for the purposes of determining the independent contractor or employment status of any relationship or individual for the purposes of this title. This section does not otherwise affect any investigatory or enforcement authority related to the determination of the independent contractor or employment status of any relationship as provided by this title or federal law.

HB 2114 also includes the following clauses:
Severability
If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Applicability
This act does not annul, alter, affect or exempt any employing unit or individual subject to title 23, Arizona Revised Statutes, from complying with the laws of this state, except to the extent that the laws of this state are inconsistent with any provision of this act, and then only to the extent of the inconsistency.

HB 2240 was:
- Passed by the first chamber on February 18, 2016
- Included in NCCI's February 26, 2016 ***Legislative Activity Report*** (RLA-2016-07)
- Amended and passed by the second chamber on March 28, 2016
- Included in NCCI's April 8, 2016 ***Legislative Activity Report*** (RLA-2016-13)
- Enacted on May 11, 2016, with an effective date of August 6, 2016

HB 2240 amends ***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 ***section 23-954. Payment of interest on awards*** to 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

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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.

23-954. 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

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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.

B. Disability shall be deemed permanent partial disability if caused by any of the following specified injuries, and compensation of fifty-five ~~per cent~~ percent of the average monthly wage of the injured employee, in addition to the compensation for temporary total disability, shall be paid for the period given in the following schedule:

1. For the loss of a thumb, fifteen months.
2. For the loss of a first finger, commonly called the index finger, nine months.
3. For the loss of a second finger, seven months.
4. For the loss of a third finger, five months.
5. For the loss of the fourth finger, commonly called the little finger, four months.
6. The loss of a distal or second phalange of the thumb or the distal or third phalange of the first, second, third or fourth finger, shall be considered equal to the loss of one-half of the thumb or finger, and compensation shall be one-half of the amount specified for the loss of the entire thumb or finger.
7. The loss of more than one phalange of the thumb or finger shall be considered as the loss of the entire finger or thumb, but in no event shall the amount received for more than one finger exceed the amount provided for the loss of a hand.
8. For the loss of a great toe, seven months.
9. For the loss of a toe other than the great toe, two and one-half months.
10. The loss of the first phalange of any toe shall be considered equal to the loss of one-half of the toe and compensation shall be one-half of the amount for one toe.
11. The loss of more than one phalange shall be considered as the loss of the entire toe.
12. For the loss of a major hand, fifty months, or of a minor hand, forty months.
13. For the loss of a major arm, sixty months, or of a minor arm, fifty months.
14. For the loss of a foot, forty months.
15. For the loss of a leg, fifty months.
16. For the loss of an eye by enucleation, thirty months.
17. For the permanent and complete loss of sight in one eye without enucleation, twenty-five months.
18. For permanent and complete loss of hearing in one ear, twenty months.
19. For permanent and complete loss of hearing in both ears, sixty months.
20. The permanent and complete loss of the use of a finger, toe, arm, hand, foot or leg may be deemed the same as the loss of any such member by separation.
21. For the partial loss of use of a finger, toe, arm, hand, foot or leg, or partial loss of sight or hearing, fifty ~~per cent~~ percent of the average monthly wage during that proportion of the number of months in the foregoing schedule provided for the complete loss of use of such member, or complete loss of sight or hearing, which the partial loss of use thereof bears to the total loss of use of such member or total loss of sight or hearing. ~~In~~ For the purposes of this paragraph, "loss of use" means a loss of physical function of the affected member, sight or hearing. The effect on an employee's ability to return to the employee's occupation at the time of the injury shall not be considered in establishing the percentage of loss under this section, except that if the employee is unable to return to the work the employee was performing at the time the employee was injured due to the total or partial loss of use, compensation pursuant to this section shall be calculated based on seventy-five ~~per cent~~ percent of the average monthly wage.
22. For permanent disfigurement about the head or face, ~~which shall include~~ including injury to or loss of teeth, the commission ~~may~~, ~~in accordance with the provisions of~~ pursuant to section 23-1047, may allow such sum for compensation thereof as it deems just, in accordance with the proof submitted, for a period of not ~~to exceed~~ more than eighteen months.

C. In cases not enumerated in subsection B of this section, if the injury causes permanent partial disability for work, the employee shall receive during such disability compensation equal to fifty-five ~~per cent~~ percent of the difference between the employee's average monthly wages before the accident and the amount ~~which~~ that represents the employee's reduced monthly earning capacity resulting from the disability, but the payment shall not continue after the disability ends, or the death of the injured employee, and in case the partial disability begins after a period of total disability, the period of total disability shall be deducted from the total period of compensation.

D. In determining the amount ~~which~~ that represents the reduced monthly earning capacity for the purposes of subsections A and C of this section, consideration shall be given, among other things, to any previous disability, the occupational history of the injured employee, the nature and extent of the physical disability, the type of work the injured employee is able to perform ~~subsequent to~~ after the injury, any wages received for work performed ~~subsequent to~~ after the injury and the age of the employee at the time of injury. If the employee is unable to return to work or continue working in any employment after the injury due to the employee's termination from employment for reasons that are unrelated to the industrial injury, the commission may consider the wages that the

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employee could have earned from that employment as representative of the employee's earning capacity. A determination of earning capacity that is based on wages that could have been earned from previously terminated employment is subject to change under subsection F of this section and an employee retains the right to later establish that the employee's reduced earning capacity is related in whole or in part to the industrial injury.
E. In case there is a previous disability, as the loss of one eye, one hand, one foot or otherwise, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.
F. For the purposes of subsection C of this section, the commission, in accordance with the provisions of section 23-1047 when the physical condition of the injured employee becomes stationary, shall determine the amount ~~which~~ that represents the reduced monthly earning capacity and ~~upon~~ on such determination make an award of compensation ~~which shall be~~ that is subject to change in any of the following events:
1. ~~Upon~~ On a showing of a change in the physical condition of the employee ~~subsequent to~~ after such findings and award arising out of the injury resulting in the reduction or increase of the employee's earning capacity.
2. ~~Upon~~ On a showing of a reduction in the earning capacity of the employee arising out of such injury where there is no change in the employee's physical condition, ~~subsequent to~~ after the findings and award.
3~~. Upon~~ On a showing that the employee's earning capacity has increased ~~subsequent to~~ after such findings and award.
G. The commission may adopt a schedule for rating loss of earning capacity and reasonable and proper rules to carry out ~~the provisions of~~ this section. In all cases involving this section, except for cases under subsection B of this section, or in cases involving a request pursuant to section 23-1061, subsection J for disability compensation, if any issue is raised regarding whether the injured employee has suffered a loss of earning capacity because of an inability to obtain or retain suitable work, the following apply:
1. The employer or carrier may present evidence showing that the inability to obtain suitable work is due, in whole or in part, to economic or business conditions, or other factors unrelated to the industrial injury. The injured employee may present evidence showing that the inability to obtain suitable work is due, in whole or in part, to the industrial injury or limitations resulting from the injury. The administrative law judge shall consider all such evidence in determining whether and to what extent the injured employee has sustained any loss of earning capacity.
2. In cases involving loss of employment, the employer or carrier may present evidence showing that the injured employee was terminated from employment or has not obtained suitable work, or both, due, in whole or in part, to economic or business conditions, or other factors unrelated to the injury. The injured employee may present evidence showing that such termination or inability to obtain suitable work is due, in whole or in part, to the industrial injury or limitations resulting from the injury. The administrative law judge shall consider all such evidence in determining whether and to what extent the injured employee has sustained any loss or additional loss of earning capacity.
H. Any single injury or disability that is listed in subsection B of this section and that is not converted into an injury or disability compensated under subsection C of this section by operation of this section shall be treated as scheduled under subsection B of this section regardless of its actual effect on the injured employee's earning capacity.

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.
~~B.~~ C. The first installment of compensation is to be paid no later than the twenty-first day after written notification by the commission to the carrier of the filing of a claim ~~except where~~ unless the right to compensation is denied. Thereafter, compensation shall be paid at least once each two weeks during the period of temporary total disability and at least monthly thereafter. Compensation shall not be paid for the first seven days after the injury. If the incapacity extends beyond the period of seven days, compensation shall begin on the eighth day after the injury, but if the disability continues for one week beyond such seven days, compensation shall be computed from the date of the injury.
~~C.~~ D. Compensation shall be made by negotiable instrument, payable immediately on demand or, at the election of the employee and if offered by the employer or carrier, by another commonly accepted method for transferring money by banking institutions, including electronic fund transfers to the employee's account or a prepaid debit card account that is established for the purpose of making direct electronic payment to the employee.

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.

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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.

HB 2240 also includes the following language:

Industrial commission of Arizona; workers' compensation fraud; self-insured employers; recommendations

A. The industrial commission of Arizona shall research and make recommendations on ways to allow for investigations into the act or practice of workers' compensation fraud impacting self-insured employers in a manner consistent with section 20-466, Arizona Revised Statutes, as applicable, but not duplicative of the functions of another state agency, including the department of insurance.

B. The industrial commission of Arizona shall make recommendations on or before December 31, 2016, to the governor, the speaker of the house of representatives, the president of the senate and chairpersons of the senate commerce and workforce development committee and the house of representatives insurance committee.

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
- Included in NCCI's April 22, 2016 ***Legislative Activity Report*** (RLA-2016-15)
- Enacted on May 12, 2016, with a projected effective date of August 6, 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

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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.

District of Columbia

DC B21-0388 was
- Passed by the DC Council on March 1, 2016
- Included in NCCI's March 11, 2016 ***Legislative Activity Report*** (RLA-2016-09)
- Effective on May 12, 2016, after it passed the congressional review period*

DC B21-0388 amends ***section 32-1535*** of the District of Columbia Official Code to require that if a person entitled to workers compensation institutes proceedings and recovers an amount against a third person, court costs and attorney fees shall be proportionally shared between the person entitled to the compensation and the employer, relative to the amount each received in the settlement against the third person.

***** Once District of Columbia bills are passed by the DC Council, they must be sent to Congress for a period of 30 days before becoming effective as law (or 60 days for certain criminal legislation).

Maryland

HB 631 was:
- Passed by the first chamber on March 3, 2016
- Included in NCCI's March 11, 2016 ***Legislative Activity Report*** (RLA-2016-09)
- Passed by the second chamber on April 1, 2016
- Included in NCCI's April 8, 2016 ***Legislative Activity Report*** (RLA-2016-13)
- Enacted on May 10, 2016, with an effective date of October 1, 2016

HB 631 amends ***section 9-628. Compensation for less than 75 weeks*** of the Labor and Employment Annotated Code of Maryland by expanding the circumstances under which a Howard County deputy sheriff is considered a public safety employee, thereby making the deputy sheriff eligible for enhanced workers compensation benefits. Specifically, the bill repeals a provision that only considers a deputy sheriff a public safety employee when he or she is performing law enforcement duties expressly requested, defined, and authorized in accordance with a written memorandum of understanding executed between the Howard County Sheriff and other law enforcement agencies.

HB 958 was:
- Passed by the first chamber on March 21, 2016
- Included in NCCI's April 1, 2016 ***Legislative Activity Report*** (RLA-2016-12)
- Amended and passed by the second chamber on April 7, 2016
- Included in NCCI's April 15, 2016 ***Legislative Activity Report*** (RLA-2016-14)
- Enacted on May 10, 2016, with an effective date of October 1, 2016

HB 958 amends ***section 11-307 Rate Filings*** of the Maryland Insurance Code as follows:
11-307 Rate Filings
(a) Required.—
(1) Except as otherwise provided in this subsection, each authorized insurer and each rating organization that has been designated by an insurer for the filing of rates under subsection (b) of this section shall file with the Commissioner all rates and supplementary rate information and all changes and amendments of rates and supplementary information made by it for use in the State on or before the

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date they become effective.
(2) Rates and supplementary rate information need not be filed for inland marine risks that by general custom are not written according to manual rules or rating plans.

(b) Establishing rates and supplementary rate information.—
(1) An insurer may itself establish rates and supplementary rate information based on the factors in § 11-306 of this subtitle.
(2) Except for workers' compensation insurance rates, an insurer may use rates and supplementary rate information prepared and filed with the Commissioner by a rating organization of which it is a member or subscriber, with average loss factors or expense factors determined by the rating organization or with modification for its own expense and loss experience as the credibility of that experience allows.
(3) If an insurer uses rates and supplementary rate information prepared by a rating organization:
(i) the insurer shall notify the Commissioner that it uses rates and supplementary rate information prepared and filed with the Commissioner by a designated rating organization of which it is a member or subscriber and shall provide the Commissioner with information about modifications of those rates and supplementary rate information that is necessary to inform the Commissioner fully; and
(ii) subject to modifications filed by the insurer, the insurer's rates and supplementary rate information shall be those filed periodically by the rating organization, including any amendments to those filings.

(c) Public inspection.—
(1) In this subsection,"proprietary rate-related information":
(i) means a rating model; and
(ii) includes the formulas, algorithms, analyses, and specific weights given to variables used in the model.
~~(1)~~ (2) (i) ~~Each~~ except as provided in paragraph (3) of this subsection, each filing and any supporting information filed under this subtitle shall be open to public inspection as soon as filed.
~~(2)~~ (ii) On request and payment of a reasonable charge, a person may obtain copies of a filing and any supporting information.
(3) (i) information that an insurer files with the Commissioner and identifies as proprietary rate-related information:
1. Constitutes a trade secret and confidential commercial information;
2. Subject to subparagraph (ii) of this paragraph and except as provided in subparagraph (iii) of this paragraph, shall be kept confidential by the Commissioner; and
3. Is not subject to subpoena served on the Commissioner or any recipient of proprietary rate-related information under subparagraph (iii) of this paragraph.
(ii) 1. except as provided in subsubparagraph 2 of this subparagraph, if the Commissioner determines that some or all of the material that an insurer files and identifies as proprietary rate-related information does not constitute proprietary rate-related information as defined in paragraph (1) of this subsection, the Commissioner shall:
A. Give the insurer written notice of that determination; and
B. Make the material open to public inspection 10 business days after the date the Commissioner gives notice of the determination to the insurer.
2. The Commissioner may not disclose the material if:
A. The insurer has not put the rate filing into effect; and
B. Within the time period described in subsubparagraph 1b of this subparagraph, the insurer withdraws the rate filing and notifies the Commissioner that the rate filing is withdrawn.
(iii) this paragraph does not prohibit the Commissioner from disclosing an insurer's proprietary rate-related information:
1. In furtherance of a regulatory or legal action that the Commissioner undertakes in performing the Commissioner's duties under this article;
2. If the recipient enters into a written agreement to maintain the confidentiality of the proprietary rate-related information, to:
A. An outside consultant that the Commissioner engages to assist the Commissioner in reviewing the insurer's rate filing;
B. Another state's insurance regulatory agency;
C. The National Association of Insurance Commissioners; or
D. A state or federal law enforcement authority, including the United States Department of Justice and the Maryland Attorney General, if acting in a law enforcement capacity; or
3. If the proprietary rate-related information is part of a homeowner's insurance or medical malpractice insurance rate filing, to the People's Insurance Counsel Division acting under § 6-306 of the state government article.
(iv) 1. except as provided in subsubparagraph 2 of this subparagraph, the People's Insurance Counsel Division shall maintain the confidentiality of proprietary rate-related information disclosed to the division under subparagraph (iii)3 of this paragraph.
2. The People's Insurance Counsel Division may disclose proprietary rate-related information to an outside consultant that the division engages to assist the division in reviewing a homeowner's insurance rate filing, provided that the outside consultant enters into a written agreement to maintain the confidentiality of the proprietary rate-related information.
(v) the Commissioner shall notify the insurer in writing at least 10 business days before the Commissioner discloses any of the insurer's proprietary rate-related information under subparagraph (iii) of this paragraph.
(vi) in addition to any other rights an insurer may have under any other applicable law, the insurer may seek to have any disclosure of the insurer's proprietary rate-related information under subparagraph (iii)1 of this paragraph be made under seal or other protection

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of confidentiality.
(vii) there is no waiver of any applicable privilege or claim of confidentiality with regard to any proprietary rate-related information that is disclosed under subparagraph (iii) of this paragraph.
(4) This subsection may not be construed to:
(i) authorize an insurer to designate the rating factors used to calculate the premium as proprietary rate-related information; or
(ii) authorize the Commissioner to keep the rating factors confidential.

(d) Action by Commissioner.—
(1) The Commissioner may investigate and determine whether or not rates in the State are excessive, inadequate, or unfairly discriminatory.
(2) In an investigation and determination under this subsection, the Commissioner shall give due consideration to the factors specified in § 11-306 of this subtitle.

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
- Included in NCCI's April 22, 2016 ***Legislative Activity Report*** (RLA-2016-15)
- Enacted on May 10, 2016, with an effective date of October 1, 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) (I) 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.

Mississippi

SB 2193 was:

- Passed by the first chamber on February 25, 2016
- Included in NCCI's March 4, 2016 ***Legislative Activity Report*** (RLA-2016-08)
- Amended and passed by the second chamber on March 23, 2016
- Included in NCCI's April 1, 2016 ***Legislative Activity Report*** (RLA-2016-12)
- Amended by Conference Committee, and amendments adopted by the House on April 15, 2016, and Senate on April 19, 2016
- Enacted on May 10, 2016, with an effective date of July 1, 2016

SB 2193, in part, amends ***section 83-17-401 Definitions*** of the Mississippi Code of 1972 as follows:
§ 83-17-401 Definitions
As used in this article, unless the context otherwise requires:
…
(e) "Workers' compensation adjuster" means an adjuster whose scope of licensure is limited to workers' compensation insurance. A workers' compensation adjuster may not represent an insured individual. A workers' compensation adjuster must comply with all

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licensing and continuing education requirements as are prescribed by the commissioner pursuant to this article.
…

Oklahoma

SB 1083 was:

- Passed by the first chamber on March 8, 2016
- Included in NCCI's March 18, 2016 ***Legislative Activity Report*** (RLA-2016-10)
- Amended and passed by the second chamber on April 20, 2016
- Included in NCCI's April 29, 2016 ***Legislative Activity Report*** (RLA-2016-16)
- Enacted on May 11, 2016, with an effective date of November 1, 2016

SB 1083 amends ***section 1151.22. A. Any contract entered into under the Roofing Contractor Registration Act shall include a statement that all individuals performing work under the contract are covered by workers' compensation insurance*** of the Oklahoma Statutes as follows:

1151.22. A. Any contract entered into under the Roofing Contractor Registration Act shall include a statement that all individuals performing work under the contract are covered by workers' compensation insurance

…

B. If ~~the individuals performing work under the contract are not covered by~~ an affidavit of exemption for workers' compensation insurance~~, the contractor shall provide a written statement to the homeowner advising that the individuals performing work under the contract are not covered by workers' compensation insurance, which~~ is used by a legitimately exempt person, it shall be ~~signed by all parties to the contract and~~ attached to the contract and it shall be used only for residential construction projects. All commercial projects shall require all individuals performing work on such project to be covered by workers' compensation insurance as employees of the person registered under the Roofing Contractor Registration Act. However, any day laborer who can show proof of being covered by workers' compensation insurance under the temporary labor agency for whom he or she is hired-out may provide an affidavit from the temporary labor agency to meet the requirement of this section for authority to use an affidavit of exemption. No roofing contractor required to be registered under the Roofing Contractor Registration Act shall hire any out-of-state company or person or use any person or independent contractor that is not registered under the Roofing Contractor Registration Act with the required workers' compensation insurance or who is not deemed his or her employee for purposes of workers' compensation insurance.

C. In no event shall a homeowner be held liable in the workers' compensation administrative system for injury or death to any person who performs work under a contract with a person required by law to be registered under the Roofing Contractor Registration Act and have workers' compensation on all persons performing work on the roofing project.

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending May 13, 2016.
Note: Any bill that passes the first chamber and is amended and passed by the second chamber must be returned to the first chamber for concurrence before going to the governor for signature.

Colorado

SB 16-217 was:

- Passed by the first chamber on May 9, 2016
- Passed by the second chamber on May 11, 2016

SB 217 amends ***sections 8-42-112. Acts of employees reducing compensation, 8-43-203. Notice concerning liability—notice to claimants—notice of rights and claims process—rules***, and ***8-43-404. Examination—refusal—personal responsibility—physicians to testify and furnish results—injured worker right to select treating physicians—injured worker right to third-party communications—definitions—rules*** of the Colorado Revised Statutes as follows:

8-42-112. Acts of employees reducing compensation.

…

(3) An admission of liability reducing compensation under this section must include a statement by a representative of the employer listing the specific facts on which the reduction is based.

(4) If the insurer or self-insured employer admits liability for the claim, any party may request an expedited hearing on the issue of whether the employer or insurer may reduce compensation under this section if the application for hearing is filed within forty-five days after the date of the admission reducing compensation under this section. The director shall set any expedited matter for hearing within sixty days after the date of the application. The time schedule for an expedited hearing is subject to the extensions set forth in section 8-43-209. If the party elects not to request an expedited hearing under this subsection (4), the time schedule for hearing the matter is as set forth in section 8-43-209.

(5) Nothing in this section limits the right of a party to submit evidence at a hearing scheduled under this section or section 8-43-209.

(6) Nothing in this section precludes a party from requesting a hearing pursuant to the time schedule set forth in section 8-43-209.

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8-43-203. Notice concerning liability—notice to claimants—notice of rights and claims process—rules.
(1) (a) The employer or, if insured, the employer's insurance carrier shall notify in writing the division and the injured employee or, if deceased, the decedent's dependents within twenty days after a report is, or should have been, filed with the division pursuant to section 8-43-101, whether liability is admitted or contested; except that, for the purpose of this section, any knowledge on the part of the employer, if insured, is not knowledge on the part of the insurance carrier. The employer or the employer's insurance carrier may notify the division electronically. Unless exempted by the director pursuant to rule because of a small number of filings or a showing of financial hardship, beginning July 1, 2006, all notices of contest shall be filed electronically. The rejection of an electronically filed notice by the division for a technical error shall not affect the validity of the notice to the claimant. If the insurance carrier or self-insured employer denies liability for the claim, the claimant may request an expedited hearing on the issue of compensability if the application therefor is filed within forty-five days after the date of mailing of the notice of contest. The director shall set any such expedited matter for hearing within ~~forty~~ sixty days after the date of the application, when the issue is liability for the disease or injury. The time schedule for such an expedited hearing is subject to the extensions set forth in section 8-43-209. If a claimant elects not to request an expedited hearing pursuant to this subsection (1), the time schedule for hearing the matter shall be as set forth in section 8-43-209.
…

8-43-404. Examination—refusal—personal responsibility—physicians to testify and furnish results—injured worker right to select treating physicians—injured worker right to third-party communications—definitions—rules.
…
(5) (a) (I) (D) Except as otherwise provided by sub-subparagraph (E) of this subparagraph (I), any party may request an expedited hearing on the issue of whether the employer or insurer provided a list in compliance with this subsection (5) if the application for expedited hearing is filed within forty-five days after the claimant provides notice of the injury to the employer.
(E) If the insurer or self-insured employer admits liability for the claim, any party may request an expedited hearing on the issue of whether the employer or insurer provided a list in compliance with this subsection (5) if the application for expedited hearing is filed within forty-five days after the initial admission of liability for the claim. The director shall set any expedited matter for hearing within sixty days after the date of the application. The time schedule for an expedited hearing is subject to the extensions set forth in section 8-43-209. If the party elects not to request an expedited hearing under this subsection (5), the time schedule for hearing the matter is as set forth in section 8-43-209.
…
(VI) (A) In addition to the one-time change of physician allowed in subparagraph (III) of this paragraph (a), upon written request to the insurance carrier or to the employer's authorized representative if self-insured, an injured employee may procure written permission to have a personal physician or chiropractor treat the employee. The written request must be completed on a form that is prescribed by the director. If permission is neither granted nor refused within twenty days after the date of the certificate of service of the request form, the employer or insurance carrier shall be deemed to have waived any objection to the employee's request. Objection shall be in writing on a form prescribed by the director and shall be ~~deposited in the United States mail or hand-delivered to~~ served on the employee or, if represented, the employee's authorized representative within twenty days after the date of the certificate of service of the request form. An insurance carrier, or an employer's authorized representative if self-insured, shall track how often an injured employee requests to change his or her physician and how often such change is granted or denied and shall report such information to the division upon request. Upon the proper showing to the division, the employee may procure the division's permission at any time to have a physician of the employee's selection treat the employee, and in any nonsurgical case the employee, with such permission, in lieu of medical aid, may procure any nonmedical treatment recognized by the laws of this state as legal. The practitioner administering the treatment shall receive fees under the medical provisions of articles 40 to 47 of this title as specified by the division.
(B) If an injured employee is permitted to change physicians under sub-subparagraph (A) of this subparagraph (VI) resulting in a new authorized treating physician who will provide primary care for the injury, then the previously authorized treating physician providing primary care shall continue as the authorized treating physician providing primary care for the injured employee until the injured employee's initial visit with the newly authorized treating physician, at which time the treatment relationship with the previously authorized treating physician providing primary care is terminated.
(C) Nothing in this subparagraph (VI) precludes any former authorized treating physician from performing an examination under subsection (1) of this section.
(D) If an injured employee is permitted to change physicians pursuant to sub-subparagraph (A) of this subparagraph (VI) resulting in a new authorized treating physician who will provide primary care for the injury, then the opinion of the previously authorized treating physician providing primary care regarding work restrictions and return to work controls unless that opinion is expressly modified by the newly authorized treating physician.
…

Note: SB 217 was not included in any previous version of NCCI's ***Legislative Activity Report***.

Louisiana

HB 476 was:

- Passed by the first chamber on April 27, 2016
- Included in NCCI's May 6, 2016 ***Legislative Activity Report*** (RLA-2016-17)

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- Passed by the second chamber on May 10, 2016

HB 476 amends ***section 22:890 Certificates of insurance*** of the Louisiana Revised Statutes, in part, as follows:

§890. Certificates of insurance

A. For the purposes of this Section:

(1) "Certificate" or "certificate of insurance" means any document, instrument, or record, including an electronic record, no matter how titled or described, which is prepared by an insurer or insurance producer and issued to a third person not a party to the subject insurance contract, as evidence of property and casualty insurance coverage. "Certificate" or "certificate of insurance" shall not mean an insurance binder.

(2) "Certificate holder" means any person, other than a policyholder, that is designated on a certificate of insurance as a "certificate holder" or any person, other than a policyholder, to whom a certificate of insurance has been issued by an insurer or insurance producer at the request of the policyholder.

(3) "Electronic record" shall have the meaning defined in R.S. 9:2602 (7).

(4) "Insurance" shall have the meaning defined in R.S. 22:46 (9).

(5) "Insurance producer" shall have the same definition as set forth in R.S. 22:1542.

(6) "Insurer" means an insurer as defined in R.S. 22:46 (10) and any other person engaged in the business of making property and casualty insurance contracts, including but not limited to self-insurers, syndicates, risk purchasing groups, and similar risk transfer entities. "Insurer" shall not mean any person self-insured for purposes of workers' compensation, including any group self-insurance fund authorized pursuant to R.S. 23:1195 et seq., any interlocal risk management agency authorized pursuant to R.S. 33:1341 et seq., or any self-insured employer authorized pursuant to R.S. 23:1168 et seq.

(7) "Lender" means an individual, partnership, corporation, limited liability company, association, federally insured depository institution, or other entity, agent, loan agent, servicing agent, or loan or mortgage broker, who makes, owns, or services a loan.

…

C. No person, other than a lender, wherever located, may prepare, issue, or request the issuance of a certificate of insurance for risks located in this state unless the ~~form has been filed with and approved by the commissioner of insurance. No person, wherever located, may alter or modify an approved certificate of insurance form unless the alteration or modification has been approved by the commissioner of insurance~~ certificate is issued on standard certificate of insurance forms promulgated by the insurer, the Association for Cooperative Operations Research and Development (ACORD), the American Association of Insurance Services (AAIS), or the Insurance Services Office (ISO).

D. ~~The commissioner of insurance shall disapprove a form filed under this Section or withdraw approval of a form if that form:~~

~~(1) Is unfair, misleading, or deceptive, or violates public policy.~~

~~(2) Violates any state statute or regulation validly promulgated by the commissioner of insurance.~~

~~(3) Requires certification of insurance coverages that are not available.~~

~~E. The commissioner may approve a certificate of insurance form that does not state that the form is provided for information only or similar language, provided that the form states that the certificate of insurance does not confer any rights or obligations other than those conveyed by the policy and that the terms of the policy control. Further, use of such a form shall not be, in and of itself, cause for disapproval by the commissioner under the provisions of Subsection D of this Section.~~

~~F.(1) The commissioner of insurance shall approve or disapprove certificate of insurance forms filed pursuant to this Section in writing within forty-five days of receipt of the form.~~

~~(2) Standard certificate of insurance forms promulgated by the Association for Cooperative Operations Research and Development (ACORD), the American Association of Insurance Services (AAIS), or the Insurance Services Office (ISO) shall be filed, but are deemed approved by the commissioner of insurance, provided these forms comply with the provisions of this Section.~~

~~G.~~ No person shall demand or request the issuance of a certificate of insurance from an insurer, insurance producer, or policyholder that contains any false or misleading information concerning the policy of insurance to which the certificate makes reference.

~~H.~~ E.(1)(a) No person may ~~prepare, issue, or~~ request an insurance producer prepare or issue, either in addition to or in lieu of a certificate of insurance, an opinion letter or other document or correspondence, instrument, or record, including an electronic record~~, that is inconsistent with this Section;~~ .

(b) The provisions of Subparagraph (a) of this Paragraph shall not apply to lenders, as defined in this Section, or to certificates of insurance required or requested by a lender from a policyholder.

(2)(a) ~~however,~~ A person may request that an insurer ~~or insurance producer may~~ prepare or issue an addendum that clarifies, explains, summarizes, or provides a statement of the coverages provided by a policy of insurance and otherwise complies with the requirements of this Section.

(b) Notwithstanding Subparagraph (a) of this Paragraph, a lender may request that an insurer or insurance producer prepare or issue an addendum that clarifies, explains, summarizes, or provides a statement of the coverages provided by a policy of insurance and otherwise complies with the requirements of this Section.

…

~~J.~~ G. A certificate of insurance form which has been ~~approved by the commissioner~~ issued in accordance with this Section and properly executed and issued by a property and casualty insurer or an insurance producer, shall constitute a confirmation that the referenced insurance policy has been issued or that coverage has been bound notwithstanding the inclusion of "for information purposes only" or similar language on the face of the certificate. A certificate of insurance is not a policy of insurance and does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policy to which the certificate of insurance makes

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reference. A certificate of insurance shall not confer to a certificate holder new or additional rights beyond what the referenced policy or any validly executed endorsements of insurance provides.
~~K.~~ H. No certificate of insurance shall contain references to legal or insurance requirements contained in any contracts ~~other than the underlying contracts of insurance~~, including but not limited to construction or service contracts. The certificate of insurance may list only the specific forms or endorsements contained in the underlying contracts of insurance. No certificate holder or other interested party may require an interpretation of those forms or endorsements from the insurance agent. The provisions of this Subsection shall not apply to lenders, as defined in this Section, or to certificates of insurance required or requested by a lender from a policyholder.
…

Missouri

HB 2194 was:

- Passed by the first chamber on March 29, 2016
- Passed by the second chamber on May 10, 2016

HB 2194, in part, amends ***section 287.955. Insurers to adhere to uniform classification system, plan—director to designate advisory organization, purpose, duties—risk premium modification plan, requirements*** of the Missouri Annotated Statues as follows:

287.955. Insurers to adhere to uniform classification system, plan—director to designate advisory organization, purpose, duties—risk premium modification plan, requirements.

….

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

(2) Premium modifications under this subsection may be determined by an underwriter assessing the individual risk characteristics and applying premium credits and debits as specified under a schedule rating plan. Alternatively, an insurer may utilize software or a computer risk modeling system designed to identify and assess individual risk characteristics and which systematically and uniformly applies premium modifications to similarly situated employers. The rating plan shall establish objective standards for measuring variations in individual risks for hazards or expense or both. ~~The rating plan shall be actuarially justified and shall not result in premiums which are excessive, inadequate, or unfairly discriminatory.~~ The rating plan shall not utilize factors which are duplicative of factors otherwise utilized in the development of rates or premiums, including the uniform classification system and the uniform experience rating plan. ~~The premium modification factors utilized under the rating plan shall be applied on a statewide basis, with no premium modifications~~ No premium modification factors shall be based solely upon the geographic location of the employer.

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

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

(c) Changes in premium modification factors may occur if there is a change in the insurer, the insurer amends or withdraws the rating plan, or if there is a change in the insured employer's operations or risk characteristics underlying the premium modification factor.

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

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

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

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

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

Note: HB 2194 was not included in any previous version of NCCI's ***Legislative Activity Report***.

SB 613 was:

- Passed by the first chamber on April 28, 2016

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- Included in NCCI's May 6, 2016 ***Legislative Activity Report*** (RLA-2016-17)
- Passed by the second chamber on May 13, 2016

SB 613 adds new section ***287.245*** and amends ***sections 287.957. Experience rating plan, contents***, and ***287.975. Pure premium rate, schedule of rates, filed with director, when—payroll differential, advisory organization to collect data, when, purpose*** of the Missouri Workers Compensation Law as follows:

287.245

1. As used in this section, the following terms shall mean:
(1) "Association", volunteer fire protection associations as defined in section 320.300;
(2) "State fire marshal", the state fire marshal selected under the provisions of sections 320.200 to 320.270;
(3) "Volunteer firefighter", the same meaning as in section 287.243.
2. Any association may apply to the state fire marshal for a grant for the purpose of funding such association's costs related to workers' compensation insurance premiums for volunteer firefighters.
3. Subject to appropriations, the state fire marshal shall disburse grants to each applying volunteer fire protection association according to the following schedule:
(1) Associations which had zero to five volunteer firefighters receive workers' compensation benefits from claims arising out of and in the course of the prevention or control of fire or the underwater recovery of drowning victims in the preceding calendar year shall be eligible for two thousand dollars in grant money;
(2) Associations which had six to ten volunteer firefighters receive workers' compensation benefits from claims arising out of and in the course of the prevention or control of fire or the underwater recovery of drowning victims in the preceding calendar year shall be eligible for one thousand five hundred dollars in grant money;
(3) Associations which had eleven to fifteen volunteer firefighters receive workers' compensation benefits from claims arising out of and in the course of the prevention or control of fire or the underwater recovery of drowning victims in the preceding calendar year shall be eligible for one thousand dollars in grant money;
(4) Associations which had sixteen to twenty volunteer firefighters receive workers' compensation benefits from claims arising out of and in the course of the prevention or control of fire or the underwater recovery of drowning victims in the preceding calendar year shall be eligible for five hundred dollars in grant money.
4. Grant money disbursed under this section shall only be used for the purpose of paying for the workers' compensation insurance premiums of volunteer firefighters.

287.957 Experience rating plan, contents

The experience rating plan shall contain reasonable eligibility standards, provide adequate incentives for loss prevention, and shall provide for sufficient premium differentials so as to encourage safety. The uniform experience rating plan shall be the exclusive means of providing prospective premium adjustment based upon measurement of the loss-producing characteristics of an individual insured. An insurer may submit a rating plan or plans providing for retrospective premium adjustments based upon an insured's past experience. Such system shall provide for retrospective adjustment of an experience modification and premiums paid pursuant to such experience modification where a prior reserved claim produced an experience modification that varied by greater than fifty percent from the experience modification that would have been established based on the settlement amount of that claim. The rating plan shall prohibit an adjustment to the experience modification of an employer if the total medical cost does not exceed ~~one thousand dollars~~ twenty percent of the current split point of primary and excess losses under the uniform experience rating plan, and the employer pays all of the total medical costs and there is no lost time from the employment, other than the first three days or less of disability under subsection 1 of section 287.160, and no claim is filed. An employer opting to utilize this provision maintains an obligation to report the injury under subsection 1 of section 287.380.

287.975 Pure premium rate, schedule of rates, filed with director, when—payroll differential, advisory organization to collect data, when, purpose

1. The advisory organization shall file with the director every pure premium rate, every manual of rating rules, every rating schedule and every change or amendment, or modification of any of the foregoing, proposed for use in this state no more than thirty days after it is distributed to members, subscribers or others.
2. The advisory organization which makes a uniform classification system for use in setting rates in this state shall collect data for two years after January 1, 1994, on the payroll differential between employers within the construction group of code classifications, including, but not limited to, payroll costs of the employer and number of hours worked by all employees of the employer engaged in construction work. Such data shall be transferred to the department of insurance, financial institutions and professional registration in a form prescribed by the director of the department of insurance, financial institutions and professional registration, and the department shall compile the data and develop a formula to equalize premium rates for employers within the construction group of code classifications based on such payroll differential within three years after the data is submitted by the advisory organization.
3. The formula to equalize premium rates for employers within the construction group of code classifications established under subsection 2 of this section shall be the formula in effect on January 1, 1999. This subsection shall become effective on January 1, 2014.
4. For the purposes of calculating the premium credit under the Missouri contracting classification premium adjustment program, an employer within the construction group of code classifications may submit to the advisory organization the required payroll record

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information for the first, second, third, or fourth calendar quarter of the year prior to the workers' compensation policy beginning or renewal date, provided that the employer clearly indicates for which quarter the payroll information is being submitted.

New Hampshire

SB 409 was:

- Passed by the first chamber on January 21, 2016
- Included in NCCI's January 29, 2016 ***Legislative Activity Report*** (RLA-2016-03)
- Amended and passed by the second chamber on May 11, 2016

SB 409 amends ***section 281-A:32-a First Responder's Critical Injury Benefit*** of the New Hampshire Statutes as follows:

281-A:32-a First Responder's Critical Injury Benefit

I. In addition to other payments made under RSA 281-A, a group II retirement system member may request additional compensation under this section. If the impairment to a group II retirement system member resulting from an injury is partial, with a determination by the department of labor that the employee has reached maximum medical improvement and that such maximum medical improvement is less than 100 percent, the governor may draw a warrant, with approval by the executive council, from funds not otherwise appropriated for payments in addition to benefits payable under this chapter for an award to be paid to such employees in amounts provided by RSA 281-A:28 for the number of weeks set forth in this section for permanent bodily loss or impairment:

(a) Permanent loss or impairment of heart, lung, or brain 208

(b) Permanent loss or impairment of other internal organs 104

(c) Permanent loss or impairment of speech, touch, taste, or smell 104

II. Payments awarded under this section shall be subject to all other provisions of RSA 281-A. Total compensation payments for all additional compensation claims paid under this section shall not exceed $125,000 per claimant. No payments shall be made after July 1, ~~2016~~ 2017. Benefits paid under this section for all claimants shall not exceed $500,000.

SB 409 also extends the prospective repeal of the first responder's critical injury benefit from June 30, 2016, to June 30, 2017.

Additionally, **SB 409** includes the following language:

I. There is established a committee to study soft tissue injuries for purposes of workers' compensation.

(a) The members of the committee shall be as follows:

(1) One member of the senate, appointed by the president of the senate.

(2) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(b) Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

II. The committee shall study soft tissue injuries for purposes of workers' compensation.

III. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section.

IV. The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 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
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AR, IL, KS, TX	Terri Robinson	501-333-2835
AK, ID, MT, OR	Jessica Epley	503-892-8919
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