



Legislative Activity Report

National Council on Compensation Insurance

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Regulatory Services

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

LEGISLATIVE ACTIVITY—LEGISLATIVE SESSION UPDATES

This report contains descriptions and/or excerpts of relevant bills that 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 June 17, 2016.

Louisiana

SB 44 was:

- Passed by the first chamber on May 4, 2016
- Included in NCCI's May 13, 2016 *Legislative Activity Report* (RLA-2016-18)
- Passed by the second chamber on May 31, 2016
- Included in NCCI's June 10, 2016 *Legislative Activity Report* (RLA-2016-22)
- Enacted on June 13, 2016, with an effective date of August 1, 2016

SB 44 amends *section 23:1103. Damages; apportionment of between employer and employee in suits against third persons; compromise of claims; credit* of the Louisiana Revised Statutes as follows:

§1103. Damages; apportionment of between employer and employee in suits against third persons; compromise of claims; credit

...
D. An insurer shall grant its insured a dollar-for-dollar credit for any amount on any claim paid pursuant to this Chapter on the employer's behalf and recovered in the current year, less any reasonable expenses incurred in the recovery by the insurer, in an action or compromise pursuant to this Section and R.S. 23:1102. The credit shall be used by the insurer in the calculation, ~~including but not limited to loss experience ratios,~~ of the loss experience modifier promulgated by and in accordance with the rules of the National Council on Compensation Insurance, to be applied in determining the annual premium paid by the employer for workers' compensation insurance under this Chapter. The group self-insurance fund shall apply the loss experience modifier authorized by R.S. 23:1196.

West Virginia

HB 128 was:

- Passed by the first and second chamber on June 14, 2016
- Enacted on June 17, 2016, with an effective date of June 14, 2016

HB 128 amends *section 33-3-33a. Excess moneys of Fire Protection Fund deposited into Volunteer Fire Department Workers' Compensation Premium Subsidy Fund; other funding; special report from State Fire Marshal by December 15, 2015; termination of program June 30, 2016* of the Code of West Virginia to provide for the:

- Deposit of monies into the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund until June 30, 2017
- Expiration and closure of the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund on June 30, 2017
- Transfer of any remaining monies in the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund upon closure of such fund

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bill passed the second chamber within the one-week period ending June 17, 2016.

Rhode Island

HB 8203 Substitute A was passed by the first and second chamber on June 16, 2016.

HB 8203 Substitute A amends *sections 28-30-22 Medical advisory board, 28-33-18.3 Continuation of benefits—Partial incapacity, 28-33-39. Transportation costs for medical examination, 28-33-41. Rehabilitation of injured persons, and 28-53-7. Payments to employees of uninsured employers* of the State of Rhode Island General Laws as follows:

§ 28-30-22 Medical advisory board.—(a) The chief judge of the workers' compensation court, in consultation with the appropriate medical or professional association, shall appoint a medical advisory board that shall serve at the chief judge's pleasure and consist of eleven (11) members in the following specialties: one orthopedic surgeon; one neurologist; one physiatrist; one chiropractor; one physical therapist; one internist; one psychiatrist or psychologist; and four (4) ad hoc physician members appointed at the discretion of the chief judge. Members of the board shall be reimbursed ~~three hundred dollars (\$300)~~ **five hundred dollars (\$500)** per day served in the discharge of the board's duties, not to exceed six thousand dollars (\$6,000) per member in any year. The chief judge shall designate the chairperson of the board.

...

§ 28-33-18.3. Continuation of benefits—Partial incapacity.—(a) (1) For all injuries occurring on or after September 1, 1990, in those cases where the employee has received a notice of intention to terminate partial incapacity benefits pursuant to § 28-33-18, the employee, or his or her duly authorized representative, may file with the workers' compensation court a petition for continuation of benefits on forms prescribed by the workers' compensation court. In any proceeding before the workers' compensation court on a petition for continuation of partial incapacity benefits, where the employee demonstrates by a fair preponderance of the evidence that his or her partial incapacity poses a material hindrance to obtaining employment suitable to his or her limitation, partial incapacity benefits shall continue. For injuries on and after July 1, ~~2021~~ **2023**, "material hindrance" is defined to include only compensable injuries causing a greater than sixty-five percent (65%) degree of functional impairment and/or disability. Any period of time for which the employee has received benefits for total incapacity shall not be included in the calculation of the three hundred and twelve-week (312) period.

(2) The provisions of this subsection apply to all injuries from Sept. 1, 1990, to July 1, ~~2021~~ **2023**.

...

§ 28-33-39. Transportation costs for medical examination.—The reasonable costs of transportation to and from the office of any examiner requested by the employer or of any impartial examiner appointed as provided in § 28-33-35 shall be charged to the employer and, if paid for by the employee, he or she shall be reimbursed in full for this expenditure by his or her employer, upon presentation of a receipt or other evidence of expenditure. The reasonable cost of transportation that occurs on or after July 1, 2016, is the rate equal to the per-mile rate allowed by the Internal Revenue Service for use of a privately owned automobile for business miles driven, as from time to time amended, for a private motor vehicle or the reasonable cost incurred for transportation, from the employee's point of departure, whether from the employee's home or place of employment, and return.

§ 28-33-41. Rehabilitation of injured persons.

...

(d) The employer shall bear the expense of rehabilitative services agreed to or ordered pursuant to this section. If those rehabilitative services require residence at or near or travel to a rehabilitative facility, the employer shall pay the employee's reasonable expense for board, lodging, and/or travel. The reasonable cost of transportation on or after July 1, 2016, is the rate equal to the per-mile rate allowed by the Internal Revenue Service for use of a privately owned automobile for business miles driven, as from time to time amended, for a private motor vehicle or the reasonable cost incurred for transportation, from the employee's point of departure, whether from the employee's home or place of employment, and return.

...

§ 28-53-7. Payments to employees of uninsured employers.—(a) Where it is determined that the employee was injured in the course of employment while working for an employer who fails to maintain a policy of workers' compensation insurance as required by § 28-36-1 et seq., the uninsured employers fund shall pay the benefits to which the injured employee would be entitled pursuant to chapters 29 to 38 of this title subject to the limitations set forth herein.

(b) The workers' compensation court shall hear all petitions for payment from the fund pursuant to § 28-30-1 et seq., provided, however, that the uninsured employers fund and the employer shall be named as parties to any petition seeking payment of benefits from the fund.

(c) Where an employee is deemed to be entitled to benefits from the uninsured employers fund, the fund shall pay benefits for disability and medical expenses as provided pursuant to chapters 29 to 38 of this title except that the employee shall not be entitled to receive benefits for loss of function and disfigurement pursuant to the provisions of § 28-33-19.

(d) The fund shall pay cost, counsel and witness fees, as provided in § 28-35-32, to any employee who successfully prosecutes any petitions for compensation; petitions for medical expenses; petitions to amend a pretrial order or memorandum of agreement; and all other employee petitions; and to employees who successfully defend, in whole or in part, proceedings seeking to reduce or terminate any and all workers' compensation benefits; provided, however, that the attorney's fees awarded to counsel who represent the employee in petitions for lump sum commutation filed pursuant to § 28-33-25, or in the settlement of disputed cases pursuant to § 28-33-25.1, shall be limited to the maximum amount paid to counsel who serve as court-appointed attorneys in workers' compensation proceedings as established by rule or order of the Rhode Island supreme court.

(e) In the event that the uninsured employer makes payment of any monies to the employee to compensate the employee for lost wages or medical expenses, the fund shall be entitled to a credit for all such monies received by or on behalf of the employee against any future benefits payable directly to the employee.

(f) This section shall apply to injuries that occur on or after ~~January~~ July 1, 2017.

HB 8203 Substitute A also adds new *section 42-16.1-19 Cost of legal and audit fees* to the State of Rhode Island General Laws as follows:

§ 42-16.1-19. Cost of legal and audit fees.—The director is hereby authorized and may in their discretion recover the reasonable cost of legal services and audit fees for services provided by in-house attorneys and/or other personnel of the department of labor and training or outside auditors and incurred by the department in matters pertaining to fraud investigations and examinations. Nothing in this section shall limit the power of the director to retain legal counsel to recover the costs of such legal counsel and auditors pursuant to other provisions of the general laws.

Note: HB 8203 Substitute A was not included in any previous version of NCCI's *Legislative Activity Report* and is identical to **SB 2945 Substitute A**, which passed the second chamber on June 18, 2016.

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bill passed the first chamber within the one-week period ending June 17, 2016.

Rhode Island

HB 8058 Substitute A/SB 3012 Substitute A amend section *44-17-1. Companies required to file—Payment of tax—Retaliatory rates* of the State of Rhode Island General Laws as follows:

§ 44-17-1 Companies required to file—Payment of tax—Retaliatory rates—(a) Every domestic, foreign, or alien insurance company, mutual association, organization, or other insurer, including any health maintenance organization, as defined in § 27-41-1, any medical malpractice insurance joint underwriters association as defined in § 42-14.1-1, any nonprofit dental service corporation as defined in § 27-20.1-2 and any nonprofit hospital or medical service corporation, as defined in chapters 27-19 and 27-20, except companies mentioned in § 44-17-6, and organizations defined in § 27-25-1, transacting business in this state, shall, on or before March 1 in each year, file with the tax administrator, in the form that he or she may prescribe, a return under oath or affirmation signed by a duly authorized officer or agent of the company, containing information that may be deemed necessary for the determination of the tax imposed by this chapter, and shall at the same time pay an annual tax to the tax administrator of two percent (2%) of the gross premiums on contracts of insurance, except for ocean marine insurance, as referred to in § 44-17-6, covering property and risks within the state, written during the calendar year ending December 31st next preceding.

(b) Qualifying insurers for purposes of this subsection means every domestic, foreign, or alien insurance company, mutual association, organization, or other insurer and excludes:

(1) Health maintenance organizations, as defined in §27-41-2;

(2) Nonprofit dental service corporations as defined in §27-20.1-2; and

(3) Nonprofit hospital or medical service corporations, as defined in §§27-19-1 and 27-20-1.

(c) For tax years 2018 and thereafter, the rate of taxation may be reduced as set forth below and, if so reduced, shall be fully applicable to qualifying insurers instead of the two percent (2%) rate listed in subsection (a) above. ~~but in~~ In the case of foreign or alien companies, except as provided in § 27-2-17(d), the tax is shall not be less in amount than is imposed by the laws of the state or country under which the companies are organized upon like companies incorporated in this state or upon its agents, if doing business to the same extent in the state or country. The tax rate shall not be reduced for gross premiums written on contracts of health insurance as defined in §42-14-5(c) but shall remain at two percent (2%) or the appropriate retaliatory tax rate, whichever is higher.

(d) For qualifying insurers the premium tax rate may be decreased based upon Rhode Island jobs added by the industry as detailed below:

(1) A committee shall be established for the purpose of implementing tax rates using the framework established herein. The committee shall be comprised of the following persons or their designees: the secretary of commerce, the director of the department of business regulation, the director of the department of revenue, and the director of the office of management and budget. No rule may be issued pursuant to this section without the prior, unanimous approval of the committee.

(2) On the timetable listed below the committee shall determine whether qualifying insurers have added new qualifying jobs in this state in the preceding calendar year. A qualifying job for purposes of this section is one in which a person is employed for consideration for at least thirty-five (35) hours a week earning no less than the median hourly wage as reported by the United States Bureau of Labor Statistics for the state of Rhode Island.

(3) If the committee determines that there has been a sufficient net increase in qualifying jobs in the preceding calendar year(s) to

offset a material reduction in the premium tax, it shall calculate a reduced premium tax rate. Such rate shall be determined via a method selected by the committee and designed such that the estimated personal income tax generated by the increase in qualifying jobs is at least one-hundred and twenty-five percent (125%) of the anticipated reduction in premium tax receipts resulting from the new rate. For purposes of this calculation, the committee may consider personal income tax withholdings or receipts, but in no event may the committee include for the purposes of determining revenue neutrality income taxes that are subject to segregation pursuant to section 44-48.3-8(f) of the general laws or that are otherwise available to the general fund.

(4) Any reduced rate established pursuant to this section must be established in a rulemaking proceeding pursuant to chapter 35 of title 42, subject to the following conditions:

(i) Any net increase in qualifying jobs and the resultant premium tax reduction and revenue impact shall be determined in any rulemaking proceeding conducted under this section and shall be set forth in a report included in the rulemaking record, which report shall also include a description of the data sources and calculation methods used. The first such report shall also include a calculation of the baseline level of employment of qualifying insurers for the calendar year 2015.

(ii) Notwithstanding any provision of the law to the contrary, no rule changing the tax rate shall take effect until one hundred and twenty (120) days after notice of the rate change is provided to the speaker of the house, the president of the senate, the house and senate fiscal advisors, and the auditor general, which notice shall include the report required under the preceding provision.

(5) For each of the first three (3) rulemaking proceedings required under this section, the tax rate may remain unchanged or be decreased consistent with the requirements of this section, but may not be increased. These first three (3) rulemaking proceedings shall be conducted by the division of taxation and occur in the following manner:

(i) The first rulemaking proceeding shall take place in calendar year 2017. This proceeding shall establish a rule that sets forth (A) a new premium tax rate, if allowed under the requirements of this section, which rate shall take effect in 2018, and (B) a method for calculating the number of jobs at qualifying insurers.

(ii) The second rulemaking proceeding shall take place in calendar year 2018. This proceeding shall establish a rule that sets forth (A) a new premium tax rate, if allowed under the requirements of this section, which rate shall take effect in 2019, and (B) the changes, if any, to the method for calculating the number of jobs at qualifying insurers.

(iii) The third rulemaking proceeding shall take place in calendar year 2019. This proceeding shall establish a rule that sets forth (A) a new premium tax rate, if allowed under the requirements of this section, which rate shall take effect in 2020, and (B) the changes, if any, to the method for calculating the number of jobs at qualifying insurers.

(5) The tax rate established in the regulation following regulatory proceedings that take place in 2019 shall remain in effect through and including 2023. In calendar year 2023 the department of business regulation will conduct a rulemaking proceeding and issue a rule that sets forth (A) a new premium tax rate, if allowed under the requirements of this section, which rate shall take effect in 2024, and (B) the changes, if any, to the method for calculating the number of jobs at qualifying insurers. A rule issued by the department of business regulation may decrease the tax rate if the requirements for a rate reduction contained in this section are met, or it may increase the tax rate to the extent necessary to achieve the overall revenue level sought when the then existing tax rate was established. Any rate established shall be no lower than one percent (1%) and no higher than two percent (2%). This proceeding shall be repeated every three (3) calendar years thereafter, however, the base for determination of job increases or decreases shall remain the number of jobs existing during calendar year 2022.

(7) No reduction in the premium tax rate pursuant to this section shall be allowed absent a determination that qualifying insurers have added in this state at least three hundred fifty (350) new, full-time, qualifying jobs above the baseline level of employment of qualifying insurers for the calendar year 2015.

(8) Notwithstanding any provision of this section to the contrary, the premium tax rate shall never be set lower than one percent (1%).

(9) The division of taxation may adopt implementation guidelines, directives, criteria, rules and regulations pursuant to chapter 35 of title 42 as are necessary to implement this section.

(10) The calculation of revenue impacts under this section is at the sole discretion of the committee established under subsection (d)(1) of this section. Notwithstanding any provision of law to the contrary, any administrative action or rule setting a tax rate pursuant to this section or failing or declining to alter a tax rate pursuant to this section shall not be subject to judicial review under chapter 35 of title 42.

HB 8058 Substitute A/SB 3012 Substitute A also create the following new sections:

§ 27-1-45. Determination of premium tax rate.—The department of business regulation may participate in proceedings under §44-17-1(d) to implement guidelines, directives, criteria, and may promulgate additional resulting rules and regulations pursuant to chapter 35 of title 42 as are necessary to implement §44-17-1(d).

§ 27-2-28. Determination of premium tax rate.—The department of business regulation may participate in proceedings under §44-17-1(d) to implement guidelines, directives, criteria, and may promulgate additional resulting rules and regulations pursuant to chapter 35 of title 42 as are necessary to implement §44-17-1(d).

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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