



State or Federal 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 relevant workers compensation-related bills were enacted within the one-week period ending March 17, 2017.

#### Kentucky

**SB 151** was:

- Passed by the first chamber on February 16, 2017
- Passed by the second chamber on March 6, 2017
- Included in NCCI's March 10, 2017 **Legislative Activity Report** (RLA-2017-09)
- Enacted on March 16, 2017, with a projected effective date of June 29, 2017

**SB 151**, in part, amends **section 342.690 Exclusiveness of liability** of the Kentucky Revised Statutes to read:  
**342.690 Exclusiveness of liability.**

...

(4) (a) Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisee, neither a franchisee nor a franchisee's employee shall be deemed to be an employee of the franchisor for any purpose under this chapter.

(b) Notwithstanding any voluntary agreement entered into between the United States Department of Labor and a franchisor, neither a franchisor nor a franchisor's employee shall be deemed to be an employee of the franchisee for any purpose under this chapter.

(c) For purposes of this subsection, "franchisee" and "franchisor" have the same meanings as in 16 C.F.R. sec. 436.1.

#### Utah

**SB 57** was:

- Passed by the first chamber on January 30, 2017
- Included in NCCI's February 10, 2017 **Legislative Activity Report** (RLA-2017-05)
- Passed by the second chamber on February 6, 2017
- Included in NCCI's February 17, 2017 **Legislative Activity Report** (RLA-2017-06)
- Enacted on March 15, 2017, with a projected effective date of May 8, 2017

**SB 57**, in part, amends **section 59-9-101. Tax basis—Rates—Exemptions—Rate reductions** of the Utah Code Annotated as follows:  
**59-9-101. Tax basis—Rates—Exemptions—Rate reductions**

...

(2) (a) An admitted insurer writing workers' compensation insurance in this state, including the Workers' Compensation Fund created under Title 31A, Chapter 33, Workers' Compensation Fund, shall pay to the tax commission, on or before March 31 in each year, a premium assessment on the basis of the total workers' compensation premium income received by the insurer from workers' compensation insurance in this state during the preceding calendar year as follows:

(i) on or before December 31, 2010, an amount of equal to or greater than 1%, but equal to or less than 5.75% of the total workers' compensation premium income described in this Subsection (2);

(ii) on and after January 1, 2011, but on or before December 31, ~~2017~~ 2022, an amount of equal to or greater than 1%, but equal to or less than 4.25% of the total workers' compensation premium income described in this Subsection (2); and

(iii) on and after January 1, ~~2018~~ 2023, an amount equal to 1.25% of the total workers' compensation premium income described in this Subsection (2).

(b) Total workers' compensation premium income means the net written premium as calculated before any premium reduction for any insured employer's deductible, retention, or reimbursement amounts and also those amounts equivalent to premiums as provided in Section 34A-2-202.

(c) The percentage of premium assessment applicable for a calendar year shall be determined by the Labor Commission under Subsection (2)(d). The total premium income shall be reduced in the same manner as provided in Subsections (1)(c)(i) and (1)(c)(ii), but not as provided in Subsection (1)(c)(iii). The commission shall promptly remit from the premium assessment collected under this Subsection (2):

(i) income to the state treasurer for credit to the Employers' Reinsurance Fund created under Subsection 34A-2-702(1) as follows:

(A) on or before December 31, 2009, an amount of up to 5% of the total workers' compensation premium income;

(B) on and after January 1, 2010, but on or before December 31, 2010, an amount of up to 4.5% of the total workers' compensation premium income;

(C) on and after January 1, 2011, but on or before December 31, ~~2017~~ 2022, an amount of up to 3% of the total workers' compensation premium income; and

(D) on and after January 1, ~~2018~~ 2023, 0% of the total workers' compensation premium income;

(ii) an amount equal to ~~0.25%~~ .25% of the total workers' compensation premium income to the state treasurer for credit to the Workplace Safety Account created by Section 34A-2-701;

(iii) an amount of up to ~~0.5%~~ .5% and any remaining assessed percentage of the total workers' compensation premium income to the state treasurer for credit to the Uninsured Employers' Fund created under Section 34A-2-704; and

(iv) beginning on January 1, 2010, ~~0.5%~~ .5% of the total workers' compensation premium income to the state treasurer for credit to the Industrial Accident Restricted Account created in Section 34A-2-705.

...

**SB 120** was:

- Passed by the first chamber on February 17, 2017
- Included in NCCI's February 24, 2017 *Legislative Activity Report* (RLA-2017-07)
- Passed by the second chamber on February 27, 2017
- Included in NCCI's March 10, 2017 *Legislative Activity Report* (RLA-2017-09)
- Enacted on March 17, 2017, with a projected effective date of May 8, 2017

**SB 120** amends section **34A-2-702. Employers' Reinsurance Fund—Injury causing death—Burial expenses—Payments to dependents** of the Utah Code, in part, as follows:

**34A-2-702. Employers' Reinsurance Fund—Injury causing death—Burial expenses—Payments to dependents.**

(5) (a) If injury causes death within a period of 312 weeks from the date of the accident, the employer or insurance carrier shall pay:

(i) the burial expenses of the deceased as provided in Section 34A-2-418; and

(ii) benefits in the amount and to a person provided for in this Subsection (5).

(b) (i) If there is a wholly dependent person at the time of the death, the payment by the employer or ~~its~~ the employer's insurance carrier shall be:

(A) subject to Subsections (5)(b)(i)(B) and (C), 66-2/3% of the decedent's average weekly wage at the time of the injury;

(B) not more than a maximum of 85% of the state average weekly wage at the time of the injury per week; and

(C) (I) not less than a minimum of \$45 per week, plus:

(Aa) ~~\$5~~ \$20 for a dependent spouse; and

(Bb) ~~\$5~~ \$20 for each dependent minor child under the age of 18 years, up to a maximum of four such dependent minor children; and

(II) not exceeding:

(Aa) the average weekly wage of the employee at the time of the injury; and

(Bb) 85% of the state average weekly wage at the time of the injury per week.

...

**Virginia**

**HB 1571** was:

- Passed by the first chamber on January 18, 2017

- Included in NCCI's January 27, 2017 **Legislative Activity Report** (RLA-2017-03)
- Passed by the second chamber on February 16, 2017
- Included in NCCI's February 24, 2017 **Legislative Activity Report** (RLA-2017-07)
- Enacted and effective on March 13, 2017

**HB 1571** amends **Section 65.2-605. Liability of employer for medical services ordered by Commission; fee schedules for medical services; malpractice; assistants-at-surgery; coding** of the Code of Virginia as follows:

**§ 65.2-605. Liability of employer for medical services ordered by Commission; fee schedules for medical services; malpractice; assistants-at-surgery; coding**

A. As used in this section, unless the context requires a different meaning:

...  
 "Codes" means, as applicable, CPT codes, HCPCS codes, ~~or~~ DRG classifications, or revenue codes.

...  
 "Health Care Common Procedure Coding System codes" or "HCPCS codes" means the medical coding system, including all subsets of codes by alphabetical letter, used to report hospital outpatient and certain physician services as published by the National Uniform Billing Committee, including Temporary National Code (Non-Medicare) S0000-S-9999.

...  
 "Medical service provided for the treatment of a serious burn" includes any professional service rendered during the dates of service of the admission or transfer to a burn center.

"Medical service provided for the treatment of a traumatic injury" includes any professional service rendered during the dates of service of the admission or transfer to a Level I or Level II trauma center.

...  
 "New type of technology" means an item resulting or derived from an advance in medical technology, including an implantable medical device or an item of medical equipment, that is supplied by a third party, provided that the item has been cleared or approved by the federal Food and Drug Administration (FDA) after the transition date and prior to the date of the provision of the medical service using the item.

...  
 "Professional service" means any medical or surgical service required to be provided to an injured person pursuant to this title that is provided by a physician or any health care practitioner licensed, accredited, or certified to perform the service consistent with state law.

...  
 "Revenue codes" means a method of coding used by hospitals or health care systems to identify the department in which medical service was rendered to the patient or the type of item or equipment used in the delivery of medical services.

...  
 B. The pecuniary liability of the employer for a:

...  
 3. Medical service provided on or after the transition date ~~is~~ for the treatment of a traumatic injury or serious burn, regardless of the date of injury, shall be limited to:

...  
 E. The maximum pecuniary liability of the employer for a fee scheduled medical service that is not included in a Virginia fee schedule when it is provided shall be determined by the Commission. The Commission's determination of the employer's maximum pecuniary liability for such fee scheduled medical service shall be effective until the Commission sets a maximum fee for the fee scheduled medical service and incorporates such maximum fee into an adjusted Virginia fee schedule adopted pursuant to subsection D. If the fee scheduled medical service is not included in a Virginia fee schedule because it is:

1. A new type of technology, ~~including an implantable medical device or item of medical equipment, that is supplied by a third party, provided that such technology has been cleared or approved by the federal Food and Drug Administration (FDA) prior to the date of the provision of the medical service,~~ the employer's maximum pecuniary liability shall not exceed 130 percent of the provider's invoiced cost for such device, as evidenced by a copy of the invoice. If the new type of technology has not been cleared or approved by the FDA prior to such date, then the provider shall not be entitled to payment or reimbursement therefor unless the employer or its insurer agree; or

...  
 F. The Commission shall:

...  
 2. Utilize a 10-member regulatory advisory panel to assist in the development of regulations adopting initial Virginia fee schedules pursuant to subsection C ~~and~~ and in adjusting initial Virginia fee schedules pursuant to subsection D, and on all matters involving or related to the fee schedule as deemed necessary by the Commission. One member of the regulatory advisory panel shall be selected by the Commission from each of the following: (i) the American Insurance Association; (ii) the Property and Casualty

Insurers Association of America; (iii) the Virginia Self-Insurers Association, Inc.; (iv) the Medical Society of Virginia; (v) the Virginia Hospital and Healthcare Association; (vi) a Type One teaching hospital; (vii) the Virginia Orthopaedic Society; (viii) the Virginia Trial Lawyers Association; (ix) a group self-insurance association representing employers; and (x) a local government group self-insurance pool formed under Chapter 27 (Section 15.2-2700 et seq.) of Title 15.2. The Commission shall meet with the regulatory advisory panel and consider the recommendations of its members in its development of the Virginia fee schedules pursuant to subsections C and D.

...

H. When the total charges of a hospital or Type One teaching hospital, based on such provider's charge master, for inpatient hospital services covered by a DRG code exceed the charge outlier threshold, then the Commission shall establish the maximum fee for such scheduled inpatient hospital services at an amount equal to the total of (i) the maximum fee for the service as set forth in the applicable fee schedule and (ii) initially equal to 80 percent of the provider's total charges for the service in excess of the charge outlier threshold. The charge outlier threshold for such services initially shall equal ~~150~~ 300 percent of the maximum fee for the service set forth in the applicable fee schedule; however, the Commission, in consultation with the firm retained pursuant to subdivision C 4, is authorized on a biennial basis to ~~decrease~~ adjust such percentage if it finds that the number of such claims for which the total charges of the hospital or Type One teaching hospital exceed the charge outlier threshold is less than five percent or to increase such percentage if such number is greater than 10 percent of all such claims.

...

In addition, **HB 1571** extends the deadline by which the regulatory advisory panel is required to meet, review, and make recommendations to the Virginia Workers' Compensation Commission from July 1, 2017, to July 1, 2018.

**SB 1201** was:

- Passed by the first chamber on January 27, 2017
- Included in NCCI's February 3, 2017 **Legislative Activity Report** (RLA-2017-04)
- Passed by the second chamber on February 17, 2017
- Included in NCCI's February 24, 2017 **Legislative Activity Report** (RLA-2017-07)
- Enacted on March 13, 2017, with an effective date of July 1, 2017

**SB 1201** amends **section 65.2-603. Duty to furnish medical attention, etc., and vocational rehabilitation; effect of refusal of employee to accept** of the Code of Virginia as follows:

**§ 65.2-603. Duty to furnish medical attention, etc., and vocational rehabilitation; effect of refusal of employee to accept.**

A. Pursuant to this section:

1. As long as necessary after an accident, the employer shall furnish or cause to be furnished, free of charge to the injured employee, a physician chosen by the injured employee from a panel of at least three physicians selected by the employer and such other necessary medical attention. Where such accident results in the amputation or loss of use of an arm, hand, leg, or foot or the enucleation of an eye or the loss of any natural teeth or loss of hearing, the employer shall furnish prosthetic or orthotic appliances, as well as wheelchairs, walkers, canes, or crutches, proper fitting and maintenance thereof, and training in the use thereof, as the nature of the injury may require.

In awards entered for incapacity for work, under this title, upon determination by the treating physician and the Commission that the same is medically necessary, the Commission may ~~require~~:

a. Require that the employer either (i) furnish and maintain ~~(i)~~ modifications to or equipment for the employee's automobile or (ii) if there is a loss of function to either or both feet, legs, hands, or arms and if the Commission determines that modifications to or equipment for the employee's automobile pursuant to clause (i) are not technically feasible, will not render the automobile operable by the employee, or will cost more than is available for such purpose after payment for any items provided under subdivision b, order that the balance of funds available under the aggregate cap of \$42,000 be applied towards the purchase by the employee of a suitable automobile or to furnish or maintain modifications to such automobile; and

b. Require that the employer furnish and maintain bedside lifts, adjustable beds, and modification of the employee's principal home consisting of ramps, handrails, or any appliances prescribed by the treating physician and doorway alterations, ~~provided that the~~

The aggregate cost of all such items and modifications required to be furnished pursuant to ~~clauses (i)~~ subdivisions a and ~~(ii)~~ b on account of any one accident shall not exceed \$42,000.

The employee shall accept the attending physician, unless otherwise ordered by the Commission, and in addition, such surgical and hospital service and supplies as may be deemed necessary by the attending physician or the Commission.

...

## BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending March 17, 2017.

## New Mexico

**SB 155 Committee Substitute** was:

- Passed by the first chamber on February 28, 2017
- Included in NCCI's March 10, 2017 *Legislative Activity Report* (RLA-2017-09)
- Amended and passed by the second chamber on March 16, 2017
- Amended and approved by the Conference Committee on March 16, 2017

**SB 155 Committee Substitute** amends *sections 52-1-25.1. Temporary total disability; return to work* and *52-1-26. Permanent Partial Disability* of the New Mexico Statutes Annotated as follows:

### **52-1-25.1. Temporary total disability; return to work.**

...

B. If, prior to the date of maximum medical improvement, an injured worker's health care provider releases the worker to return to work ~~the worker is not entitled to temporary total disability benefits if:~~

~~(1) the employer offers work at the worker's pre-injury wage; or~~

~~(2) the worker accepts employment with another employer at the worker's pre-injury wage and the employer does not make a reasonable work offer at the worker's pre-injury wage, the worker shall receive temporary total disability compensation benefits equal to two-thirds of the worker's pre-injury wage.~~

C. If, prior to the date of maximum medical improvement, an injured worker's health care provider releases the worker to return to work and the ~~employer offers~~ worker returns to work at less than the worker's pre-injury wage, the worker shall receive temporary total disability compensation benefits equal to two-thirds of the difference between the worker's pre-injury wage and the worker's post-injury wage.

D. ~~If the worker returns to work pursuant to the provisions of Subsection B of this section~~ A worker is not entitled to temporary total disability benefits as set forth in Subsection B or C of this section if:

(1) the employer makes a reasonable work offer at or above the worker's pre-injury wage, within medical restrictions, if any, as stated by the health care provider pursuant to Section 52-1-49 NMSA 1978, and the worker rejects the offered employment;

(2) the worker accepts employment with another employer at or above the worker's pre-injury wage; or

(3) the worker is terminated for misconduct connected with the employment that is unrelated to the workplace injury; if the workers' compensation judge finds that an employer terminated the worker for pretextual reasons as a way of attempting to avoid payment of benefits to the worker or as retaliation against the worker for seeking benefits, the worker shall be entitled to temporary total disability benefits and the employer shall be subject to penalties as set forth in Sections 52-1-28.1 and 52-1-28.2 NMSA 1978.

E. Upon a finding that an employer has terminated a worker for pretextual reasons, the workers' compensation judge at the judge's discretion may also impose an additional fine, not to exceed ten thousand dollars (\$10,000), on the employer to be paid to the worker.

F. Notwithstanding the provisions of this section, the employer shall continue to provide reasonable and necessary medical care pursuant to Section 52-1-49 NMSA 1978.

G. If there is a dispute between the parties regarding the reasonableness of the employer's work offer or the worker's refusal to return to work, the workers' compensation judge shall decide if the work offer or the worker's refusal to return to work is reasonable based on all of the circumstances.

### **52-1-26. Permanent Partial Disability.**

...

C. Permanent partial disability shall be determined by calculating the worker's impairment as modified by ~~his~~ the worker's age, education and physical capacity, pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978; provided that, regardless of the actual calculation of impairment as modified by the worker's age, education and physical capacity, the percentage of disability awarded shall not exceed ninety-nine percent.

D. ~~If On or after the date of maximum medical improvement, an injured worker returns to work at a wage equal to or greater than the worker's pre-injury wage~~ the worker's permanent partial disability rating shall be equal to ~~his~~ the worker's impairment and shall not be subject to the modifications calculated pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978 if:

(1) the worker returns to work at a wage at or above the worker's pre-injury wage;

(2) the worker accepts employment with another employer at or above the worker's pre-injury wage;

(3) the employer makes a reasonable work offer, at or above the worker's pre-injury wage, within medical restrictions, if any, as stated by the health care provider pursuant to Section 52-1-49 NMSA 1978, and the worker rejects the offered employment; or

(4) the worker is terminated for misconduct connected with the employment that is unrelated to the workplace accident; if the workers' compensation judge finds that an employer terminates the worker for pretextual reasons to avoid payment of benefits to the worker or as retaliation against the worker for seeking benefits, the worker shall be entitled to modifier benefits and the employer shall be subject to penalties as set forth in Sections 52-1-28.1 and 52-1-28.2 NMSA 1978.

E. Upon a finding that an employer has terminated a worker for pretextual reasons, the workers' compensation judge at the judge's discretion may also impose an additional fine, not to exceed ten thousand dollars (\$10,000), on the employer to be paid to the worker.

E. F. In considering a claim for permanent partial disability, a workers' compensation judge shall not receive or consider the testimony of a vocational rehabilitation provider offered for the purpose of determining the existence or extent of disability.

G. If there is a dispute between the parties regarding the reasonableness of the employer's work offer or the worker's refusal to return to work, the workers' compensation judge shall decide if the work offer or the worker's refusal to return to work is reasonable based on all of the circumstances.

## BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending March 17, 2017.

### Iowa

**HF 518** as amended, amends various sections of the Code of Iowa as follows:

#### **85.16 Willful injury—intoxication.**

...

2. a. By the employee's intoxication, which did not arise out of and in the course of employment but which was due to the effects of alcohol or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug not prescribed by an authorized medical practitioner, if the intoxication was a substantial factor in causing the injury.

b. For the purpose of disallowing compensation under this subsection, both of the following apply:

(1) If the employer shows that, at the time of the injury or immediately following the injury, the employee had positive test results reflecting the presence of alcohol, or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug which drug either was not prescribed by an authorized medical practitioner or was not used in accordance with the prescribed use of the drug, it shall be presumed that the employee was intoxicated at the time of the injury and that intoxication was a substantial factor in causing the injury.

(2) Once the employer has made a showing as provided in subparagraph (1), the burden of proof shall be on the employee to overcome the presumption by establishing that the employee was not intoxicated at the time of the injury, or that intoxication was not a substantial factor in causing the injury.

...

#### **85.18 Contract to relieve not operative.**

No contract, rule, or device whatsoever shall operate to relieve the employer, in whole or in part, from any liability created by this chapter except as herein provided. This section does not create a private cause of action.

#### **85.23 Notice of injury—failure to give.**

Unless the employer or the employer's representative shall have actual knowledge of the occurrence of an injury received within ninety days from the date of the occurrence of the injury, or unless the employee or someone on the employee's behalf or a dependent or someone on the dependent's behalf shall give notice thereof to the employer within ninety days from the date of the occurrence of the injury, no compensation shall be allowed. For the purposes of this section, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related.

#### **85.26 Limitation of actions—who may maintain action.**

1. An original proceeding for benefits under this chapter or chapter 85A, 85B, or 86, shall not be maintained in any contested case unless the proceeding is commenced within two years from the date of the occurrence of the injury for which benefits are claimed or, if weekly compensation benefits are paid under section 86.13, within three years from the date of the last payment of weekly compensation benefits. For the purposes of this section, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related.

...

#### **85.33 Temporary total and temporary partial disability.**

...

3. a. If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employer offers the employee suitable work and the employee refuses to accept the suitable work with the same offered by the employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. Work offered at the employer's principal place of business or established place of operation where the employee has previously worked is presumed to be geographically suitable for an employee whose duties involve travel away from the employer's principal place of business or established place of operation

more than fifty percent of the time. If suitable work is not offered by the employer for whom the employee was working at the time of the injury and the employee who is temporarily partially disabled elects to perform work with a different employer, the employee shall be compensated with temporary partial benefits.

b. The employer shall communicate an offer of temporary work to the employee in writing, including details of lodging, meals, and transportation, and shall communicate to the employee that if the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing and that during the period of the refusal the employee will not be compensated with temporary partial, temporary total, or healing period benefits, unless the work refused is not suitable. If the employee refuses the offer of temporary work on the grounds that the work is not suitable, the employee shall communicate the refusal, along with the reason for the refusal, to the employer in writing at the time the offer of work is refused. Failure to communicate the reason for the refusal in this manner precludes the employee from raising suitability of the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer.

...

### **85.34 Permanent disabilities.**

...

Compensation for permanent partial disability shall begin at the termination of the healing period provided in subsection 1 when it is medically indicated that maximum medical improvement from the injury has been reached and that the extent of loss or percentage of permanent impairment can be determined by use of the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. The compensation shall be in addition to the benefits provided by sections 85.27 and 85.28. The compensation shall be based upon the extent of the disability and upon the basis of eighty percent per week of the employee's average spendable weekly earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to one hundred eighty-four percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. The minimum weekly benefit amount shall be equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. For all cases of permanent partial disability compensation shall be paid as follows:

...

On. For the loss of a shoulder, weekly compensation during four hundred weeks.

...

u. In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "a" through "t" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

...

w. In all cases of permanent partial disability described in paragraphs "a" through "t", or paragraph "u" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "t", or paragraph "u" when determining functional disability and not loss of earning capacity.

x. Compensation for permanent partial disability for an injury shall terminate on the date when compensation for permanent total disability for any injury begins. An employee shall not receive compensation for permanent partial disability if the employee is receiving compensation for permanent total disability.

...

### **3. Permanent total disability.**

a. Compensation for an injury causing permanent total disability shall be upon the basis of eighty percent per week of the employee's average spendable weekly earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal

to two hundred percent of the statewide average weekly wage paid employees as determined by the department of workforce development under section 96.19, subsection 36, and in effect at the time of the injury. The minimum weekly benefit amount is equal to the weekly benefit amount of a person whose gross weekly earnings are thirty-five percent of the statewide average weekly wage. The weekly compensation is payable ~~during the period of the employee's disability~~ until the employee is no longer permanently and totally disabled.

b. Such compensation shall be in addition to the benefits provided in sections 85.27 and 85.28. No compensation shall be payable under this subsection for any injury for which compensation is payable under subsection 2 of this section. In the event compensation has been paid to any person under any provision of this chapter, chapter 85A or chapter 85B for ~~the same an~~ an injury producing a total permanent disability, any such amounts so paid shall be deducted from the total amount of compensation payable for such permanent total disability. An employee shall not receive compensation for permanent partial disability if the employee is receiving compensation for permanent total disability.

c. An employee forfeits the employee's weekly compensation for a permanent total disability under this subsection for a week in which the employee is receiving a payment equal to or greater than fifty percent of the statewide average weekly wage from any of the following sources:

(1) Gross earnings from any employer.

(2) Payment for current services from any source.

d. An employee is not entitled to compensation for a permanent total disability under this subsection while the employee is receiving unemployment compensation under chapter 96.

...

4. *Credits for excess payments.* If an employee is paid weekly compensation benefits for temporary total disability under section 85.33, subsection 1, for a healing period under section 85.34, subsection 1, or for temporary partial disability under section 85.33, subsection 2, in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess ~~paid by the employer~~ shall be credited against the liability of the employer for permanent partial disability under section 85.34, subsection 2 any future weekly benefits due for an injury to that employee, provided that the employer or the employer's representative has acted in good faith in determining and notifying an employee when the temporary total disability, healing period, or temporary partial disability benefits are terminated.

5. *Recovery of employee overpayment.* If an employee is paid any weekly benefits in excess of that required by this chapter and chapters 85A, 85B, and 86, the excess paid by the employer shall be credited against the liability of the employer for any future weekly benefits due pursuant to subsection 2, for a any current or subsequent injury to the same employee. ~~An overpayment can be established only when the overpayment is recognized in a settlement agreement approved under section 86.13, pursuant to final agency action in a contested case which was commenced within three years from the date that weekly benefits were last paid for the claim for which the benefits were overpaid, or pursuant to final agency action in a contested case for a prior injury to the same employee. The credit shall remain available for eight years after the date the overpayment was established. If an overpayment is established pursuant to this subsection, the employee and employer may enter into a written settlement agreement providing for the repayment by the employee of the overpayment. The agreement is subject to the approval of the workers' compensation commissioner. The employer shall not take any adverse action against the employee for failing to agree to such a written settlement agreement.~~

...

7. *Successive disabilities.*

a. ~~An employer is fully liable for compensating all~~ only that portion of an employee's disability that arises out of and in the course of the employee's employment with the employer and that relates to the injury that serves as the basis for the employee's claim for compensation under this chapter, or chapter 85A, 85B, or 86. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment from a prior injury with the employer, to the extent that the employee's preexisting disability has already been compensated under this chapter, or chapter 85A, 85B, or 86. An employer is not liable for compensating an employee's preexisting disability that arose out of and in the course of employment with a different employer or from causes unrelated to employment.

b. (1) ~~If an injured employee has a preexisting disability that was caused by a prior injury arising out of and in the course of employment with the same employer, and the preexisting disability was compensable under the same paragraph of subsection 2 as the employee's present injury, the employer is liable for the combined disability that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer.~~

(2) ~~If, however, an employer is liable to an employee for a combined disability that is payable under subsection 2, paragraph "u", and the employee has a preexisting disability that causes the employee's earnings to be less at the time of the present injury than if the prior injury had not occurred, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer minus the percentage that the employee's earnings are less at the time of the present injury than if the prior injury had not occurred.~~

c. A successor employer shall be considered to be the same employer if the employee became part of the successor employer's workforce through a merger, purchase, or other transaction that assumes the employee into the successor employer's workforce without substantially changing the nature of the employee's employment.

### **85.39 Examination of injured employees.**

1. After an injury, the employee, if requested by the employer, shall submit for examination at some reasonable time and place and as often as reasonably requested, to a physician or physicians authorized to practice under the laws of this state or another state, without cost to the employee; but if the employee requests, the employee, at the employee's own cost, is entitled to have a physician or physicians of the employee's own selection present to participate in the examination. If an employee is required to leave work for which the employee is being paid wages to attend the requested examination, the employee shall be compensated at the employee's regular rate for the time the employee is required to leave work, and the employee shall be furnished transportation to and from the place of examination, or the employer may elect to pay the employee the reasonable cost of the transportation. The refusal of the employee to submit to the examination shall ~~suspend~~ forfeit the employee's right to any compensation for the period of the refusal. Compensation shall not be payable for the period of ~~suspension~~ refusal.

2. If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination. The physician chosen by the employee has the right to confer with and obtain from the employer-retained physician sufficient history of the injury to make a proper examination. An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection, shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

### **85.45 Commutation**

1. Future payments of compensation may be commuted to a present worth lump sum payment only upon application of a party to the commissioner and upon written consent of all parties to the proposed commutation or partial commutation, and on the following conditions:

...

3. The parties to any commutation or partial commutation of future payments agreed to and ordered pursuant to this section may agree that the employee has the right to benefits pursuant to section 85.27 under such terms and conditions as agreed to by the parties, for a specified period of time after the commutation or partial commutation agreement has been ordered by the workers' compensation commissioner. During that specified period of time, the commissioner shall have jurisdiction of the commutation or partial commutation agreement for the purpose of adjudicating the employee's entitlement to benefits provided for in section 85.27 as provided in the agreement.

### **85.70 Additional payment for attendance—rehabilitation and training—new career vocational training and education program.**

1. An employee who has sustained an injury resulting in permanent partial or permanent total disability, for which compensation is payable under this chapter other than an injury to the shoulder compensable pursuant to section 85.34, subsection 2, paragraph "On", and who cannot return to gainful employment because of such disability, shall upon application to and approval by the workers' compensation commissioner be entitled to a one hundred dollar weekly payment from the employer in addition to any other benefit payments, during each full week in which the employee is actively participating in a vocational rehabilitation program recognized by the vocational rehabilitation services division of the department of education. The workers' compensation commissioner's approval of such application for payment may be given only after a careful evaluation of available facts, and after consultation with the employer or the employer's representative. Judicial review of the decision of the workers' compensation commissioner may be obtained in accordance with the terms of the Iowa administrative procedure Act, chapter 17A, and in section 86.26. Such additional benefit payment shall be paid for a period not to exceed thirteen consecutive weeks except that the workers' compensation commissioner may extend the period of payment not to exceed an additional thirteen weeks if the circumstances indicate that a continuation of training will in fact accomplish rehabilitation.

2. a. An employee who has sustained an injury to the shoulder resulting in permanent partial disability for which compensation is payable under section 85.34, subsection 2, paragraph "On", and who cannot return to gainful employment because of such disability, shall be evaluated by the department of workforce development regarding career opportunities in specific fields aligning with postsecondary career and technical education programs that provide instruction in the areas of agriculture, family and consumer sciences, health occupations, business, industrial technology, and marketing, that allow for accommodation of the employee's disability and to determine if the employee would benefit from participation in the new career vocational training and education program offered through an area community college, that will allow the employee to return to the workforce.

b. Upon completion of the evaluation and a determination by the department that the employee is a candidate for the new career vocational training and education program, the employee shall be referred by the department to the community college that is in the closest proximity to the employee's residence, or upon agreement of the department and the employee, to the community college that offers a vocational training and education program that best meets the employee's needs, for enrollment in the new career vocational training and education program at the community college for the purpose of providing the employee with occupational training that will result in, at a minimum, the awarding of an associate degree or completion of a certificate program and will enable the employee to return to the workforce. If an employee does not enroll in the new career vocational training and education program at the community college to which the employee has been referred by the department within six months after the referral, the employee is no longer eligible to participate in the program.

c. The employee shall be entitled to financial support from the employer or the employer's insurer for participation in the new career vocational and education training program in a total amount not to exceed fifteen thousand dollars to be used for the payment of tuition and fees and the purchase of required supplies. The community college in which an employee is enrolled pursuant to the program shall bill the employer or the employer's insurer for the employee's tuition and fees each semester, or the equivalent, that the employee is enrolled in the program. The employer or the employer's insurer shall also pay for the purchase of supplies required by the employee to participate in the program, upon receipt of documentation from the employee detailing the cost of the supplies and the necessity for purchasing the supplies. Such documentation may include written course requirements or other documentation from the community college or the course instructor regarding the necessity for the purchase of certain supplies.

d. The employer or the employer's insurer may request a periodic status report each semester from the community college documenting the employee's attendance and participation in and completion of the education and training program. If an employee does not meet the attendance requirements of the community college at which the employee is enrolled or does not maintain a passing grade in each course in which the employee is enrolled each semester, or the equivalent, the employee's eligibility for continued participation in the program is terminated.

e. The community college shall also provide the employer or the employer's insurer with documentation detailing that the receipt of funds by the community college pursuant to this subsection is for the payment of tuition and fees and the purchase of required supplies.

f. Beginning on or before December 1, 2018, the department of workforce development, in cooperation with the department of education, the insurance division of the department of commerce, and all community colleges that are participating in the new career and vocational training and education program, shall prepare an annual report for submission to the general assembly that provides information about the status of the program including but not limited to the utilization of and participants in the program, program completion rates, employment rates after completion of the program and the types of employment obtained by the program participants, and the effects of the program on workers' compensation premium rates.

#### **85.71 Injury outside of state**

1. If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee, or in the event of death, the employee's dependents, would have been entitled to the benefits provided by this chapter had such injury occurred within this state, such employee, or in the event of death resulting from such injury, the employee's dependents, shall be entitled to the benefits provided by this chapter, if at the time of such injury any of the following is applicable:

a. The employer has a place of business in this state and the employee regularly works at or from that place of business,~~or the employer has a place of business in this state and the employee is domiciled in this state.~~

...

#### **86.26 Judicial review**

1. Judicial review of decisions or orders of the workers' compensation commissioner may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the hearing under section 86.17 was held, the workers' compensation commissioner shall transmit to the reviewing court the original or a certified copy of the entire record of the contested case which is the subject of the petition within thirty days after receiving written notice from the party filing the petition that a petition for judicial review has been filed, and an application for stay of agency action during the pendency of judicial review shall not be filed in the division of workers' compensation of the department of workforce development but shall be filed with the district court. Such a review proceeding shall be accorded priority over other matters pending before the district court.

2. Notwithstanding section 17A.19, subsection 5, a timely petition for judicial review filed pursuant to this section shall stay execution or enforcement of a decision or order of the workers' compensation commissioner if the party seeking judicial review posts a bond securing any compensation awarded pursuant to the decision or order with the district court within thirty days of filing the petition, in a reasonable amount as fixed and approved by the court. Unless either the party posting the bond files an objection with the court, within twenty days from the date that the bond is fixed and approved by the court, that the amount of the bond is not reasonable, or the party whose interests are protected by the bond files an objection with the court, within twenty days from the date that the amount of the bond is fixed and approved by the court, that the amount of the bond is not reasonable

or adequate, the amount of the bond shall be deemed reasonable and adequate. If, upon objection, the district court orders the amount of the bond posted to be modified, the party seeking judicial review shall repost the bond in the amount ordered, within twenty days of the date of the order modifying the bond, in order to continue the stay of execution or enforcement of the decision or order of the workers' compensation commissioner.

**86.39 Fees—approval.**

1. All fees or claims for legal, medical, hospital, and burial services rendered under this chapter and chapters 85, 85A, 85B, and 87 are subject to the approval of the workers' compensation commissioner. For services rendered in the district court and appellate courts, the attorney fee is subject to the approval of a judge of the district court.

2. An attorney shall not recover fees for legal services based on the amount of compensation voluntarily paid or agreed to be paid to an employee for temporary or permanent disability under this chapter, or chapter 85, 85A, 85B, or 87. An attorney shall only recover a fee based on the amount of compensation that the attorney demonstrates would not have been paid to the employee but for the efforts of the attorney. Any disputes over the recovery of attorney fees under this subsection shall be resolved by the workers' compensation commissioner.

**86.42 Judgment by district court on award.**

Any party in interest may present a file-stamped copy of an order or decision of the commissioner, from which a timely petition for judicial review has not been filed or if judicial review has been filed, which has not had execution or enforcement stayed as provided in section 17A.19, subsection 5, or section 86.26, subsection 2, or an order or decision of a deputy commissioner from which a timely appeal has not been taken within the agency and which has become final by the passage of time as provided by rule and section 17A.15, or an agreement for settlement approved by the commissioner, and all papers in connection therewith, to the district court where judicial review of the agency action may be commenced. The court shall render a decree or judgment and cause the clerk to notify the parties. The decree or judgment, in the absence of a petition for judicial review or if judicial review has been commenced, in the absence of a stay of execution or enforcement of the decision or order of the workers' compensation commissioner as provided in section 17A.19, subsection 5, or section 86.26, subsection 2, or in the absence of an act of any party which prevents a decision of a deputy workers' compensation commissioner from becoming final, has the same effect and in all proceedings in relation thereto is the same as though rendered in a suit duly heard and determined by the court.

**535.3 Interest on judgments and decrees.**

1. a. Interest shall be allowed on all money due on judgments and decrees of courts at a rate calculated according to section 668.13, except for interest due pursuant to section 85.30 for which the rate shall be ten percent per year.

b. Notwithstanding paragraph "a", interest due pursuant to section 85.30 shall accrue from the date each compensation payment is due at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

...

In addition, **HF 518** includes the following clauses:

1. The sections of this Act amending sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of this Act.

2. The sections of this Act amending section 85.45 apply to commutations for which applications are filed on or after the effective date of this Act.

## Maryland

**HB 1315** amends *section 11-329. Workers' compensation insurers* of the Annotated Insurance Code of Maryland as follows:

**§ 11-329. Workers' compensation insurers**

(a) Each workers' compensation insurer shall:

- (1) be a member of a workers' compensation rating organization; and
- (2) adhere to the policy forms filed by the rating organization.

...

(3) (i) An insurer may develop a tiered rating plan containing two or more risk tiers to be applied to the insurer's acceptance of risks under the uniform classification system on which a rate may be made.

(ii) a tiered rating plan under subparagraph (i) of this paragraph shall:

1. Establish discrete tiers for the acceptance of risks based on defined risk attributes that:

A. Are not arbitrary, capricious, or unfairly discriminatory; and

B. Are reasonably related to the insurer's business and economic purposes; and

2. Require that each insured be placed in the highest quality tier for which that insured qualifies.

(iii) an insurer shall file a tiered rating plan developed under subparagraph (i) of this paragraph with the commissioner at least 30 days before the tiered rating plan's use.

(iv) if an insurer fails to demonstrate that the data produced under a tiered rating plan can be reported in a manner consistent with the uniform classification system and the uniform statistical plan, the commissioner shall disapprove the tiered rating plan.

...  
(f) (1) Except as provided in paragraphs (2) ~~and~~ (3), and (4) 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.

...  
(3) An insurer may file a rating plan with the commissioner that provides for prospective premium adjustments based on merit for an insured that does not meet minimum premium requirements to qualify for a uniform experience rating plan.

(4) (i) Except as provided in subparagraph (ii) of this paragraph, in addition to any premium adjustment allowed under paragraphs (1) ~~and~~ (2), and (3) 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:

...  
~~(4)~~ (5) An insurer may file a rating plan that provides for retrospective premium adjustments based on an insured's past experience.

**Note:** HB 1315 is identical to SB 72, which passed the first chamber on March 7, 2017, and was included in NCCI's March 17, 2017, **Legislative Activity Report** (RLA-2017-10).

**HB 1484** amends **section 9-660. Provision of medical services and treatment** of the Annotated Labor and Employment Code of Maryland as follows:

**§ 9-660. Provision of medical services and treatment**

...  
(d) (1) A provider who provides medical service or treatment to a covered employee under subsection (a) of this section shall submit to the employer or the employer's insurer a bill for providing medical service or treatment within 12 months from the later of the date:

(i) medical service or treatment was provided to a covered employee;

(ii) the claim for compensation was accepted by the employer or the employer's insurer; or

(iii) the claim for compensation was determined by the commission to be compensable.

(2) the employer or the employer's insurer may not be required to pay a bill submitted after the time period required under paragraph (1) of this subsection unless:

(i) the provider files an application for payment with the commission within 3 years from the later of the date:

1. Medical service or treatment was provided to the covered employee;

2. The claim for compensation was accepted by the employer or the employer's insurer; or

3. The claim for compensation was determined by the commission to be compensable; and

(ii) the commission excuses the untimely submission for good cause.

## Missouri

**SB 282** amends **section 287.243. Line of duty compensation—definitions—claim procedure—no subrogation rights for employers or insurers—grievance procedures—sunset date—fund created, use of moneys—rulemaking authority** of the Missouri Revised Statutes, in part, as follows:

**287.243. Line of duty compensation—definitions—claim procedure—no subrogation rights for employers or insurers—grievance procedures—sunset date—fund created, use of moneys—rulemaking authority.**

1. This section shall be known and may be cited as the "Line of Duty Compensation Act".

2. As used in this section, unless otherwise provided, the following words shall mean:

...  
(3) "Child", any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter who, at the time of the law enforcement officer's, emergency medical technician's, air ambulance pilot's, air ambulance registered professional nurse's, or firefighter's fatality is:

(a) Eighteen years of age or under;

(b) Over eighteen years of age and a student as defined in section 8101 of title 5, United States Code; or

(c) Over eighteen years of age and incapable of self-support because of physical or mental disability;

...  
3. (1) A claim for compensation under this section shall be filed ~~by the estate of~~ by survivors of the deceased with the division of workers' compensation not later than one year from the date of death of a law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter. If a claim is made within one year of the

date of death of a law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter killed in the line of duty, compensation shall be paid, if the division finds that the claimant is entitled to compensation under this section.

(2) The amount of compensation paid to the claimant shall be twenty-five thousand dollars, subject to appropriation, for death occurring on or after June 19, 2009.

4. Any compensation awarded under the provisions of this section shall be distributed as follows:

(1) If there is no child who survived the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter, to the surviving spouse of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter;

(2) If there is at least one child who survived the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter, and a surviving spouse of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter, fifty percent to the surviving child, or children, in equal shares, and fifty percent to the surviving spouse;

(3) If there is no surviving spouse of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter, to the surviving child, or children, in equal shares;

(4) If there is no surviving spouse of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter and no surviving child:

(a) To the surviving individual, or individuals, in shares per the designation or, otherwise, in equal shares, designated by the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter to receive benefits under this subsection in the most recently executed designation of beneficiary of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter on file at the time of death with the public safety agency, organization, or unit; or

(b) If there is no individual qualifying under paragraph (a), to the surviving individual, or individuals, in equal shares, designated by the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter to receive benefits under the most recently executed life insurance policy of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter on file at the time of death with the public safety agency, organization, or unit;

(5) If there is no individual qualifying under subdivisions (1), (2), (3), or (4) of this subsection, to the surviving parent, or parents, in equal shares, of the law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter; or

(6) If there is no individual qualifying under subdivisions (1), (2), (3), (4), or (5) of this subsection, to the surviving individual, or individuals, in equal shares, who would otherwise qualify under the definition of the term "child" but for his or her age.

...

## Oregon

**HB 2337** amends **section 656.206 Permanent Total Disability** of the Oregon Revised Statutes, in part, as follows:

Section 1. **656.206 Permanent Total Disability.**

...

~~(2) When~~ If permanent total disability results from the a worker's injury, the worker shall receive during the period of that disability compensation benefits equal to 66-2/3 percent of wages not to exceed 100, no more than 133 percent of the average weekly wage nor or no less than the amount of 90 percent of wages a week or the amount of \$50, whichever amount is lesser 33 percent of the average weekly wage .

...

**HB 2337** also includes the following clause:

Section 2. The amendments to ORS 656.206 by section 1 of this 2017 Act apply to injuries occurring on or after the effective date of this 2017 Act.

**HB 2338** amends **sections 656.005 Definitions, 656.204 Death, and 656.208 Death during permanent total disability** of the Oregon Revised Statutes, in part, as follows:

Section 1. **656.005 Definitions.**

...

(5) "Child" means a child of an injured worker, including:

(a) includes A posthumous child; ;

(b) A child legally adopted prior to before the injury; ;

(c) A child toward whom the worker stands in loco parentis; ;

(d) A child born out of wedlock ;

(e) and A stepchild, if such the stepchild was, at the time of the injury, a member of the worker's family and substantially dependent upon the worker for support; ; and

~~(f) A dependent child of any age who is an invalid is a child, for purposes of benefits, regardless of age, so long as the child was an invalid at the time of the accident and thereafter remains an invalid substantially dependent on the worker for support. For purposes of this chapter, a dependent child who is an invalid is considered to be a child under 18 years of age was an invalid at the time of the accident and thereafter remains an invalid substantially dependent on the worker for support.~~

...

~~(10) (a) "Dependent" means any of the following named following relatives of the worker who, at the time of an accident, depended in whole or in part for the relative's support on the earnings of a worker whose death results from any who dies as a result of an injury: Parent, grandparent, stepparent, grandson, granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the accident, are dependent in whole or in part for their support upon the earnings of the worker. Unless otherwise provided by treaty, aliens not residing within the United States at the time of the accident other than parent, spouse in a marriage or children are not included within the term "dependent."~~

~~(A) A parent, grandparent or stepparent;~~

~~(B) A grandson or granddaughter;~~

~~(C) A brother or sister or half-brother or half-sister; and~~

~~(D) A niece or nephew.~~

~~(b) "Dependent" does not include an alien who does not reside within the United States at the time of the accident, other than a parent, a spouse or children, unless a treaty provides otherwise.~~

...

Section 2. **656.204 Death.** If death results from ~~the an~~ accidental injury, payments ~~shall~~ must be made as follows:

~~(1)(a) The cost of final disposition of the body and funeral expenses, including but not limited to transportation of the body, shall~~ must be paid, not to exceed 20 times the average weekly wage in any case.

~~(b) The insurer or self-insured employer shall pay bills submitted for disposition and funeral expenses up to the benefit limit established in paragraph (a) of this subsection. If any part of the benefit remains unpaid 60 days after the date of death or the date of claim acceptance, whichever is later, the insurer or self-insured employer shall pay the unpaid amount to the estate of the worker.~~

~~(2)(a) If the a worker is survived by a spouse, monthly benefits shall~~ must be paid in an amount equal to 4.35 times 66-2/3 percent of the average weekly wage to the surviving spouse until remarriage. The payment shall cease at the end of the month in which the remarriage occurs.

~~(b) If the worker is survived by a spouse, monthly benefits also shall be paid in an amount equal to 4.35 times 10 percent of the average weekly wage for each child of the deceased who is substantially dependent on the spouse for support, until such child becomes 18 years of age.~~

~~(c) If the worker is survived by a spouse, monthly benefits also shall be paid in an amount equal to 4.35 times 25 percent of the average weekly wage for each child of the deceased who is not substantially dependent on the spouse for support, until such child becomes 18 years of age.~~

~~(d) If a surviving spouse receiving monthly payments dies, leaving a child who is entitled to compensation on account of the death of the worker, a monthly benefit equal to 4.35 times 25 percent of the average weekly wage shall be paid to each such child until the child becomes 18 years of age or the child's entitlement to benefits under subsection (8) of this section ceases, whichever is later.~~

~~(e) If a child who has become 18 years of age is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.~~

~~(f) In no event shall the total monthly benefits provided for in this subsection exceed 4.35 times 133 1/3 percent of the average weekly wage. If the sum of the individual benefits exceeds this maximum, the benefit for each child will be reduced proportionally.~~

~~(3)(a) (b) Upon remarriage, a surviving spouse shall~~ must be paid 36 times the monthly benefit in a lump sum as final payment of the claim, but the monthly payments for each child shall continue as before surviving spousal benefit.

~~(b) (c) If, after the date of the subject worker's death, the surviving spouse cohabits with another person for an aggregate period of more than one year and a child has resulted from the relationship, the surviving spouse shall~~ must be paid 36 times the monthly benefit in a lump sum as final payment of the claim, but the monthly payment for any child who is entitled to compensation on account of the death of the worker shall continue as before surviving spousal benefit.

~~(4)(a) (3)(a) If the a worker does not leave a spouse but leaves a child under 18 19 years of age, a monthly benefit equal to 4.35 times 25 percent of the average weekly wage shall~~ must be paid to each such child until the child becomes ~~18 19~~ years of age.

~~(b) If a child who has become 18 years of age is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.~~

~~(c) (b) In no event shall~~ The total benefits provided for in this subsection may not exceed 4.35 times 133-1/3 percent of the average weekly wage. If the sum of the individual benefits exceeds this maximum, the benefit for each child ~~will~~ must be reduced proportionally.

~~(5)(a) (4)(a) If the a worker leaves a dependent other than a surviving spouse or a child, a monthly payment shall~~ must be made to each dependent that is equal to 50 percent of the average monthly support the dependent actually received ~~by such dependent~~

from the worker during the 12 months next preceding the occurrence of the accidental injury. If a dependent is under the age of ~~18~~ 19 years at the time of the accidental injury, the payment to the dependent shall must cease when ~~such~~ the dependent becomes ~~18~~ 19 years of age. The payment to any dependent shall must cease under the same circumstances that would have terminated the dependency had the injury not happened.

~~(b) If the dependent who has become 18 years of age is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.~~

~~(c) (b) In no event shall~~ The total benefits provided for in this subsection may not exceed 4.35 times 10 percent of the average weekly wage. If the sum of the individual benefits exceeds this maximum, the benefit for each dependent ~~will~~ must be reduced proportionally.

~~(6) (5) If a child is an invalid at the time the child otherwise becomes ineligible for benefits under this section, the payment to the child shall must~~ continue while the child remains an invalid. If a person is entitled to payment because the person is an invalid, payment shall must terminate when the person ceases to be an invalid.

~~(7) If, at the time of the death of a worker, the child of the worker or dependent has become 17 years of age but is under 18 years of age, the child or dependent shall receive the payment provided in this section for a period of one year from the date of the death. However, if after such period the child is a full-time high school student, benefits shall be paid as provided in subsection (8) of this section.~~

~~(8)(a) (6)(a) Benefits under this section which are to be paid as provided in this subsection shall be paid for the child or dependent until the child or dependent becomes 19 years of age. If, however, the child or dependent is attending higher education or begins attending higher education within six months of the date the child or dependent leaves high school, benefits shall be paid until the child or dependent becomes 23 years of age, ceases attending higher education or graduates from an approved institute or program, whichever is earlier. If a child or dependent is between 19 and 26 years of age at the time of a worker's death, or becomes 19 years of age after the worker's death, monthly benefits must be paid for not more than 48 months until the age of 26 during a period in which the child or dependent is completing secondary education, is obtaining a general educational development certificate or is attending a program of higher education. The child or dependent must provide an insurer or self-insured employer with documentation that enables the insurer or self-insured employer to determine the child's or dependent's eligibility for monthly benefits.~~

~~(b) If a child or dependent who is eligible for benefits under this subsection has no~~ does not have a surviving parent, the child or dependent shall must receive 4.35 times  $66\frac{2}{3}$  percent of the average weekly wage ~~until the child or dependent becomes 23 years of age, ceases attending higher education or graduates from an approved institute or program, whichever is earlier.~~

~~(c) As used in this subsection, "attending a program of higher education" means regularly attending community college, college or university, or regularly attending a course of vocational or technical training designed to prepare the participant for gainful employment. A child or dependent enrolled in an educational course load of less than one-half of that determined by the educational facility to constitute "full-time" enrollment is not "attending a program of higher education."~~

~~(9) (7) As used in this section, "average weekly wage" has the meaning for that term provided in ORS 656.211.~~

**Section 3. 656.208 Death during permanent total disability.** ~~(4) If the an~~ injured worker dies during the period of the worker's permanent total disability, whatever the cause of death, leaving a spouse or any dependents listed in ORS 656.204, and the worker leaves a beneficiary, payment shall must be made in the same manner and in the same amounts as provided in ORS 656.204.

~~(2) If any surviving spouse to whom the provisions of this section apply remarries, the payments on account of a child or children shall continue to be made to the child or children the same as before the remarriage.~~

**HB 2338** also includes the following clauses:

**Section 4.** The Director of the Department of Consumer and Business Services shall adjust under ORS 656.506 (7) the amount and duration of benefits that accrue on and after the effective date of this 2017 Act for injuries that occurred before the effective date of this 2017 Act. An insurer, or a self-insured employer, shall pay benefits that exceed the amount and duration of benefits that would have been due to a worker under the law that existed at the time of the worker's injury and the director shall reimburse the insurer or selfinsured employer from the Workers' Benefit Fund.

**Section 5.** The amendments to ORS 656.005, 656.204 and 656.208 by sections 1 to 3 of this 2017 Act apply to injuries that occur on or after the effective date of this 2017 Act, except that ORS 656.204 (6)(a) applies to benefits that accrue on or after the effective date of this 2017 Act regardless of the date on which the injury occurred. The insurer shall deduct from the 48-month maximum specified for benefits in ORS 656.204 (6)(a) the number of months during which a child or dependent received benefits after the age of 19 if the child or dependent became 19 years of age before the effective date of this 2017 Act.

## 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	Peter Burton	610-964-8852
AL, GA, KY, LA, MS	Laura Hart Bryan	225-618-8168
AK, AZ, CO, NM, 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
ID, MT, NV, OR	Jessica Epley	503-892-8919
MO, NE, OK, SD	Carla Townsend	314-843-4001
Federal Issues	Tim Tucker	202-403-8526

This report is informational and is not intended to provide an interpretation of state and federal legislation.