



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 workers compensation-related bills were enacted within the one-week period ending July 21, 2017.

#### North Carolina

**HB 26** was:

- Passed by the first chamber on February 16, 2017
- Included in NCCI's February 24, 2017 **Legislative Activity Report** (RLA-2017-07)
- Amended and passed by the second chamber on June 28, 2017
- Included in NCCI's July 7, 2017 **Legislative Activity Report** (RLA-2017-26)
- Enacted and effective on July 20, 2017

**HB 26** amends *sections 97-82 Memorandum of agreement between employer and employee to be submitted to Commission on prescribed forms for approval; direct payment as award, and 97-90 Legal and medical fees to be approved by Commission; misdemeanor to receive fees unapproved by Commission, or to solicit employment in adjusting claims; agreement for fee or compensation* of the North Carolina General Statutes as follows:

**§ 97-82. Memorandum of agreement between employer and employee to be submitted to Commission on prescribed forms for approval; direct payment as award.**

...

(b) If approved by the Commission, a memorandum of agreement shall for all purposes be enforceable by the court's decree as hereinafter specified. Payment pursuant to G.S. 97-18(b), or payment pursuant to G.S. 97-18(d) when compensability and liability are not contested prior to expiration of the period for payment without prejudice, shall constitute an award of the Commission on the question of compensability of and the insurer's liability for the injury as reflected on a form prescribed by the Commission pursuant to G.S. 97-18(b) or G.S. 97-18(d) for which payment was made. An award of the Commission arising out of G.S. 97-18(b) or G.S. 97-18(d) shall not create a presumption that medical treatment for an injury or condition not identified in the form prescribed by the Commission pursuant to G.S. 97-18(b) or G.S. 97-18(d) is causally related to the compensable injury. An employee may request a hearing pursuant to G.S. 97-84 to prove that an injury or condition is causally related to the compensable injury. Compensation paid in these circumstances shall constitute payment of compensation pursuant to an award under this Article.

**§ 97-90 Legal and medical fees to be approved by Commission; misdemeanor to receive fees unapproved by Commission, or to solicit employment in adjusting claims; agreement for fee or compensation.**

...

~~(f) The~~ If a dispute arises between an employee's current and past attorney or attorneys regarding the division of a fee as approved by the Commission pursuant to this section, the Commission shall hear and determine any dispute between an employee's current and past attorney or attorneys regarding the division of a fee as approved by the Commission pursuant to this section. any dispute after the Commission has approved the settlement agreement. The Commission shall give notice to each of the employee's current

and past attorneys of record of the total amount of the approved fee prior to determining how the fee shall be divided between those attorneys. An attorney who is ~~a~~ an interested party to an action under this subsection shall have the same rights of appeal as outlined in subsection (c) of this section.

In addition, **HB 26** includes the following clause:

Except as otherwise provided, this act is effective when it becomes law and applies to claims pending on or after that date.

**SB 489** was:

- Passed by the first chamber on April 26, 2017
- Included in NCCI's May 5, 2017 *Legislative Activity Report* (RLA-2017-17)
- Passed by the second chamber on June 27, 2017
- Included in NCCI's July 7, 2017 *Legislative Activity Report* (RLA-2017-26)
- Enacted and effective on July 20, 2017

**SB 489** amends sections **58-36-105. Certain workers' compensation insurance policy cancellations prohibited** (relating to the North Carolina Rating Bureau), **58-2-255. Electronic insurance communications and records**, and **97-84. Determination of disputes by Commission or deputy** of the North Carolina General Statutes as follows:

Section 1

**§ 58-36-105. Certain workers' compensation insurance policy cancellations prohibited**

...

(b) Any cancellation permitted by subsection (a) of this section is not effective unless written notice of cancellation has been given to the insured not less than 15 days before the proposed effective date of cancellation. The notice may be given by registered or certified mail, return receipt requested, to the insured and any other person designated in the policy to receive notice of cancellation at their addresses shown in the policy or, if not indicated in the policy, at their last known addresses. The notice shall state the precise reason for cancellation. Whenever notice of intention to cancel is given by registered or certified mail, no cancellation by the insurer shall be effective unless and until such method is employed and completed. Notice of intent to cancel given by registered or certified mail shall be conclusively presumed completed three days after the notice is sent if, on the same day that the notice is sent by registered or certified mail, the insurer also provides notice by first-class mail and by electronic means if available as defined in G.S. 58-2-255(a) to the insured and any other person designated in the policy to receive notice. Any such supplemental notice given by electronic means shall be effective for the limited purpose of establishing this conclusive presumption. Notice of cancellation, termination, or nonrenewal may also be given by any method permitted for service of process pursuant to Rule 4 of the North Carolina Rules of Civil Procedure. Failure to send this notice, as provided in this section, to any other person designated in the policy to receive notice of cancellation invalidates the cancellation only as to that other person's interest.

...

Section 2

**§ 58-2-255. Electronic insurance communications and records.**

...

(b) When any insurance law of this State, ~~except for cancellation, termination, or nonrenewal of workers' compensation policies pursuant to G.S. 58-36-105(b),~~ State requires a communication to be provided to a party in writing, signed by a party, provided by means of a specific delivery method, or retained by an insurer, those requirements are satisfied if the insurer complies with Article 40 of Chapter 66 of the General Statutes.

...

Section 3

**§ 97-84. Determination of disputes by Commission or deputy**

The Commission or any of its members or deputies shall hear the parties at issue and their representatives and witnesses, and shall determine the dispute in a summary manner. ~~The Commission shall decide the case shall be decided and issue findings of fact issued~~ based upon the preponderance of the evidence in view of the entire record. The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue shall be filed with the record of the proceedings, within 180 days of the close of the hearing record unless time is extended for good cause by the Commission, and a copy of the award shall immediately be sent to the parties in dispute. ~~The parties may be heard by a deputy, in which event the hearing shall be conducted in the same way and manner prescribed for hearings which are conducted by a member of the Industrial Commission, and said deputy shall proceed to a complete determination of the matters in dispute, file his written opinion within 180 days of the close of the hearing record unless time is extended for good cause by the Commission, and the deputy shall cause to be issued an award pursuant to such determination.~~ If the deputy or member of the Commission that heard

the parties at issue and their representatives and witnesses is unable to determine the matters in dispute and issue an award, the Commission may assign another deputy or member to decide the case and issue an award.

#### Section 4

Notwithstanding G.S. 97-31.1, Section 3 of this act is effective when it becomes law and applies to claims pending on or after the effective date of this act. The remainder of this act is effective when it becomes law and applies to notices of cancellation of workers' compensation policies sent on or after that date.

### Rhode Island

**HB 5934** was:

- Passed by the first chamber on May 4, 2017
- Included in NCCI's May 12, 2017 *Legislative Activity Report* (RLA-2017-18)
- Passed by the second chamber on June 30, 2017
- Included in NCCI's July 7, 2017 *Legislative Activity Report* (RLA-2017-26)
- Enacted on July 18, 2017, with an effective date of June 30, 2017

**HB 5934**, in part, deletes *section 27-9-51 Excess profits for workers' compensation and employer's liability insurance prohibited*, as follows:

~~**27-9-51. Excess profits for workers' compensation and employer's liability insurance prohibited.**~~

~~(a) Each insurance group shall file with the department prior to July 1 of each year, on a form prescribed by the department, the following data for workers' compensation and employers' liability insurance:~~

- ~~(1) The calendar year earned premium;~~  
~~(2) Accident year incurred losses and loss adjustment expenses;~~  
~~(3) The administrative and selling expenses incurred in Rhode Island or allocated to Rhode Island for the calendar year; and~~  
~~(4) Policyholder dividends applicable to the calendar year.~~

~~(b) (1) Excess profit has been realized if the underwriting gain is greater than the anticipated underwriting profit plus five percent (5%) of earned premiums for the three (3) most recent calendar years;~~

~~(2) As used in this section with respect to any three (3) year period, "anticipated underwriting profit" means the sum of the dollar amounts obtained by multiplying, for each rate filing of the insurance group in effect during that period, the earned premiums applicable to the rate filing during that period by the percentage factor included in the rate filing for profit and contingencies, the percentage factor having been determined with due recognition to investment income from funds generated by Rhode Island business. Separate calculations need not be made for consecutive rate filings containing the same percentage factor for profits and contingencies.~~

~~(c) Each insurance group shall also file a schedule of Rhode Island loss and loss adjustment experience for each of the three (3) most recent accident years. The incurred losses and loss adjustment expenses shall be valued as of December 31 of the accident year, developed to an ultimate basis, and two (2) twelve (12) month intervals after this, each developed to an ultimate basis so that a total of three (3) evaluations will be provided for each accident year. For reporting purposes unrelated to determining excessive profits, the loss and loss adjustment experience of each accident year shall continue to be reported until each accident year has been reported at eight (8) stages of development.~~

~~(d) Each insurance group's underwriting gain or loss for each calendar accident year shall be computed as follows: The sum of the accident year incurred losses and loss adjustment expenses as of December 31 of the year, developed to an ultimate basis, plus the administrative and selling expenses incurred in the calendar year, plus policyholder dividends applicable to the calendar year, shall be subtracted from the calendar year earned premium to determine the underwriting gain or loss.~~

~~(e) For the three (3) most recent calendar accident years, the underwriting gain or loss shall be compared to the anticipated underwriting profit.~~

~~(f) If the insurance group has realized an excess profit, the department shall order a return of the excess amounts after affording the insurance group an opportunity for a hearing and complying with the provisions of the Administrative Procedures Act, chapter 35 of title 42. The excess amounts shall be refunded in all instances unless the insurance group affirmatively demonstrates to the department that the refund of the excess amounts will render the insurance group insolvent under the provisions of this title.~~

~~(g) Any excess profit of an insurance group offering workers' compensation or employers' liability insurance shall be returned to policyholders in the form of a cash refund or be returned to policyholders in the form of a credit toward the future purchase of insurance. The excess amount shall be refunded on a pro rata basis in relation to the final compilation year earned premiums to the workers' compensation policyholders of record of the insurance group on December 31 of the final compilation year.~~

~~(h) (1) Cash refunds to policyholders may be rounded to the nearest dollar;~~

~~(2) Data in required reports to the department may be rounded to the nearest dollar;~~

~~(3) Rounding, if elected by the insurance group, shall be applied consistently.~~

~~(i) (1) Refunds shall be completed in one of the following ways:~~

(i) If the insurance group elects to make a cash refund, the refund shall be completed within sixty (60) days of the entry of a final order indicating that excess profits have been realized; or

(ii) If the insurance group elects to make refunds in the form of a credit to renewal policies, the credits shall be applied to policy renewal premium notices which are forwarded to insured more than sixty (60) calendar days after the entry of a final order indicating that excess profits have been realized. If an insurance group has made this election, but an insured after this cancels his or her policy or allows his or her policy to terminate, the insurance group shall make a cash refund not later than sixty (60) days after the termination of the coverage;

(2) Upon completion of the renewal credits or refund payments, the insurance group shall immediately certify to the department that the refunds have been made.

(j) Any refund or renewal credit made pursuant to this section, for the purposes of reporting under this section for subsequent years, shall be treated as a policyholder dividend applicable to the year in which it is incurred.

**SB 917 Substitute A** was:

- Passed by the first chamber on June 28, 2017
- Passed by the second chamber on June 29, 2017
- Included in NCCI's July 7, 2017 *Legislative Activity Report* (RLA-2017-26)
- Enacted on July 21, 2017, with an effective date of June 29, 2017

**SB 917 Substitute A**, in part, amend sections **28-33-18.3. Continuation of benefits—Partial incapacity**, **28-53-2. Establishment—Sources—Administration**, and **28-53-7. Payments to employees of uninsured employers** of the Rhode Island Workers Compensation Act as follows:

**§ 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, 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, 2023.~~

...

**§ 28-53-2. Establishment—Sources—Administration.**

(a) There shall be established within the department of labor and training a special restricted receipt account to be known as the Rhode Island uninsured employers fund. The fund shall be capitalized from excise taxes assessed against uninsured employers pursuant to the provisions of § 28-53-9 of this chapter and from general revenues appropriated by the legislature. Beginning in state fiscal year ending ~~June 30, 2017~~ June 30, 2018, the legislature may appropriate up to two million dollars (\$2,000,000) in general revenue funds annually for deposit into the Rhode Island uninsured employers fund.

...

**§ 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 ~~July 1, 2017~~ July 1, 2018.

**Note: SB 917 Substitute A** is identical to **HB 6224 Substitute A**, which was enacted on June 30, 2017, and included in NCCI's July 7, 2017 **Legislative Activity Report** (RLA-2017-26).

#### **BILLS PASSING SECOND CHAMBER**

There were no relevant workers compensation-related bills that were passed by the second chamber within the one-week period ending July 21, 2017.

#### **BILLS PASSING FIRST CHAMBER**

There were no relevant workers compensation-related bills that were passed by the first chamber within the one-week period ending July 21, 2017.

#### **BILLS VETOED**

The following workers compensation-related bill was vetoed within the one-week period ending July 21, 2017.

### **North Carolina**

**HB 205** was:

- Passed by the first chamber on March 9, 2017
- Included in NCCI's March 17, 2017 **Legislative Activity Report** (RLA-2017-10)
- Amended and passed by the second chamber on June 5, 2017
- Included in NCCI's June 16, 2017 **Legislative Activity Report** (RLA-2017-23)
- Amended by the Conference Committee and passed by both chambers on June 28, 2017
- Vetoed by the governor on July 17, 2017

**HB 205**, in part, amends **sections 97-13 Exceptions from provisions of Article** and **97-2 Definitions** of the North Carolina General Statutes as follows:

#### **Section 97-13 Exceptions from provisions of Article**

...

(c1) Certain Inmates.—Notwithstanding the thirty dollars (\$30.00) per week limit in subsection (c) of this section, the average weekly wage of inmates employed pursuant to the Prison Industry Enhancement Program shall be calculated pursuant to G.S. 97-2(5).

...

#### **Section 97-2 Definitions**

...

(2) Employee.—

...

It shall be a rebuttable presumption that the term "employee" shall not include any person performing services in the sale of newspapers or magazines to ultimate consumers under an arrangement whereby the newspapers or magazines are to be sold by that person at a fixed price and the person's compensation is based on the retention of the excess of the fixed price over the amount at which the newspapers or magazines are charged to the person.

...

**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.

<b>State</b>	<b>State Relations Executive</b>	<b>Phone Number</b>
CT, ME, NH, RI, VT	Laura Backus Hall	802-454-1800
FL, ID, MT, NV, OR	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
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AR, IL, KS, TX	Terri Robinson	501-333-2835
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This report is informational and is not intended to provide an interpretation of state and federal legislation.