



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

Louisiana

HB 408 was:

- Passed by the first chamber on May 8, 2017
- Passed by the second chamber on May 23, 2017
- Enacted on June 3, 2017, with an effective date of August 1, 2017

HB 408 amends **section 1564. Producers of record of Title 22** (Louisiana Insurance Code) as follows:

§ 1564. Producers of record

...

B.(1)

...

(b) If the insurer receives a producer of record letter for an application, the insurer shall provide the new producer of record with a quotation or proposal based on new applications submitted by the new producer of record regardless of any other outstanding quotations or proposals. If the quotation or proposal is accepted by the insured, the insurer shall issue the policy with the designated producer of record. If the insurer receives a written request by the insured to change the producer of record on an application, the insurer shall give the initial producer of record written notice ~~fifteen~~ ten calendar days in advance of the change or removal. If the insurer receives a request to change a producer of record on an application within ~~fifteen~~ ten calendar days of the policy inception, the insurer shall provide the required ~~fifteen-day~~ ten-calendar day notice; however, any required change of producer shall be effective on the inception date of the policy.

(c) If a change or removal of a producer is requested by an insured during a policy period, the insurer shall give the producer written notice ~~fifteen~~ ten calendar days in advance of the change or removal. If the insurer receives a request to change a producer within the last ~~fifteen~~ ten calendar days of the policy period, the insurer shall provide the required ~~fifteen-day~~ ten-calendar day notice; however, any required change of producer shall be effective on the inception date of the renewal policy.

(d) Property, casualty, and bond commissions shall be paid to the ~~original~~ producer of record at the policy inception for the full term of the policy, unless such policy is written for more than one year or is continuous until canceled, in which case commissions shall be paid to the new producer of record starting on the anniversary rating date when new rates take effect. Accident, health, or benefits commissions shall be paid to the current producer of record and shall change when the producer of record changes.

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Note: **HB 408** was not included in any previous version of NCCI's *Legislative Activity Report*.

Maine

LD 848 was:

- Passed by the first chamber on June 8, 2017
- Passed by the second chamber on June 9, 2017

- Included in NCCI's June 16, 2017 **Legislative Activity Report** (RLA-2017-23)
- Enacted on July 24, 2017, with a projected effective date of October 31, 2017

LD 848 deletes **subsection 3 of Title 39-A, section 201 Mental injury caused by mental stress** of the Maine Revised Statutes and adds **subsection 3-A of Title 39-A, section 201 Mental injury caused by mental stress** of the Maine Revised Statutes as follows:

Section 201, Subsection 3 Mental injury caused by mental stress.

Mental injury resulting from work related stress does not arise out of and in the course of employment unless it is demonstrated by clear and convincing evidence that:

A. The work stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee; and [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The work stress, and not some other source of stress, was the predominant cause of the mental injury. [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]

The amount of work stress must be measured by objective standards and actual events rather than any misperceptions by the employee.

A mental injury is not considered to arise out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action, taken in good faith by the employer.

3-A. Mental injury caused by mental stress.

Mental injury resulting from work-related stress does not arise out of and in the course of employment unless:

A. It is demonstrated by clear and convincing evidence that:

(1) The work stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee; and

(2) The work stress, and not some other source of stress, was the predominant cause of the mental injury.

The amount of work stress must be measured by objective standards and actual events rather than any misperceptions by the employee; or

B. The employee is a law enforcement officer, firefighter or emergency medical services person and is diagnosed by an allopathic physician or an osteopathic physician licensed under Title 32, chapter 48 or chapter 36, respectively, with a specialization in psychiatry or a psychologist licensed under Title 32, chapter 56 as having post-traumatic stress disorder that resulted from work stress, that the work stress was extraordinary and unusual compared with that experienced by the average employee and the work stress and not some other source of stress was the predominant cause of the post-traumatic stress disorder, in which case the post-traumatic stress disorder is presumed to have arisen out of and in the course of the worker's employment. This presumption may be rebutted by clear and convincing evidence to the contrary. For purposes of this paragraph, "law enforcement officer," "firefighter" and "emergency medical services person" have the same meaning as in section 328-A, subsection 1.

By January 1, 2022, the board shall submit a report to the joint standing committee of the Legislature having jurisdiction over labor matters that includes an analysis of the number of claims brought under this paragraph, the portion of those claims that resulted in a settlement or award of benefits and the effect of the provisions of this paragraph on costs to the State and its subdivisions. The Department of Administrative and Financial Services, Bureau of Human Resources and the Department of Public Safety shall assist the board in developing the report, and the board shall seek the input of an association, the membership of which consists exclusively of counties, municipalities and other political or administrative subdivisions, in the development of the report.

This paragraph is repealed October 1, 2022.

A mental injury is not considered to arise out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action, taken in good faith by the employer.

West Virginia

HB 2857 was:

- Passed by the first chamber on March 23, 2017
- Amended and passed by the second chamber on April 7, 2017
- Enacted on April 26, 2017, with an effective date of July 7, 2017

HB 2857 creates new **Article 3E** in **Chapter 21. Labor** of the Code of West Virginia, which includes, but is not limited to, the following language:

Article 3E. The West Virginia Safer Workplace Act.

...

§21-3E-16. Employer testing; notice; termination; forfeiture.

If an employer implements a drug-free workplace program in accordance with this article, which includes notice, education and procedural requirements for testing for drugs and alcohol pursuant to this law, the employer may require the employee to submit to a test for the presence of drugs or alcohol. If a drug or alcohol is found to be present in the employee's system at a level proscribed by the employer's policy, the employee may be terminated and forfeits his or her eligibility for unemployment compensation benefits and, if injured at the time of the intoxication, indemnity benefits under the Worker Compensation Laws. However, the employer's drug-free workplace program must notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and that policy must also state that if an injured employee refuses to submit to a test for drugs or alcohol, that employee forfeits eligibility for unemployment compensation benefits, and if injured, for indemnity benefits under the Worker Compensation Laws. Employers who do not notify their employees of this condition of employment waive their right to assert that eligibility for benefits is entirely forfeited.

Nothing herein may be construed or deemed to affect subsection (a), section two, article four, chapter twenty-three of this code and the provisions of said section shall be the sole manner in which intoxication may be proven to establish such intoxication as the proximate cause of an injury for purposes of said chapter.

Note: HB 2857 was not included in any previous version of NCCI's *Legislative Activity Report*.

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 28, 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 28, 2017.

FEDERAL ISSUES

Issue	Update
Regulation of Air Ambulance Services	<p>The House of Representatives Transportation and Infrastructure Committee has approved an air ambulance services amendment to legislation reauthorizing the Federal Aviation Administration (FAA). The amendment would create an advisory committee to make recommendations for a rulemaking to:</p> <ul style="list-style-type: none">• Require air ambulance operators to clearly disclose charges for air transportation services separately from charges for nonair transportation medical services provided while onboard an aircraft• Provide other consumer protections for customers of air ambulance operators <p>This advisory committee would include the Secretary of Transportation as well as representatives of other relevant federal agencies, state insurance departments, and a representative of the air ambulance industry.</p> <p>The question of which law governs air ambulance rates in the workers compensation context—whether state workers compensation laws or the Federal Airline Deregulation Act (ADA)—has become a point of friction in recent years. This has led to several ADA “pre-emption” challenges to state reimbursement rates coming before the courts in various jurisdictions, with the most recent cases being heard in Texas state and federal courts. In some cases, the ADA has been found to preempt state workers compensation laws regulating air ambulance reimbursement rates.</p> <p>Additionally, Sen. Jon Tester (D-MT) has introduced SB 471, which is intended to preserve state authority to regulate air carriers providing air ambulance services, including network participation, reimbursement, and balance billing.</p>
Federal Insurance Office (FIO) TRIPRA Study	<p>The Federal Insurance Office (FIO) Study of Small Insurer Competitiveness in the Terrorism Risk Insurance Marketplace was transmitted to Congress last week as required by the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) of 2015. FIO relied upon data provided by NCCI and the independent state rating bureaus to analyze workers compensation issues.</p> <p>The study examines the impact of state workers compensation laws on terrorism coverage and provides an overview of the unique impact of the terrorism peril on workers compensation. The analysis provides a</p>

	<p>narrative on increased aggregation exposures, the impact of rate regulation, potential residual market impacts, and the inability to exclude specific perils.</p> <p>The US Department of Treasury adopted its “small insurer” definition as required by the Act to mean an insurer whose policyholder surplus for the preceding year is less than five times the Terrorism Risk Insurance Program trigger. Using this methodology for 2016, a “small insurer” would be any insurer with policyholder surplus less than \$600 million (\$120 million Program trigger x 5). FIO indicated that the study is based on approximately 200 domestic insurance groups fitting the definition of “small insurer” that were required to respond to the data call.</p>
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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
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AK, AZ, CO, NM, UT	Maggie Karpuk	818-707-8374
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Federal Issues	Tim Tucker	202-403-8526

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