



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 includes 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 is included in the first report published each month. This report is issued on a weekly basis throughout the legislative season and provides updates on the content of these bills if and when they progress through the legislative process. This report covers bills from states where NCCI provides ratemaking services (see state list under Contact Information) and the US Congress.

BILLS ENACTED

There were no relevant workers compensation-related bills enacted within the one-week period ending January 26, 2018.

BILLS PASSING SECOND CHAMBER

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending January 26, 2018.

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending January 26, 2018.

Indiana

SB 166, in part, adds new **section 22-3-1-6** to the Indiana Labor and Safety code to read:

Sec. 6. (a) The worker's compensation board of Indiana shall report before November 1 of each year to the interim study committee on employment and labor (established under IC 2-5-1.3-4) for the immediately preceding state fiscal year:

- (1) the number of employers that the worker's compensation board of Indiana determined during the immediately preceding state fiscal year improperly classified at least one (1) worker as an independent contractor;
- (2) the total number of improperly classified workers employed by the employers listed in subdivision (1);
- (3) an estimate of the additional costs to the state that the board attributes to the improperly classified workers; and
- (4) the amount of the penalties and interest assessed against the employers listed in subdivision (1) by the worker's compensation board of Indiana, and the amount of the penalties and interest assessed that has been collected.

(b) This section expires December 31, 2020.

Mississippi

HB 789, in part, amends **sections 71-3-73. Second Injury Trust Fund, 71-3-95. Payment of operating expense, 71-3-97. Collection of civil penalties authorized by chapter; deposit of civil penalties into State General Fund, 71-3-99. Budget and collection procedure, and 71-3-100. Payment and deposit in State General Fund of funds received by Workers' Compensation Commission; funding of commission expenses** of the Mississippi Code of 1972 as follows:

§ 71-3-73. Second Injury Trust Fund

~~(1)~~ If an employee who has previously lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, becomes permanently and totally incapacitated through the loss, or loss of use, of another member or organ, the employer shall be liable only for the compensation payable for such second injury. In addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for permanent total incapacity, out of a special fund known as the "Second Injury Trust-Fund," and created for such purpose in the following manner:

- ...
- ~~(2) During fiscal year 2017 and thereafter, the 41 Workers' Compensation Commission shall have full authority to 42 assess employer the support of the agency.~~

§ 71-3-95. Payment of operating expense

(1) The commission shall make such expenditures as may be necessary for the adequate administration of this chapter, including salaries and traveling expense, the cost of personal services, office rent at the seat of government and elsewhere, the purchase of books, periodicals, office equipment and supplies, printing and binding reports, the cost of membership in official organizations, and other purposes. All expenditures of the commission in the administration of this chapter shall be allowed and paid out of the ~~State General~~ Administrative Expense Fund as provided in Section ~~71-3-100~~ 71-3-97, upon the presentation of itemized vouchers therefor approved by the chairman of the commission.

(2) The commission is authorized, in its discretion, to transfer a sum or sums not to exceed Two Hundred Thousand Dollars (\$ 200,000.00) from the Administrative Expense Fund to the Second Injury Fund. The commission is further authorized, in its discretion, to replace any funds so transferred in the event that funds become available.

§ 71-3-97. Collection of civil penalties authorized by chapter; deposit of civil penalties into State General Fund.

(1) There is established in the State Treasury a special fund for the purpose of providing for the payment of all expenses in respect to the administration of this chapter. Such fund shall be administered by the commission. The State Treasurer shall be the custodian of such funds, and all monies and securities in such fund shall be held in trust by the State Treasurer and shall not be the money or property of the state.

(2) The State Treasurer is authorized to disburse monies from such fund only upon order of the commission. The official bond of the State Treasurer shall be conditioned for the faithful performance of his duty hereunder.

(3) The State Treasurer shall deposit any monies paid into such fund into such qualified depository banks as the commission may designate, and is authorized to invest any portion of the fund which, in the opinion of the commission, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposit of state funds by the State Treasurer. All interest earned by such portion of the fund as may be invested by the State Treasurer shall be collected by him and placed to the credit of such fund.

(4) All civil penalties provided in this chapter, if not voluntarily paid, may be collected by civil suit brought by the commission, and shall be paid into the State General such Fund.

§ 71-3-99. Budget and collection procedure

...
(4) All amounts collected under the provisions of this section shall be paid into the ~~State General~~ Administrative Expense Fund as provided in Section ~~71-3-100~~.
...

§ 71-3-100. Payment and deposit in State General Fund of funds received by Workers' Compensation Commission; funding of commission expenses

All funds received by the Workers' Compensation Commission, as established by Section 71-3-85 et seq., shall be paid to the State Treasurer, who shall issue receipts therefor and who shall deposit such funds ~~into the State General Fund~~ in the State Treasury in a special fund to the credit of the commission. All such funds shall be expended only pursuant to appropriation approved by the Legislature and as provided by law.

~~From and after July 1, 2016, the expenses of the Workers' Compensation Commission shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized by Section 71-3-85 et seq. shall be deposited into the State General Fund as authorized by law.~~

...

Virginia

HB 82 repeals an enactment clause in **section 65.2-1201. Financing; tax** of the Virginia Workers' Compensation Act that provides that the maximum tax rate that may be assessed on insurance carriers or self-insured employers for the purpose of funding workers compensation benefits that are awarded against uninsured employers from the Uninsured Employer's Fund will revert from 0.5% to 0.25% on July 1, 2018. Repealing the enactment will maintain the maximum rate at its current level of 0.5%.

HB 531 amends and reenacts **section 65.2-804. Evidence of compliance with title; notices of cancellation of insurance** of the Virginia Workers' Compensation Act as follows:

§ 65.2-804. Evidence of compliance with title; notices of cancellation of insurance.

A1. Each employer subject to this title shall file with the Workers' Compensation Commission, in form prescribed by it, annually or as often as may be necessary, evidence of his compliance with the provisions of § 65.2-801 and all others relating thereto; however, if the employer secures his liability under this title pursuant to subdivision A 1 of § 65.2-801 then the insurance carrier shall make a filing on behalf of the employer, and such filing shall be made electronically in the form as prescribed and to the agent as designated by the Commission, within 30 days of the inception of the policy. Evidence of an employer's compliance with the provisions of subdivision A 1 of § 65.2-801 shall be deemed to satisfy such provisions if it includes the name and address of the

insured, the insured's federal employer identification number, his policy number, dates of insurance coverage, the name and address of his insurer, and the insurer's identification number. ~~Proof of coverage information filed with the Commission by an insurance carrier or rate service organization on behalf of an employer shall in no event be aggregated by the Commission with the proof of coverage information filed by or on behalf of other employers.~~ Every employer who has complied with the foregoing provision and has subsequently cancelled his insurance or his membership in a licensed group self-insurance association shall immediately notify the Workers' Compensation Commission of such cancellation, the date thereof and the reasons therefor. Every insurance carrier or group self-insurance association shall in like manner notify the Workers' Compensation Commission immediately upon the cancellation of any policy issued by it or any membership agreement, whichever is applicable, under the provisions of this title, except that a carrier or group self-insurance association need not set forth its reasons for cancellation unless requested by the Workers' Compensation Commission.

...

HB 558 amends and reenacts **sections 65.2-605. Liability of employer for medical services ordered by Commission; fee schedules for medical services; malpractice; assistants-at-surgery; coding** and **65.2-605.1. Prompt payment; limitation on claims** of the Virginia Workers' Compensation Act 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:

...

"Medical community" means one of the following six regions of the Commonwealth:

1. Northern region, consisting of the area for which three-digit ZIP code prefixes 201 and 220 through 223 have been assigned by the U.S. Postal Service.
2. Northwest region, consisting of the area for which three-digit ZIP code prefixes 224 through 229 have been assigned by the U.S. Postal Service.
3. Central region, consisting of the area for which three-digit ZIP code prefixes 230, 231, 232, 238, and 239 have been assigned by the U.S. Postal Service.
4. Eastern region, consisting of the area for which three-digit ZIP code prefixes 233 through 237 have been assigned by the U.S. Postal Service.
5. Near Southwest region, consisting of the area for which three-digit ZIP code prefixes 240, 241, 244, and 245 have been assigned by the U.S. Postal Service.
6. Far Southwest region, consisting of the area for which three-digit ZIP code prefixes 242, 243, and 246 have been assigned by the U.S. Postal Service.

The applicable community for providers of medical services rendered in the Commonwealth shall be determined by the zip code of the location where the services were rendered. The applicable community for providers of medical services rendered outside of the Commonwealth shall be determined by the zip code of the principal place of business of the employer if located in the Commonwealth or, if no such location exists, the zip code of the location where the Commission hearing regarding a dispute concerning the services would be conducted.

...

B. The pecuniary liability of the employer for a:

1. Medical, surgical, and hospital service herein required when ordered by the Commission that is provided to an injured person prior to the transition date, regardless of the date of injury, shall be limited absent a contract providing otherwise, to such charges as prevail in the same community for similar treatment when such treatment is paid for by the injured person. As used in this subdivision, "same community" for providers of medical services rendered outside of the Commonwealth shall be deemed to be the principal place of business of the employer if located in the Commonwealth or, if no such location exists, the location where the Commission hearing regarding the dispute is conducted;

...

§ 65.2-605.1. Prompt payment; limitation on claims.

...

~~G. Any health care provider located outside of the Commonwealth who provides health care services under the Act to a claimant shall be reimbursed as provided in this section, and the "same community," as used in subdivision B 1 of § 65.2-605 for treatment provided prior to the transition date as defined in subsection A of § 65.2-605, shall be deemed to be the principal place of business of the employer if located in the Commonwealth or, if no such location exists, then the location where the Commission hearing regarding the dispute is conducted.~~

~~H. The Commission, by January 1, 2016, shall establish a schedule pursuant to which employers, employers' workers' compensation insurance carriers, and providers of workers' compensation medical services shall be required, by a date determined by the Commission that is no earlier than July 1, 2016, and no later than December 31, 2018, to adopt and implement infrastructure under which (i) providers of workers' compensation medical services (providers) shall submit their billing, claims, case management, health records, and all supporting documentation electronically to employers or employers' workers' compensation insurance~~

carriers, as applicable (payers) and (ii) payers shall return actual payment, claim status, and remittance information electronically to providers that submit their billing and required supporting documentation electronically. The Commission shall establish standards and methods for such electronic submissions and transactions that are consistent with International Association of Industrial Accident Boards and Commission Medical Billing and Payment guidelines. The Commission shall determine the date by which payers and providers shall be required to adopt and implement the infrastructure, which determinations shall be based on the volume and complexity of workers' compensation cases in which the payer or provider is involved, the resources of the payer or provider, and such other criteria as the Commission determines to be appropriate.

FEDERAL ISSUES

Issue	Update
Terrorism Insurance Data Calls	NCCI has been working with the US Department of the Treasury's Federal Insurance Office (FIO) and the National Association of Insurance Commissioners (NAIC) on their respective terrorism insurance coverage data calls since they began in 2016. Each entity had previously undertaken separate data calls to which the industry was required to respond. NCCI was designated by both FIO and the NAIC as the sole source for the workers compensation data in each call in 2016 and 2017, which relieved individual carriers from having to provide workers compensation data. For the 2018 data calls, FIO and the NAIC are working to converge their respective data calls into a single format. NCCI will continue to satisfy the workers compensation portion of the combined data call and carriers will not need to provide any data. Carriers will complete the converged template for the other covered Terrorism Risk Insurance Reauthorization Act (TRIPRA) lines of insurance.
State Regulatory Authority	The US House of Representatives Financial Services Committee has passed HR 3746 , the Business of Insurance Regulatory Reform Act of 2017. This measure affirms the primacy of state insurance regulations and clarifies that insurance carriers that are regulated by a state insurance regulator are no longer subject to Consumer Financial Protection Bureau (CFPB) authority, unless otherwise subject to the CFPB Act, in which case the CFPB must construe its authority narrowly.

The bills included in the following section have been filed, but have not yet passed the first chamber.

STATE LEGISLATIVE ACTIVITY

State	Update
Alabama	<p>HB 41 provides that a retired certified firefighter would receive supplemental insurance coverage or reimbursement of actual expenses for medical treatment related to a diagnosis of cancer when the cancer was considered an occupational disease and is diagnosed within 10 years of the firefighter's retirement. The costs would be reimbursable if the expenses were not covered by the firefighter's health insurance or Medicare. The costs of this supplemental insurance coverage would be paid by the employer from which the firefighter retired.</p> <p>HB 192 allows benefits payable to a surviving spouse of a law enforcement officer or firefighter killed in the line of duty to continue even if the spouse remarries. (Currently, benefits cease upon the surviving spouse's remarriage or at the expiration of 500 weeks, whichever is earlier.) The measure also permits payment of benefits to a surviving dependent child of a law enforcement officer or firefighter killed in the line of duty to continue until the child reaches the age of majority. (Currently, benefits end upon the child reaching the age of majority or expiration of 500 weeks, whichever is earlier.)</p>
Florida	<p>SB 376 revises workers compensation standards for determining benefits for employment-related mental or nervous injuries of law enforcement officers, firefighters, emergency medical technicians, paramedics, and first responders. Generally, the bill will increase the likelihood of compensability for workers compensation indemnity benefits for mental or nervous injuries of first responders or post-traumatic stress disorder (PTSD) of law enforcement officers, firefighters, emergency medical technicians, or paramedics.</p> <p><i>NCCI estimates that, if enacted, amended SB 376 may result in an indeterminate increase in workers compensation (WC) system costs in Florida. Much of the cost impact to first responders would be felt by governmental entities who are typically the employers of such professions. However, the estimated impact on overall WC system costs would be expected to be minimal, since data reported to NCCI shows that first responders represent approximately 2% of statewide losses in Florida.</i></p> <p>Other measures introduced this session include:</p> <ul style="list-style-type: none"> • HB 227/HB 629/SB 126, relating to workers compensation benefits for first responders • HB 793/SB 280, concerning telehealth

	<ul style="list-style-type: none"> • HB 1235/SB 1866, dealing with Loss-Sensitive Workers Compensation Insurance Programs • HB 1381, in part, adding loss costs for purposes of making rates for workers compensation and employer liability insurance • HB 6075/SB 1452, relating to nonjoinder of insurers • SB 258, prohibiting attorney fees paid under the Workers Compensation Law and the Florida Insurance Code from being included in an insurer’s rate base or used to justify a rate or rate change • SB 1634, authorizing the consumer advocate appointed by the Chief Financial Officer to intervene as a party in certain proceedings relating to the regulation of workers compensation insurance • SB 1668, requiring insurers filing rates with the Office of Insurance Regulation to provide specified information and projections relating to claim litigation in their rate filings
Hawaii	<p>There are several topics generating workers compensation-related legislation this session, including:</p> <ul style="list-style-type: none"> • Provision of medical treatment while a claim is being contested (HB 1778, HB 2116 and SB 2181) • Independent medical examinations (HB 1694, SB 253, SB 731, and SB 1116) • Prescription drug reimbursement (HB 1631, SB 330, SB 338, SB 983, and SB 2358) <p>Numerous measures have also been introduced dealing with opioid prescriptions and addressing administration of the state’s existing provisions for medical marijuana production, use, and distribution.</p>
Indiana	<p>There have been several medical marijuana bills filed, including:</p> <ul style="list-style-type: none"> • HB 1041, permitting a “qualifying patient” to use medical marijuana under certain circumstances. The bill would require the state Department of Health to promulgate rules regarding use, distribution, cultivation, production, and testing of medical marijuana. The Department would also be tasked with developing a medical marijuana registry. • HB 1106, allowing persons with serious medical conditions to cultivate and use medical marijuana. The state Department of Health would be charged with implementing and enforcing the program. • SB 307 establishing a medical marijuana program permitting caregivers and patients with a physician recommendation to possess a certain quantity of marijuana for treatment of certain medical conditions, and further establishing a department of marijuana enforcement (DOME) which would oversee the program. <p>Other measures filed for consideration this session include:</p> <ul style="list-style-type: none"> • SB 249, allowing the state Department of Revenue, Department of Labor, and Department of Workforce Development to issue subpoenas for witnesses and records as part of investigations of suspected misclassification of construction contractors. It would also permit the Worker’s Compensation Board to issue a stop work order against an uninsured employer. • SB 277, exempting from workers compensation coverage members of certain religious sects who meet certain requirements and obtain a certificate of exemption from the Worker’s Compensation Board. • SB 369, requiring that the Commissioner of Insurance adopt rules for exclusive use of a closed drug formulary beginning July 1, 2020. The drug formulary used would be the formulary published to the Official Disability Guidelines (ODG) Workers’ Compensation Drug Formulary Appendix A published by MCG Health.
Kansas	<p>HB 2487 limits workers compensation experience modification increases resulting from motor vehicle accidents in which neither an employee of the employer or the employer itself was at fault. The measure provides that the insurance commissioner shall promulgate rules and regulations setting forth a loss limitation for any experience rating modifications resulting from such an accident.</p> <p><i>NCCI is analyzing this measure to determine potential cost impact.</i></p>
Kentucky	<p>SB 77 broadens the coverage available for government-employed rescue squad employees under workers compensation law. The bill repeals the existing exclusion from coverage when rescue squad workers are engaged in a mission where the primary purpose is providing emergency medical care or first aid.</p>
Mississippi	<p>HB 1137/SB 2311 provide that a notice of nonrenewal is not required when a replacement policy form is issued by the same insurer or when an insured is transferred to a licensed affiliate of the insurer, so long as the transfer or replacement results in the same or substantially similar coverage. When a replacement policy is issued, the insurer must mail or deliver written notice to the policyholder of any terms or conditions that are less favorable to the policyholder 30 days in advance of the effective date of renewal. Any transferring insurer must also provide notice to the Mississippi Workers Compensation Commission and the Mississippi Insurance Department of the transfer 45 days before notifying the policyholder; and the policyholder must be given notice of the transfer at least 30 days before the expiration of the policy term.</p>

	<p>HB 1 decreases the number of workers that would subject an employer to workers compensation laws from the current five employees to one employee. Additionally, the measure prohibits a waiting period for the provision of medical benefits and requires permanent total disability benefits to be paid as an increment of the average salary of the injured employee with increases over time for cost of living and potential earnings capacity.</p>
Missouri	<p>HB 1448 allows for the legalization of recreational marijuana.</p> <p>HB 1554 permits the use of medical cannabis for certain ailments.</p> <p>HB 1693 revises definitions and compensability relative to occupational disease, repealing most of the optional benefit for mesothelioma risk enacted in 2013 legislation and eliminating the Mesothelioma Risk Management fund.</p> <p><i>NCCI is analyzing this measure to determine potential cost impact.</i></p>
Nebraska	<p>LB 858 provides for an annual adjustment for Total Disability income benefits in proportion to the annual increase, if any, to the state’s average weekly wage.</p> <p><i>NCCI is analyzing this measure to determine potential cost impact.</i></p> <p>LB 928, in part, amends the burial benefit from the current \$10,000 to an amount equal to 14 times the state average weekly wage.</p> <p><i>NCCI is analyzing this measure to determine potential cost impact.</i></p>
New Hampshire	<p>HB 1508 increases the indemnity benefit rate and implements a medical fee schedule.</p> <p><i>NCCI analysis of this measure indicates an impact on workers compensation system costs ranging from –7.6% to –9.2%.</i></p> <p>HB 1711 establishes coverage for addiction rehabilitation for injured workers who develop a dependency resulting from the treatment of their injury.</p> <p><i>NCCI analysis of this measure indicates that the impact on workers compensation system costs is uncertain but would result in an increase.</i></p> <p>SB 352 expands the availability of independent medical exams to all injured workers, not just those who are part of a managed care plan.</p> <p><i>NCCI analysis of this measure indicates that the impact on workers compensation system costs is uncertain but could result in an increase.</i></p> <p>SB 553 establishes workers’ compensation claims for mental conditions resulting from PTSD for firefighters, police officers, and rescue or ambulance workers when diagnosed by a mental health professional. Further, the bill creates a presumption in favor of public safety employees diagnosed with PTSD and creates new criteria as the basis for such claims. The measure also updates the definition of personal injury.</p>
Oklahoma	<p>Several measures have been prefiled for this legislative session:</p> <ul style="list-style-type: none"> • HB 2994 addresses protocol for injury caused by intoxication, temporary partial disability benefit calculations, and Workers Compensation Commission administration and funding • SB 1120 allows for the use of medical marijuana for patients with a “serious condition” as defined in the bill • SB 1340 includes comprehensive workers compensation reform including redefining of terms, provisions of injury and occurrence, codifying language resulting from previous court decisions, codifying the use of the Sixth Edition <i>AMA Guide</i>, commutation of permanent disability benefits, choice of physician, and occupational disease
Oregon	<p>SB 1535 addresses the methodology of calculating the average weekly wage in order to pay temporary total disability benefits, proposing new methods for calculating the average weekly wage for injured employees with irregular and seasonal earnings.</p>
Tennessee	<p>SB 1521 extends the sunset date of the provision for Bureau of Workers' Compensation for six years, to June 30, 2024.</p> <p>SB 1615 removes the current requirement that every carrier writing workers compensation insurance in Tennessee maintain a claims office in the state, or contract with a claims adjuster located in the state.</p> <p>SB 261 requires all workers compensation cases to first be heard by the Workers’ Compensation Appeals Board prior to being appealed to the state Supreme Court.</p>

Vermont	HB 681 provides for notice at worksites of the requirements regarding employee classification, permits the Department of Labor to enter an employer's premises for the purposes of investigating compliance with the workers compensation and unemployment compensation laws and enhances enforcement penalties. HB 574 amends the definitions related to independent contractors in the workers compensation and unemployment insurance laws.
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STATE COMMITTEE ACTIVITY

State	Update
Idaho	The matter of PTSD benefits for emergency personnel will be discussed at the February 14, 2018, Industrial Commission meeting, which will then determine whether the legislature will consider this benefit change in 2018.
North Carolina	In 2017, the General Assembly instructed the North Carolina Industrial Commission (NCIC) to promulgate rules and guidelines related to the utilization of opioids, benzodiazepines, and other pain management drugs. The proposed rules set forth requirements that doctors must meet when prescribing such drugs. The rules also impose limitations and guidelines that must be followed. Public hearing on the proposal is scheduled for March 2, 2018, and the deadline for comments is March 19. Additional details can be found on the NCIC's website www.ic.nc.gov/proposed10M.Notice-011618.pdf .
Texas	The Texas Department of Insurance is recommending a 15% reduction in the overall level of classification relativities, to be effective July 1, 2018. In developing the proposed relativities, staff included changes resulting from NCCI's Item Filing B-1435—Revisions to Basic Manual Classifications and Appendix E—Classifications by Hazard Group, including Trucking and Towing. A hearing took place on January 25, 2018. The record is open for comments until 5:00 pm on February 1, 2018.

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