LEGISLATIVE ACTIVITY—LEGAL 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 February 9, 2018.

BILLS PASSING SECOND CHAMBER
There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending February 9, 2018.

BILLS PASSING FIRST CHAMBER
The following workers compensation-related bills passed the first chamber within the one-week period ending February 9, 2018.

<table>
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<th>Arizona</th>
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| HB 2047 amends section 23-901. Definitions of the Arizona Revised Statutes, in part, as follows: 23-901. Definitions In this chapter, unless the context otherwise requires: 6. “Employee”, “workman”, “worker” and “operative” means: (q) A working member of a limited liability company who owns less than fifty percent of the membership interest in the limited liability company. (r) A working member of a limited liability company who owns fifty percent or more of the membership interest in the limited liability company may be deemed to be an employee entitled to the benefits provided by this chapter on the written acceptance, by endorsement, of an application for coverage by the working member at the discretion of the insurance carrier for the limited liability company. The basis for computing wages for premium payments and compensation benefits for the working member is an assumed average monthly wage of six hundred dollars or more but not more than the maximum wage provided in section 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the working member is computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the working member at the time of injury. (s) A working shareholder of a corporation who owns less than fifty percent of the beneficial interest in the corporation. (t) A working shareholder of a corporation who owns fifty percent or more of the beneficial interest in the corporation may be deemed to be an employee entitled to the benefits provided by this chapter on the written acceptance, by endorsement, of an application for coverage by the working shareholder at the discretion of the insurance carrier for the corporation. The basis for computing wages for premium payments and compensation benefits for the working shareholder is an assumed average monthly wage of six hundred dollars or more but not more than the maximum wage provided in section 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the working shareholder is based on the lesser of the assumed monthly wage or the actual average monthly wage received by the working shareholder.
the working shareholder is computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the working shareholder at the time of injury.

...
(f) If an employer fails to provide the notice required by subsection (e)(2), the prescribing physician’s request under subsection (d) is considered approved, and reimbursement of the “N” drug prescribed for use by the disabled employee is authorized.

(g) If the third party’s determination under subsection (e) is to deny the prescribing physician’s request to permit the use of an “N” drug:
1. The employer shall notify the prescribing physician and the disabled employee; and
2. The disabled employee may apply to the worker’s compensation board for a final determination concerning the third party’s determination under subsection (e).

(h) Notwithstanding subsections (c) through (f), during a medical emergency, an employee shall receive a drug prescribed for the employee even if the drug is an “N” drug according to the formulary.

Kentucky

HB 220 adds a new section to Chapter 336 of the Kentucky Labor and Human Rights law to read:

(1) As used in this section:

(a) “Marketplace contractor” means a person or entity that enters into an agreement with a marketplace platform to use its digital network or mobile application to receive connections to third party individuals or entities seeking services; and

(b) “Marketplace platform” means a person or entity that:
1. Offers a digital network or mobile application that connects marketplace contractors to third party individuals or entities seeking the type of services offered by a marketplace contractor;
2. Accepts service requests from the public exclusively through its digital network or mobile application and does not accept service requests by telephone, facsimile or in person at a physical retail location; and
3. Does not perform the services offered by the marketplace contractor at or from a physical business location that is operated by the platform in the state.

(2) A marketplace contractor shall not be deemed to be an employee of a marketplace platform for any purpose under state and local laws, regulations, and ordinances, including but not limited to KRS Chapters 336, 341, and 342, so long as:

(a) The marketplace platform and the marketplace contractor agree in writing that the marketplace contractor is an independent contractor with respect to the marketplace platform;

(b) The marketplace platform does not unilaterally prescribe specific hours during which the marketplace contractor must be available to accept service requests from third party individuals or entities submitted solely through the online-enabled application, software, Web site, or system of the marketplace platform;

(c) The marketplace platform does not prohibit the marketplace contractor from using any online-enabled application, software, Web site, or system offered by another marketplace platform;

(d) The marketplace platform does not restrict the marketplace contractor from engaging in another occupation or business;

(e) The marketplace contractor bears all or substantially all of the expenses incurred by the marketplace contractor in performing the services; and

(f) The marketplace platform does not supply instrumentalities or tools for the person doing the work;

(3) For services performed by a marketplace contractor prior to the effective date of this Act, the marketplace contractor shall be treated as an independent contractor of the marketplace platform and not an employee of the marketplace platform if the requirements set forth in subsection (2) of this Act were met at the time at which the services were performed.

(4) This section shall not apply to:

(a) Service performed in the employment of a state or any political subdivision of a state, or in the employ of an Indian tribe, or any instrumentality of a state, any political subdivision of a state or any Indian tribe that is wholly owned by one (1) or more states or political subdivisions of Indian tribes, provided such service is excluded from employment as defined in 26 U.S.C. secs. 3301 to 3311;

(b) Service performed in the employment of a religious, charitable, educational, or other organization that is excluded from employment as defined in 26 U.S.C. secs. 3301 to 3311, solely by reason of 26 U.S.C. sec. 3306(c)(8); or

(c) Services consisting of transporting freight, sealed envelopes, boxes or parcels, or other sealed containers for compensation.

Utah


34A-2-410. Temporary disability—Amount of payments—State average weekly wage defined.

(1) (a) Subject to Subsections (1)(b) and (5), in case of temporary disability, so long as the disability is total, the employee shall receive 66-2/3% of that employee’s average weekly wages at the time of the injury but:
(i) not more than a maximum of 100% of the state average weekly wage at the time of the injury per week; and
(ii) (A) subject to Subsections (1)(a)(iii)(B) and (C), not less than a minimum of $45 per week plus:
   (I) $5 $20 for a dependent spouse; and
   (II) $5 $20 for each dependent child under the age of 18 years, up to a maximum of four dependent children;

(1) If the injury causes temporary partial disability for work, the employee shall receive weekly compensation equal to:
   (a) 66-2/3% of the difference between the employee’s average weekly wages before the accident and the weekly wages the employee is able to earn after the accident, but not more than 100% of the state average weekly wage at the time of injury; plus
   (b) $5 $20 for a dependent spouse and $5 $20 for each dependent child under the age of 18 years, up to a maximum of four such dependent children, but only up to a total weekly compensation that does not exceed 100% of the state average weekly wage at the time of injury.

34A-2-412. Permanent partial disability—Scale of payments.
(1) An employee who sustained a permanent impairment as a result of an industrial accident and who files an application for hearing under Section 34A-2-417 may receive a permanent partial disability award from the commission.
(2) Weekly payments may not in any case continue after the disability ends, or the death of the injured person.
(3) (a) In the case of the injuries described in Subsections (4) through (6), the compensation shall be 66-2/3% of that employee’s average weekly wages at the time of the injury, but not more than a maximum of 66-2/3% of the state average weekly wage at the time of the injury per week and not less than a minimum of $45 per week plus $5 $20 for a dependent spouse and $5 $20 for each dependent child under the age of 18 years, up to a maximum of four dependent children, but not to exceed 66-2/3% of the state average weekly wage at the time of injury per week.
   (b) The compensation determined under Subsection (3)(a) shall be:
      (i) paid in routine pay periods not to exceed four weeks for the number of weeks provided for in this section; and
      (ii) in addition to the compensation provided for temporary total disability and temporary partial disability.

34A-2-413. Permanent total disability—Amount of payments—Rehabilitation.

(2) For permanent total disability compensation during the initial 312-week entitlement, compensation is 66-2/3% of the employee’s average weekly wage at the time of the injury, limited as follows:
   (a) compensation per week may not be more than 85% of the state average weekly wage at the time of the injury;
   (b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the sum of $45 per week and:
      (A) $5 $20 for a dependent spouse; and
      (B) $5 $20 for each dependent child under the age of 18 years, up to a maximum of four dependent minor children; and
      (ii) the amount calculated under Subsection (2)(b)(i) may not exceed:
         (A) the maximum established in Subsection (2)(a); or
         (B) the average weekly wage of the employee at the time of the injury; and
         (c) after the initial 312 weeks, the minimum weekly compensation rate under Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest dollar.

SB 75 amends various sections of the Utah Workers’ Compensation Act as follows:

Unless otherwise specified, as used in this title:
(1) “Certified mail” means a method of mailing by any carrier that is accompanied by proof of delivery.
(2) “Commission” means the Labor Commission created in Section 34A-1-103.
(3) “Commissioner” means the commissioner of the commission appointed under Section 34A-1-201.

34A-2-206. Furnishing information to division—Employers’ annual report—Rights of division—Examination of employers under oath—Penalties.

(a) The division may seek a penalty of not to exceed $500 for each offense to be recovered in a civil action brought by the commission or the division on behalf of the commission against an employer who:
   (i) within a reasonable time to be fixed by the division and after the receipt of written notice signed by the director or the director’s designee specifying the information demanded and served by certified mail or personal service, refuses to furnish to the division:
      (A) the annual statement required by this section; or
other information as may be required by the division under this section; or
(ii) willfully furnishes a false or untrue statement.
(b) All penalties collected under Subsection (4)(a) shall be paid into the Employers’ Reinsurance Fund created in Section 34A-2-702.

(1) (a) (i) An employer who fails to comply, and every officer of a corporation or association that fails to comply, with Section 34A-2-201 is guilty of a class B misdemeanor.
(ii) Each day’s failure to comply with Subsection (1)(a)(i) is a separate offense.
(b) If the division sends written notice of noncompliance by certified mail or personal service to the last-known address of an employer, a corporation, or an officer of a corporation or association, and the employer, corporation, or officer does not within 10 days of the day on which the notice is delivered provide to the division proof of compliance, the notice and failure to provide proof constitutes prima facie evidence that the employer, corporation, or officer is in violation of this section.
(2) (a) If the division has reason to believe that an employer is conducting business without securing the payment of compensation in a manner provided in Section 34A-2-201, the division may give notice of noncompliance by certified mail or personal service to the following at the last-known address of the following:
...

34A-2-211. Notice of noncompliance to employer—Enforcement power of division—Penalty.
(1) (a) In addition to the remedies specified described in Section 34A-2-210, if the division has reason to believe that an employer is conducting business without securing the payment of benefits in a manner provided in accordance with Section 34A-2-201, the division may give that employer shall deliver written notice of the noncompliance to the employer by certified mail or personal service to the employer’s last-known address of the employer.
(b) If the employer does not remedy the default demonstrate compliance with Section 34A-2-201 to the division within 15 days after the day on which the notice is delivered, the division may shall issue an order requiring the employer to appear before the division and show cause why the employer should not be ordered to comply with Section 34A-2-201.
(c) If the division finds that an employer has failed to provide for the payment of benefits in a manner provided in comply with Section 34A-2-201, the division may shall require the employer to comply with Section 34A-2-201.
(2) (a) Notwithstanding Subsection (1) Except as provided in Subsection (2)(d), after the division makes a finding of noncompliance described in Subsection (1)(c), the division may shall, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, and this Subsection (2), impose a penalty against the employer under this Subsection (2) ;
(i) subject to Title 63G, Chapter 4, Administrative Procedures Act; and
(ii) if the division believes that an employer of one or more employees is conducting business without securing the payment of benefits in a manner provided in Section 34A-2-201.
(b) The Except as provided in Subsection (2)(e), a penalty imposed under Subsection (2)(a) shall be the greater of:
(i) $1,000; or
(ii) three times the amount of the premium the employer would have paid for workers’ compensation insurance based on the rate filing of the workers’ compensation insurance carrier that provides workers’ compensation insurance under Section 31A-22-1001, during the period of noncompliance.
(c) For purposes of Subsection (2)(b)(ii):
(i) the premium is calculated by applying rates and rate multipliers to the payroll basis under Subsection (2)(c)(ii), using the highest rated employee class code applicable to the employer’s operations; and
(ii) the payroll basis is 150% of the state’s average weekly wage multiplied by the highest number of workers employed by the employer during the period of the employer’s noncompliance multiplied by the number of weeks of the employer’s noncompliance up to a maximum of 156 weeks.
(d) The division may waive the penalty described in this Subsection (2) if:
(i) (A) the finding of noncompliance is the first finding of noncompliance against the employer under this section;
(B) the period of noncompliance was less than 180 days;
(C) the employer is currently in compliance with Section 34A-2-201; and
(D) no injury was reported to the division in accordance with Section 34A-2-407 during the period of noncompliance; or
(ii) (A) the employer is a corporation;
(B) each employee of the corporation is an officer of the corporation; and
(C) the employer is currently in compliance with Section 34A-2-201.
(e) (i) The division may reduce the penalty described in this Subsection (2) if:
(A) the finding of noncompliance is the first finding of noncompliance against the employer under this section;
(B) the employer is currently in compliance with Section 34A-2-201; and
(C) no injury was reported to the division in accordance with Section 34A-2-407 during the period of noncompliance; and
(D) upon request from the division, the employer submits to the division the employer’s payroll records related to the period of noncompliance.

(ii) (A) The reduced penalty shall be an amount equal to the premium the employer would have paid for workers’ compensation insurance based on the rate filing of the workers’ compensation insurance carrier that provides workers’ compensation insurance under Section 31A-22-1001, during the period of noncompliance.

(B) The division shall calculate the amount described in Subsection (2)(e)(ii)(A) using the payroll records described in Subsection (2)(e)(ii)(D).

(f) The division may reinstate the full penalty amount against an employer if the Uninsured Employers’ Fund is ordered to pay benefits for an injury that occurred but was not reported during the period of noncompliance for which the division waived or assessed a reduced penalty under this subsection.

... (5) An administrative action issued by the division under this section shall:
(a) be in writing;
(b) be sent by certified mail or personal service to the last-known address of the employer;
(c) state the findings and administrative action of the division; and
(d) specify its effective date, which may be:
(i) immediate; or
(ii) at a later date.
...

34A-6-303. Enforcement procedures—Notification to employer of proposed assessment—Notification to employer of failure to correct violation—Contest by employer of citation or proposed assessment—Procedure.

(1) (a) If the division issues a citation under Subsection 34A-6-302(1), it shall within a reasonable time after inspection or investigation, notify the employer by certified mail or personal service of the assessment, if any, proposed to be assessed under Section 34A-6-307 and that the employer has 30 days to notify the Division of Adjudication that the employer intends to contest the citation, abatement, or proposed assessment.

(b) If, within 30 days from the receipt of the notice issued by the division, the employer fails to notify the Division of Adjudication that the employer intends to contest the citation, abatement, or proposed assessment, and no notice is filed by any employee or representative of employees under Subsection (3) within 30 days, the citation, abatement, and assessment, as proposed, is final and not subject to review by any court or agency.

(2) (a) If the division has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the time period permitted, the division shall notify the employer by certified mail or personal service:
(i) of the failure;
(ii) of the assessment proposed to be assessed under Section 34A-6-307; and
(iii) that the employer has 30 days to notify the Division of Adjudication that the employer intends to contest the division’s notification or the proposed assessment.
...

SB 92 repeals and reenacts section 34A-1-309. Attorney fees, and amends sections 34A-2-413. Permanent total disability—Amount of payments—Rehabilitation, and 34A-2-801. Initiating adjudicative proceedings—Procedure for review of administrative action of the Utah Labor Code as follows:

34A-1-309. Attorney fees.

(1) In a case before the commission in which an attorney is employed, the commission has full power to regulate and fix the fees of the attorney.

(2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, an attorney may file an application for hearing with the Division of Adjudication to obtain an award of attorney fees as authorized by this section and commission rules.

(3) (a) The commission may award reasonable attorney fees on a contingency basis when there is generated:
(i) disability or death benefits; or
(ii) interest on disability or death benefits.

(b) An employer or its insurance carrier shall pay attorney fees awarded under Subsection (3)(a) out of the award of:
(i) disability or death benefits; or
(ii) interest on disability or death benefits.

(4) (a) In addition to the attorney fees ordered under Subsection (3), the commission may award reasonable attorney fees on a contingency basis for medical benefits ordered paid in the same percentages for an award under Subsection (3) provided for in rule made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if:
(i) medical benefits are not approved by:
(A) the employer or its insurance carrier; or
(B) the Uninsured Employer’s Fund created in Section 34A-2-704;
(ii) after the employee employs an attorney, medical benefits are paid or ordered to be paid;

...
(iii) the commission’s informal dispute resolution mechanisms are reasonably used by the parties before adjudication; and
(iv) the sum of the following at issue in the adjudication of the medical benefit claim is less than $4,000:
(A) disability or death benefits; and
(B) interest on disability or death benefits.
(b) An employer or its insurance carrier shall pay attorney fees awarded under Subsection (4)(a) in addition to the payment of medical benefits ordered.
For an adjudication of a workers’ compensation claim where only medical benefits are at issue, reasonable attorney fees may be awarded in accordance with and to the extent allowed by rule adopted by the Utah Supreme Court and implemented by the Labor Commission.

34A-2-413. Permanent total disability—Amount of payments—Rehabilitation

... (10) ... (g) In accordance with Section 34A-1-309, the administrative law judge may award reasonable attorney fees to an attorney retained by an employee to represent the employee’s interests with respect to reexamination of the permanent total disability finding, except if the employee does not prevail, the attorney fees shall be set at $1,000. The attorney fees awarded shall be paid by the employer or the employer’s insurance carrier in addition to the permanent total disability compensation benefits due.

(b) (g) During the period of reexamination or adjudication, if the employee fully cooperates, each insurer, self-insured employer, or the Employers’ Reinsurance Fund shall continue to pay the permanent total disability compensation benefits due the employee.

(11) If any provision of this section, or the application of any provision to any person or circumstance, is held invalid, the remainder of this section is given effect without the invalid provision or application.

34A-2-801. Initiating adjudicative proceedings—Procedure for review of administrative action.

(1) ... (c) A person providing goods or services described in Subsections 34A-2-407(12) and 34A-3-108(13) may file an application for hearing in accordance with Section 34A-2-407 or 34A-3-108.

(d) An attorney may file an application for hearing in accordance with Section 34A-1-309.

(2) (a) Unless all parties agree to the assignment in writing, the Division of Adjudication may not assign the same administrative law judge to hear a claim under this section by an injured employee if the administrative law judge previously heard a claim by the same injured employee for a different injury or occupational disease.

...