



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 February 16, 2018.

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending February 16, 2018.

Utah

SB 75 was:

- Passed by the first chamber on February 6, 2018
- Included in NCCI's February 16, 2018 **Legislative Activity Report** (RLA-2018-07)
- Passed by the second chamber on February 14, 2018

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

34A-1-102. Definitions.

Unless otherwise specified, as used in this title:

~~(1)~~ (1) "Certified mail" means a method of mailing by any carrier that is accompanied by proof of delivery.

~~(1)~~ ~~(2)~~ (2) "Commission" means the Labor Commission created in Section 34A-1-103.

~~(2)~~ ~~(3)~~ (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.

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(4) (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

(B) 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.

34A-2-209. Employer's penalty for violation—Notice of noncompliance—Proof required—Admissible evidence—Criminal prosecution.

(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;

(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)(i)(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.

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(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.

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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.

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SB 92 was:

- Passed by the first chamber on February 7, 2018
- Included in NCCI's February 16, 2018 **Legislative Activity Report** (RLA-2018-07)
- Passed by the second chamber on February 14, 2018

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

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~~(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.~~

~~(h)-(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.

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BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending February 16, 2018.

Missouri

HB 1859 adds new **section 44.091** to the Missouri Annotated Statutes as follows:

44.091.

1. For purposes of this section, the following terms mean:

(1) "Law enforcement officer", any public servant having both the power and duty to make arrests for violations of any ordinance or law of this state, and any federal law enforcement officer authorized to carry firearms and to make arrests for violations of the laws of the United States;

(2) "Requesting entity", any law enforcement agency or entity within this state empowered by law to maintain a law enforcement agency;

(3) "Sending agency", a law enforcement agency that has been requested to provide assistance by a requesting entity.

2. Whenever any law enforcement agency enters into a mutual aid arrangement or agreement with another entity as provided in subsection 44.090, any law enforcement officer assisting the requesting entity shall have the same powers of arrest as he or she has in his or her own jurisdiction and the same powers arrest as officers of the requesting entity. Such powers shall be limited to the location where such services are requested to be provided, for the duration of the specific event, and while acting under the direction of the requesting entity's chief law enforcement officer or his or her designee.

3. Any law enforcement officer assisting a requesting entity under a mutual aid arrangement or agreement under section 44.090 shall be deemed an employee of the sending agency and shall be subject to the workers' compensation, overtime, and expense reimbursement provisions provided to him or her as an employee of the sending agency.

4. Any law enforcement officer assisting a requesting entity under a mutual aid arrangement or agreement under section 44.090 shall enjoy the same legal immunities as an officer of the requesting entity, including sovereign immunity, official immunity, and the public duty doctrine.

5. Nothing in this section shall be construed to limit the powers of arrest provided to a law enforcement officer by any other law.

Tennessee

SB 1967 adds new **Chapter 10 to Title 50 Employer and Employee** of the Tennessee Code as follows:

50-10-101.

- (1) “Marketplace contractor” means any individual, corporation, partnership, sole proprietorship, or other business entity that:
(A) Enters into an agreement with a marketplace platform to use the platform’s online-enabled application, software, website, or system to be given an assignment, or otherwise receive connections, to third-party individuals or entities seeking its services in this state; and
(B) In return for compensation from the third-party or marketplace platform, offers or provides services to third-party individuals or entities upon being given an assignment or connection through the marketplace platform’s online-enabled application, software, website, or system; and
(2) “Marketplace platform” means a corporation, partnership, sole proprietorship, or other business entity operating in this state that offers an online-enabled application, software, website, or system that enables the provision of services by marketplace contractors to third-party individuals or entities seeking the services.

50-10-102.

(a) Notwithstanding any law to the contrary, a marketplace contractor is an independent contractor, and not an employee, of the marketplace platform for all purposes under state and local laws, rules, and ordinances, including, but not limited to, chapters 6 and 7 of this title, if all of the following conditions are met:

- (1) The marketplace platform and marketplace contractor agree in writing that the contractor is an independent contractor with respect to the marketplace platform;
(2) 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. If a marketplace contractor posts the contractor’s voluntary availability to provide services, the posting does not constitute a prescription of hours for purposes of this subdivision (a)(2);
(3) The marketplace platform does not prohibit the marketplace contractor from using any online-enabled application, software, website, or system offered by other marketplace platforms;
(4) The marketplace platform does not restrict the marketplace contractor from engaging in any other occupation or business;
(5) The marketplace platform does not require marketplace contractors to use specific supplies or equipment; and
(6) The marketplace platform does not provide on-site supervision during the performance of services by a marketplace contractor.
(b) This section does not apply to any service that is the type of service identified in 26 U.S.C. § 3306(c)(7) or (c)(8). 50-10-103.

50-10-103.

Nothing in this chapter applies to a transportation network company, as defined in § 65-15-301.

Utah

HB 163, in part, creates new *chapter 62. Prescription Drug Affordability Act* in the Utah Health Code to require the Department of Health to:

- Design a prescription drug importation program
- Apply for approval of the prescription drug importation program
- Implement the provisions of the program if the program is approved
- Study how the state can obtain approval for the program if approval is denied

In addition, **HB 163** amends several sections of the Utah Code Annotated to:

- Describe the requirements of the prescription drug importation program
- Require pharmaceutical manufacturers to provide information to the state about certain price increases for prescription drugs
- Modify the Utah Antitrust Act to make certain anticompetitive activities illegal
- Create a sunset date for the provisions of this bill

HB 288 adds new *section 34A-2-114. Unlawful interference—Penalties* to the Utah Workers’ Compensation Act as follows:

34A-2-114. Unlawful interference—Penalties.

(1) An employer may not knowingly or intentionally:

- (a) impede or diminish an employee’s efforts to make a claim or receive workers’ compensation benefits under this chapter or Chapter 3, Utah Occupational Disease Act; or
(b) intimidate, coerce, or harass an employee with the intent of preventing the employee from making a claim or receiving workers’ compensation benefits under this chapter or Chapter 3, Utah Occupational Disease Act.

(2) An employer may not suspend, discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee solely because the employee:

- (a) claims or attempts to claim workers’ compensation benefits under this chapter or Chapter 3, Utah Occupational Disease Act;
(b) reports an employer’s noncompliance with a provision of this chapter or Chapter 3, Utah Occupational Disease Act; or
(c) testifies or intends to testify in a workers’ compensation proceeding.

(3) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division may impose a fine of up to \$5,000 against an employer for each violation of Subsection (1) or (2).

(4) The division shall deposit any money collected under this section into the Uninsured Employers' Fund created in Section 34A-2-704.

(5) This section does not affect the rights or obligations of an employee or employer under common law.

West Virginia

SB 341, in part, amends and reenacts *section 23-5-10* and adds *section 23-5-11a* to the Code of West Virginia as follows:

§23-5-10. Appeal from administrative law judge decision to appeal board; appeals to Intermediate Court of Appeals after certain date.

(a) The employer, claimant, Workers' Compensation Commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, may appeal to the appeal board created in §23-5-11 of this code for a review of a decision by an administrative law judge: Provided, That the appeal board created in §23-5-11 of this code has no jurisdiction to hear an appeal of a decision by an administrative law judge entered after June 30, 2019. No appeal or review shall lie unless application therefor be made within ~~thirty~~ thirty 30 days of receipt of notice of the administrative law judge's final action or in any event within ~~sixty~~ sixty 60 days of the date of such final action, regardless of notice and, unless the application for appeal or review is filed within the time specified, no such appeal or review shall be allowed, such time limitation being hereby declared to be a condition of the right of such appeal or review and hence jurisdictional.

(b) An appeal of a final order or decision by the Office of Judges, entered after June 30, 2019, shall be made to the Intermediate Court of Appeals, pursuant to §51-11-1 et seq. of this code.

§23-5-11a. Transfer of jurisdiction of appeals to Intermediate Court of Appeals; termination of board of review.

(a) The Workers' Compensation Board of Review, created in §23-5-11 of this code, has no jurisdiction to review a decision issued by the Office of Judges after June 30, 2019.

(b) The Intermediate Court of Appeals, created in §51-11-1 et seq. of this code, has exclusive appellate jurisdiction over all final orders or decisions issued by the Office of Judges after June 30, 2019.

(c) On or before June 30, 2020, the Workers' Compensation Board of Review shall issue a final decision in, or otherwise dispose of, each and every appeal pending before the board.

(d) Upon the Workers' Compensation Board of Review's disposition of all appeals filed with the board on or before June 30, 2019, the Workers' Compensation Board of Review is terminated.

SB 370 amends and reenacts *section 23-2-1a* of the Code of West Virginia as follows:

§23-2-1a. Employees subject to chapter; exception.

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(c) Persons who volunteer time or services, without wages, for a ski area operator, or a program or activity sponsored by a ski area operator, are not employees under this chapter and are not entitled to benefits for injuries, notwithstanding the fact that they receive noncash remunerations. Notice in writing shall be given by the ski area operator to all persons who volunteer time or services for a ski area operator that volunteering of time or services is not employment for the purposes of this chapter. For purposes of this subsection, a "ski area operator" shall have the meaning as set forth in §20-3A-2 of this code.

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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HI	Carolyn Pearl	808-524-6239
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DC, MD, VA, WV	David Benedict	804-380-3005
FL	Dawn Ingham	561-893-3165
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