



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

The following relevant workers compensation-related bills were enacted within the one-week period ending March 16, 2018.

Arizona

HB 2025 was:

- Passed by the first chamber on January 29, 2018
- Included in NCCI's February 9, 2018 **Legislative Activity Report** (RLA-2018-06)
- Passed by the second chamber on March 13, 2018
- Enacted on March 16, 2018, with a retroactive effective date of February 28, 2018

HB 2025 amends **section 20-359. Deviations from filed workers' compensation rates** of the Arizona Revised Statutes as follows:
20-359. Deviations from filed workers' compensation rates

A. Every insurer shall adhere to the filings made by the rating organization of which it is a member, except that any member insurer may file with the director:

1. Up to six uniform percentage deviations that decrease or increase the statewide rate portion of the rating organization's rate filing. If more than one deviation is filed by an insurer, each deviation must be established consistent with the underwriting rules that are based on criteria that would lead to a logical distinction of potential risk.

2. A subclassification rate related rule that deviates from the rules or schedule rating plan filed by the insurer's rating organization. An insurer shall not simultaneously apply a deviation and a schedule rating plan ~~within~~ to the insurance company insured risk.

B. Each deviation filed shall be on file with the director for a waiting period of at least thirty days before it becomes effective. On written application by the insurer making the filing, the director may authorize a filing to become effective before the waiting period expires. A deviation that is filed pursuant to subsection A, paragraph 1 of this section and that is not disapproved by the director expires the following December 31 at midnight in this state unless the director terminates the deviation sooner. A deviation that is filed pursuant to subsection A, paragraph 2 of this section continues until the insurer withdraws the deviation or the director determines that the deviation no longer meets the standards prescribed in section 20-356, paragraph 1. At any time the director may require an insurer to actuarially support a deviation. The insurer that files the deviation shall simultaneously send a copy of the filing to the rating organization of which it is a member and to any designated rating organization.

C. A rating organization shall notify the director if the organization disapproves any deviation relating to workers' compensation insurance. The director shall notify the industrial commission of the disapproval within ten days after receipt of the disapproval from the rating organization.

Sec. 2. Retroactivity

HB 2025 also includes the following clause:

Section 20-359, Arizona Revised Statutes, as amended by this act, applies retroactively to workers' compensation insurance rate filings made by an insurer or an insurance rating organization from and after February 28, 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
- Included in NCCI's February 23, 2018 **Legislative Activity Report** (RLA-2018-08)
- Enacted on May 16, 2018, with an effective date of May 7, 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) "Certified mail" means a method of mailing by any carrier that is accompanied by proof of delivery.

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

~~(2)~~ (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.

...

(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.

...

(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.

...

BILLS PASSING SECOND CHAMBER

No relevant workers compensation-related bill passed the second chamber within the one-week period ending March 16, 2018.

BILLS PASSING FIRST CHAMBER

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

Alabama

SB 283 amends **sections 27-42-3, 27-42-5, 27-42-8, 27-42-11, and 27-42-12** of the Alabama Insurance Code, in part, as follows:

Section 27-42-3

Applicability of chapter.

This chapter shall apply to all kinds of direct insurance, ~~except life, annuities, disability, accident and health, title, surety, credit, mortgage guaranty, and ocean marine insurance.~~ excluding all of the following:

(1) Life, annuity, health, or disability insurance.

(2) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.

(3) Fidelity or surety bonds, or any other bonding obligations.

(4) Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction.

(5) Insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, or indemnification for repair, replacement, or service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits.

(6) Title insurance.

(7) Ocean marine insurance.

(8) Any insurance provided by or guaranteed by the government.

Section 27-42-5

Definitions.

As used in this chapter, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

...

(4) CLAIMANT. Any insured making a first party claim or ANY person instituting a liability claim. The term does not include a person who is an affiliate of an insolvent insurer.

...

~~(6)~~ (7) COVERED CLAIM. An unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage and not in excess of, the applicable limits of an insurance policy to which this chapter applies, issued by an insurer, if such insurer becomes an insolvent insurer after January 1, 1981, and (i) the claimant or insured is a resident of this state at the time of the insured event; or (ii) the property from which the claim arises is permanently located in this state. "Covered claim" shall The term does not include any of the following:

a. Any amount due any reinsurer, insurer, insurance pool, self-insurer, or underwriting association, as subrogation recoveries or otherwise, nor shall "covered claim" include any .

b. Any first party claims by a "high net worth insured."

c. Any amount awarded as punitive or exemplary damages except for punitive damages awarded under the Alabama Wrongful Death Act.

d. Any amount sought as a return of premium under any retrospective rating plan.

...

(10) INSURED. Any named insured, additional insured, vendor, lessor, or other party identified as an insured under a policy.

...

Section 27-42-8

Powers and duties.

(a) The association shall:

(1)a. Be obligated to the extent of the pay covered claims existing prior to the determination of insolvency and order of liquidation arising within 30 days after the determination of insolvency order of liquidation, or before the policy expiration date if less than 30 days after the determination, on order of liquidation, or before the insured replaces the policy or causes its cancellation, if he or

she does so within 30 days of the determination, but the association's obligation shall include only that amount of each covered claim which is in excess of one hundred dollars (\$100) and is less than one hundred fifty thousand dollars (\$150,000), except that the association shall pay the full amount of any covered employee benefit claim arising under Section A of workers' compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises. order of liquidation. The obligation shall be satisfied by paying to the claimant an amount as follows:

1. The full amount of a covered claim for benefits under a workers' compensation insurance coverage.
2. An amount not exceeding ten thousand dollars (\$10,000) per policy for a covered claim for the return of unearned premium.
3. An amount not exceeding three hundred thousand dollars (\$300,000) or the policy limits, whichever is less, per claim for all covered claims. For purposes of this limitation, all claims of any kind whatsoever arising out of, or related to, bodily injury or death to any one person shall constitute a single claim, regardless of the number of claims made or the number of claimants.

b. In no event shall the association be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises.

c. Notwithstanding any other provisions of this chapter, a covered claim shall not include any claim filed with the guaranty fund association after the earlier of:

1. Twenty-five months after the date of the order of liquidation.
2. The final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

d. Any obligation of the association to defend an insured on a covered claim shall cease upon the association's 1. payment, by settlement releasing the insured or on a judgment, of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit or 2. tender of such amount.

e. If the association determines that there may be more than one claimant having a covered claim or allowed claim against the association or any associations similar to the association in other states, under the policy or policies of any one insolvent insurer, the association may establish a plan to allocate amounts payable by the association in such manner as the association deems equitable.

...

(b) The association may:

...

(7) Bring an action against any third party administrator, agent, attorney, or other representative of the insolvent insurer to obtain custody and control of all claims information including, but not limited to, files, records, and electronic data related to an insolvent company that are appropriate or necessary for the association, or a similar association in other states, to carry out its duties under this chapter. In such a suit, the association shall have the absolute right through emergency equitable relief to obtain custody and control of all claims information in the custody or control of the third party administrator, agent, attorney, or other representative of the insolvent insurer, regardless of where the claims information may be physically located. In bringing such an action, the association shall not be subject to any defense, lien, possessory or otherwise, or other legal or equitable ground whatsoever for refusal to surrender claims information that might be asserted against the liquidator of the insolvent insurers. To the extent that litigation is required for the association to obtain custody of the claims information requested and litigation results in the relinquishment of claims information to the association after refusal to provide the same in response to a written demand, the court shall award the association its costs, expenses, and reasonable attorneys' fees incurred in bringing the action. This section shall have no effect on the rights and remedies that the custodian of such claims information may have against the insolvent insurers, so long as such rights and remedies do not conflict with the rights of the association to custody and control of the claims information under this chapter.

...

Section 27-42-11

Settlement and payment of claims; recovery.

...

(i) The association and any association similar to the association in another state shall be recognized as claimants in the liquidation of an insolvent insurer for any amounts paid by them on covered claims obligations as determined under this chapter, or similar laws in other states, and shall receive dividends and any other distributions at the priority set forth for policyholder claims in the liquidation proceeding. The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by determinations of covered claim eligibility under this chapter and by settlements of claims made by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

Section 27-42-12

Exhaustion of rights; nonduplication of recovery.

~~(a) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his rights under such policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of any recovery under such insurance policy. an insurance policy, whether or not it is a policy issued by a member insurer, where the claim under the other policy arises from the same facts, injury, or loss that gave rise to the covered claim against the association, shall be required first to exhaust all coverage provided by any such policy. Any amount payable on a covered claim under this chapter shall be reduced by the full applicable limits stated in the other insurance policy and the association shall receive a full credit for the stated limits, or, where there are no applicable stated limits, the claim shall be reduced by the total recovery. Notwithstanding the foregoing, no person shall be required to exhaust any right under the policy of an insolvent insurer.~~

(1) A claim under a policy providing liability coverage to a person who may be jointly and severally liable with, or a joint tortfeasor with, the person covered under the policy of the insolvent insurer that gives rise to the covered claim, shall be considered to be a claim arising from the same facts, injury, or loss that gave rise to the covered claim against the association.

(2) A claim under an insurance policy shall also include, for purposes of this section:

a. A claim against a health maintenance organization, a hospital plan corporation, or a professional health service corporation.

b. Any amount payable by or on behalf of a self-insurer.

(3) To the extent that the association's obligation is reduced by the application of this section, the liability of the person insured by the insolvent insurer's policy for the claim shall be reduced in the same amount.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he or she shall seek recovery first from the association of the location of the property and if it is a ~~workmen's~~ workers' compensation claim, he or she shall seek recovery first from the association of the residence of the claimant at the time of the accident giving rise to the claim. Any recovery under this chapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

* **Note: SB 283** is identical to **HB 401**, which passed the first chamber on March 5, 2017, and was included in NCCI's March 16, 2018 **Legislative Activity Report** (RLA-2018-11).

Alaska

HB 79 amends numerous sections of the Alaska Workers' Compensation Act to:

- Allow the department of labor and workforce development to receive a greater percentage of the annual service fees that insurers pay
- Clarify that penalties for late reports accrue to the workers' safety and compensation administration account
- Make technical changes to allow electronic filing of documents
- Allow the division director to prescribe the format for reporting injuries to the division
- Expand personal liability for workers compensation benefits and civil penalties to owners of more types of employing business entities if the business fails to carry workers compensation insurance
- Move the failure to insure process from the Alaska Workers' Compensation Board (board) to the division of workers' compensation (division)
- Allow the division to assess a civil penalty directly rather than petitioning the board to set the penalty, simplifying the calculation and maximum civil penalty for a failure to insure for workers compensation liability, and allowing the division to assess a civil penalty against employers who have engaged in misclassification of workers for the purpose of evading full payment of workers compensation insurance premiums
- Extend from seven days to 30 days for an employer to pay an assessed penalty
- Provide penalties for failure to produce records legally required to be kept, provide a process for an employer to dispute a civil penalty assessment, allow an employer to pay an assessed civil penalty by payment plan, require that employers who agree to a payment plan pay interest, and clarify that penalties may not be suspended
- Provide interest on civil penalties and other civil penalties under the Workers' Compensation Act (Act) accrue to the workers compensation benefits guaranty fund
- Extend from 10 days to 30 days the deadline for reporting termination of coverage, establishing a 30-day deadline for reporting initial coverage, and establishing a civil penalty for failure to submit proof of insurance to the division within 30 days
- Clarify when an employer must preauthorize or deny a provider's written request for medical treatment
- Add publications to a list that the department of labor and workforce development may incorporate, including future amended versions, into regulation
- Require the board to schedule a prehearing conference not later than 30 days after a claim is filed, and at the prehearing conference set discovery deadlines and a hearing date, rather than waiting for an employee to request a hearing
- End the practice of permitting nonattorneys to represent parties before the board
- Provide the board shall file its decision not later than 30 days after the hearing record closes

- Extend the date by which non-medical compensation benefits must be paid and clarify when medical benefits are due
- Remove the seven-day grace period for payment of compensation benefits, and clarify when an employer’s denial of a provider’s written request for medical treatment must be filed
- Clarify when a penalty accrues for late-paid medical benefits, including a provider’s written request for medical treatment
- Allow an employee or the workers compensation benefits guaranty fund the ability to file a lien within one year of knowledge of an employee’s injury or death and allow the division to file a lien for the amount of an assessed civil penalty
- Phase out the second injury fund, setting an end date for the fund’s acceptance of new reimbursement claims, and clarify that the fund will continue to pay reimbursement claims until all liability for previously accepted claims to the second injury fund, and claims ordered to be paid from that fund, have been satisfied
- Provide for a definition of “independent contractor”
- Eliminate the requirement that corporate executive officers seek the division’s approval before opting out of workers compensation coverage for themselves, and clarify the requirements for opting out
- Allow the division to assess a civil penalty against employers who have engaged in misclassification of workers
- Expand the basis for a finding of fraud by imposing an affirmative duty on an employee receiving workers compensation benefits to report work and receipt of other types of wage-loss replacement benefits
- Clarify what constitutes misclassification of workers for the purpose of evading full payment of workers compensation insurance premiums
- Clarify which business entities and individuals are liable for failure to secure compensation
- Clarify which business entities and individuals are liable for knowingly disposing of assets with intent to avoid the payment of compensation to an employee or the employee’s dependents
- Eliminate a requirement that the board approve attorney fees as part of a settlement when fees are the sole issue in the settlement that requires board approval

Colorado

SB 171, in part, amends *sections 8-40-301, 8-40-202*, and *8-41-401* of the Workers’ Compensation Act of Colorado as follows:
8-40-301. Scope of term “employee”—definitions.

...

(10) (a) “Employee” excludes any person providing services as a marketplace contractor if all of the following conditions are satisfied:

(I) The services performed by the marketplace contractor are governed by a written contract executed between the contractor and a marketplace platform that states that the marketplace contractor is providing services as an independent contractor and not as an employee;

(II) All or substantially all of the payment made to the marketplace contractor for services rendered is based on a fixed or contract rate;

(III) The marketplace contractor is allowed to work any hours or schedules the contractor chooses; except that, if the contractor elects to work specified hours or schedules, the contract may require the contractor to perform work during the selected hours or schedules;

(IV) The marketplace contractor is not required to accept a minimum number of service requests;

(V) The marketplace contractor is able to perform services for other parties;

(VI) The marketplace platform does not provide on-site supervision during the performance of services by the marketplace contractor;

(VII) The marketplace platform does not require the marketplace contractor to obtain training or attend mandatory meetings;

(VIII) The marketplace contractor bears all or substantially all of its own expenses that it incurred in performing the services;

(IX) The marketplace platform does not require the marketplace contractor to use specific materials, supplies, or equipment in performing services, other than the marketplace platform’s online-enabled application, software, website, or system;

(X) The marketplace contractor does not perform service requests at or from a physical business location that is operated by the marketplace platform;

(XI) The marketplace platform does not require the marketplace contractor to wear a uniform;

(XII) The written contract between the marketplace platform and the marketplace contractor states whether the marketplace contractor may hire, lease, or contract out part or all of the work, and if the written contract allows the marketplace contractor to hire, lease, or contract out part or all of the work, the written contract also states that before starting the work, the marketplace contractor must comply with section 8-41-401, if applicable; and

(XIII) The written contract between the marketplace platform and the marketplace contractor states, in a conspicuous manner, that the marketplace contractor is not entitled to workers’ compensation benefits under articles 40 to 47 of this title 8, and that the marketplace contractor is responsible for paying applicable taxes on income the contractor earns pursuant to the contract relationship.

(b) (I) Notwithstanding any other provision of this subsection (10), an individual marketplace contractor that performs services for pay for a marketplace platform shall be deemed to be an employee, regardless of whether the common-law relationship of master and servant exists, unless:

(A) The individual is free from control and direction in the performance of the service, both under the terms of the contract for performance of service and in fact; and

(B) The individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed.

(II) For purposes of this subsection (10)(b), the degree of control exercised by the marketplace platform for whom the service is performed over the performance of the service or over the individual performing the service must not be considered if the control is exercised pursuant to the requirements of any state or federal statute, rule, or regulation.

(c) Compliance by the parties with the conditions specified in subsection (10)(a) of this section creates a rebuttable presumption of an independent contractor relationship between the marketplace platform and the marketplace contractor that may be overcome only by clear and convincing evidence.

(d) Nothing in this subsection (10) prohibits a marketplace contractor from being treated as an independent contractor and not as an employee under any other provisions of law.

(e) As used in this subsection (10):

(I) (A) "Marketplace contractor" or "contractor" means a person that enters into a written agreement with a marketplace platform to use the platform's online-enabled application, software, website, or system to receive service requests from third parties seeking the types of services offered by the contractor.

(B) "Marketplace contractor" does not include a person receiving or performing a service request that consists of transporting for compensation: freight; sealed envelopes, boxes, or parcels; or other sealed or closed containers.

(II) "Marketplace platform" means a corporation, partnership, sole proprietorship, or other entity operating in this state that offers an online-enabled application, software, website, or system that:

(A) Enables the provision of services by marketplace contractors to third parties seeking the services; and

(B) Accepts service requests from the public only through its online-enabled application, software, website, or system.

8-40-202. Employee

...

(2)(b)(IV) If the parties use a written document pursuant to this paragraph (b), such Subsection (2)(b), the document must be signed by both parties and may be the contract for performance of service or a separate document. ~~Such~~ The document shall ~~create~~ creates a rebuttable presumption of an independent contractor relationship between the parties, which presumption may be overcome only by clear and convincing evidence, where ~~such~~ the document contains a disclosure, in type ~~which that~~ is larger than the other provisions in the document or in bold-faced or underlined type, that the independent contractor is not entitled to workers' compensation benefits and that the independent contractor is obligated to pay federal and state income tax on any moneys earned pursuant to the contract relationship. All signatures on ~~any such~~ the document must be duly notarized.

...

8-41-401. Lessor contractor-out deemed employer—liability—recovery

...

(7) This section shall ~~does~~ not apply to any person excluded from the definition of "employee" pursuant to section 8-40-301 (5), ~~or~~ (7), or (10).

Maryland

HB 1499 repeals and reenacts, with amendments, sections 1-204, 27-402, 27-801, and 27-802 of the Maryland Insurance Code as follows:

§ 1-204. Application of article to workers' compensation insurance

~~For~~ Except for provisions governing the reporting and investigation of workers' compensation insurance fraud claims under § 2-201, Title 2, Subtitle 4, and Title 27, Subtitles 4 and 8 of this Article, for the purpose of workers' compensation insurance, this article does not apply to an employer who:

- (1) participates in a governmental self-insurance group under § 9-404 of the Labor and Employment Article; or
- (2) self-insures under § 9-405 of the Labor and Employment Article.

§ 27-402. Scope of subtitle

The provisions of this subtitle that apply to insurers also apply to:

...

(12) the Maryland Health Insurance Plan; and

(13) a governmental self-insurer group formed in accordance with § 9-404 of the labor and Employment Article;

(14) an employer who self-insures or participates in a self-insurance group in accordance with § 9-405 of the labor and employment article; and

~~(13)~~ (15) an agent, employee, or representative of an entity described in items (1) through ~~(12)~~ (14) of this section.

§ 27-801. Definitions

...

(c) "Insurance fraud" means:

...

(2) theft, as set out in §§ 7–101 through 7–104 of the Criminal Law Article:

(i) from a person regulated under this article; or

(ii) by a person regulated under this article or an officer, director, agent, or employee of a person regulated under this article; ~~or~~

(3) a violation of § 9-1106 of the Labor and Employment Article; or

~~(3)~~ (4) any other fraudulent activity that is committed by or against a person regulated under this article and is a violation of:

...

§ 27-802. Reporting suspected insurance fraud

(a) ... (4) A governmental self-insurance group formed in accordance with § 9-404 of the Labor and Employment Article or an employer who self-insures or participates in a self-insurance group in accordance with § 9-405 of the Labor and Employment Article shall meet the reporting requirement of this subsection by reporting suspected insurance fraud in writing to the fraud division.

(b) In addition to any protection provided under Title 4, Subtitle 4, Part IV of the General Provisions Article, any information, documentation, or other evidence provided under this section by an insurer, its employees, fund producers, or insurance producers, a viatical settlement provider, a viatical settlement broker, an independent insurance producer, ~~or a registered premium finance company~~, a governmental self-insurance group, or an employer who self-insures or participates in a self-insurance group to the Commissioner, the Fraud Division, or a federal, State, or local law enforcement authority in connection with an investigation of suspected insurance fraud is not subject to public inspection for as long as the Commissioner, Fraud Division, or law enforcement authority considers the withholding to be necessary to complete an investigation of the suspected fraud or to protect the person investigated from unwarranted injury.

...

* **Note:** **HB 1499** is identical to **SB 575**, which passed the first chamber on March 6, 2018, and was included in NCCI's March 16, 2018 **Legislative Activity Report** (RLA-2018-11).

HB 1500/SB 979 repeals and reenacts, with amendments, section 9-902 of the Maryland Labor and Employment Code as follows:
§ 9-902. Action against third party after award or payment of compensation

...

(e) If the covered employee or the dependents of the covered employee recover damages, the covered employee or dependents:

(1) first, may deduct the costs and expenses of the covered employee or dependents for the action;

(2) next, subject to subsection (g) of this section, shall reimburse the self-insured employer, insurer, Subsequent Injury Fund, or Uninsured Employers' Fund for:

(i) the compensation already paid or awarded; and

(ii) any amounts paid for medical services, funeral expenses, or any other purpose under Subtitle 6 of this title; and

...

(g) In determining reimbursement under subsection (e)(2) of this section, if the self-insured employer, insurer, or uninsured employers' fund has not waived third-party reimbursement:

(1) first, the self-insured employer, insurer, or uninsured employers' fund shall be reimbursed; and

(2) next, the subsequent injury fund shall be reimbursed.

HB 1500/SB 979 also include the following clause:

And be it further enacted, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any action filed before the effective date of this Act.

HB 1592, in part, repeals and reenacts, with amendments, **section 9-912** and repeals **section 9-1015** of the Maryland Labor and Employment Code as follows:

§ 9-212. Jockey

(a) (1) This section applies to each jockey licensed by the State Racing Commission to ride a thoroughbred horse.

(2) This section applies only at a thoroughbred racing association or training facility under the jurisdiction of the State Racing Commission.

(b) A jockey is a covered employee while performing a service in connection with ~~racing or~~

(1) live thoroughbred racing; or

~~(2) training a thoroughbred race horse, if the principal earnings of the jockey are based on money earned as a jockey during live racing and not as an exercise rider.~~

~~(c) (1) For the purposes of this title, the joint employers employer of a jockey who is a covered employee under this section while performing a service in connection with racing or training is are:~~

~~(i) the Maryland Jockey Injury Compensation Fund, Inc.; and~~

~~(ii) each licensed owner or trainer who is subject to assessment under § 11-906 of the Business Regulation Article at the time of any occurrence for which benefits are payable to the jockey under this title.~~

~~(2) For purposes of this title, the employer of a jockey who is a covered employee under this section while performing a service in connection with training is the trainer for whom the service is performed.~~

~~(3) (2) This subsection does not affect any other provision of law or practice.~~

~~(d) Notwithstanding any other provision of law, this section may not be construed to bar an action by a jockey against a third party.~~

§ 9-1015. Payment by Maryland Jockey Injury Compensation Fund, Inc

~~(a) A jockey who is a covered employee under § 9-212 of this title while performing a service in connection with training or the dependents of the jockey may apply for payment from the Maryland Jockey Injury Compensation Fund, Inc. if the employer of the jockey is in default on a claim under § 9-1002(b) of this subtitle.~~

~~(b) On receipt of an application for payment, the Maryland Jockey Injury Compensation Fund, Inc. shall pay the award.~~

~~(c) (1) If the Maryland Jockey Injury Compensation Fund, Inc. makes payment under this section to a covered employee or the dependents of the covered employee as directed by the Commission, the Maryland Jockey Injury Compensation Fund, Inc. is subrogated to the rights of the covered employee or dependents against the uninsured employer.~~

~~(2) The Maryland Jockey Injury Compensation Fund, Inc. may:~~

~~(i) institute a civil action against the uninsured employer to recover the money paid under the award;~~

~~(ii) refer the matter to the Maryland Racing Commission for suspension or revocation of the occupational license of the uninsured employer;~~

~~(iii) refer the matter to the appropriate authority for prosecution under § 9-1108 of this title; or~~

~~(iv) take action under any combination or all of items (i) through (iii) of this paragraph.~~

Missouri

HB 1656 adds nine new sections to *chapter 285* of the Missouri Annotated Statutes, creating the "Professional Employer Organization Act" to provide, in part, that:

- The responsibility to obtain workers compensation coverage shall be specifically allocated in the professional employer agreement to either the professional employment organization (PEO) or the client.
- If the coemployment relationship between a PEO and a client is terminated, the client shall utilize an experience modification rating that reflects its individual experience. The PEO shall provide a client its workers compensation information within five business days of receiving or giving notice that the relationship has been terminated.
- A client may request its workers compensation information at any time and the PEO shall provide such information to the client within five business days of receiving such request. Such information shall also be provided to any future client insurer if requested by such client.
- A client is additionally required to provide prospective insurers with its workers compensation information upon receiving such information from the PEO. A client is further required to disclose to a prospective insurer its current or previous relationship with a PEO. Violation of either of these provisions is subject to a Class A misdemeanor.
- If a third party requests verification of a client's experience modification factor for a client in certain types of insurance policies from a PEO, the PEO shall, within five business days of receipt of receiving the client's consent, provide the information to the third party. If the client refuses to grant consent to a request for information, the PEO shall notify the requesting third party that the client has refused to consent to the disclosure of the information.

HB 1719 repeals and adds numerous sections to the Missouri Annotated Statutes, in part, creating the "Professional Employer Organization Act" to provide, in part, that:

- The responsibility to obtain workers compensation coverage shall be specifically allocated in the professional employer agreement to either the professional employment organization (PEO) or the client.
- If the coemployment relationship between a PEO and a client is terminated, the client shall utilize an experience modification rating that reflects its individual experience. The PEO shall provide a client its workers compensation information within five business days of receiving or giving notice that the relationship has been terminated.
- A client may request its workers compensation information at any time and the PEO shall provide such information to the client within five business days of receiving such request. Such information shall also be provided to any future client insurer if requested by such client.
- A client is additionally required to provide prospective insurers with its workers compensation information upon receiving such information from the PEO. A client is further required to disclose to a prospective insurer its current or previous relationship with a PEO. Violation of either of these provisions is subject to a Class A misdemeanor.

- If a third party requests verification of a client's experience modification factor for a client in certain types of insurance policies from a PEO, the PEO shall, within five business days of receipt of receiving the client's consent, provide the information to the third party. If the client refuses to grant consent to a request for information, the PEO shall notify the requesting third party that the client has refused to consent to the disclosure of the information.

* **Note:** **HB 1719** is similar, but not identical to, **HB 1656** listed above.

Oklahoma

HB 3277 amends and repeals multiple sections of the Oklahoma Administrative Workers' Compensation Act to:

- Modify the definition of *compensable injury* as it relates to alcohol and drug testing employees within 24 hours after an injury.
- Modify the definition of *continuing medical maintenance* by allowing the use of the following treatments if the Workers' Compensation Commission (WCC) finds it in the best interest of the employee: diagnostic test, surgery, injections, counseling, and physical therapy or pain management devices or equipment.
- Modify the definition of *course and scope of employment* by clarifying that injuries occurring in a parking lot or while the employee is on a work break are compensable if the area where the injury occurred is owned by or exclusively controlled by the employer.
- Modify the definition of *cumulative trauma* by striking language that required the employee to have completed at least 180 days of continuous active employment with the employer in order to make a cumulative trauma claim.
- Redefine *disability* as the loss of use of a part of the body which must be proved by objective findings.
- Modify the definition of *employee* as it relates to an exemption from workers compensation coverage for family member employees and dependent employees living in the household of the employer.
- Modify the definition of *permanent disability* to allow loss of earning capacity directly related to the permanent loss of use of a part of body to be considered when determining benefits for permanent disability.
- Redefine *permanent partial disability* as a permanent disability or loss of use of a body part after maximum medical improvement has been reached and loss of earning capacity directly related to the disability.
- Reiterate that all employers subject to the Administrative Workers' Compensation Act (AWCA) are required to pay or provide benefits to injured employees regardless of fault.
- Bar duplicate claims for compensation under the AWCA when a claim has been brought in another jurisdiction and a final adjudication is entered in the case for the same injury.
- Prohibit the WCC from granting benefits that duplicate benefits paid by the employer or the employer's insurance carrier in another jurisdiction.
- Extend the territorial jurisdiction of the AWCA to include all lands and premise within the exterior boundaries of the state which are owned by the federal government.
- Strike language that provides immunity from a tort liability claim to an operator or owner of an oil or gas well or other operation for exploring, drilling, or producing oil and gas.
- Clarify that a portion of the criminal fines obtained from workers compensation fraud investigations are to be deposited into the WCC Revolving Fund instead of the Workers' Compensation Fund.
- Strike language that requires a statement about workers compensation fraud being a felony crime be posted on all WCC-related forms for notices and instructions.
- Transfer authority to hear and decide retaliation claims from the WCC to the district courts.
- Set the compensation for any mental injury or illness at the same level of compensation for permanent partial disability.
- Strike language that prohibits physical or mental stress to be considered in determining whether the employee has met his or her burden of proof when the injury is a cardiovascular, coronary, pulmonary, respiratory or cerebrovascular accident, or myocardial infarction.
- Provide that adherence to the Office of Disability Guidelines Treatment in Workers' Compensation is mandatory unless the WCC makes a specific finding that a deviation from the guidelines is in the best interest of the employee.
- Allow notice to a healthcare provider to be delivered by fax, email, or any other electronic means with confirmation of receipt. The notice tells the provider that an injury is work-related and payment for the services should not be billed to the injured employee.
- Allow the WCC to hold executive sessions to meet in private to discuss policy, personnel and staffing administration, and other related matters, provided all three commissioners are present and no official action is taken at the meeting.
- Modify the procedure for changing rules and forms established by the WCC by requiring a vote on any substantive changes to a form and compliance with the Administrative Procedures Act for rulemaking.
- Authorize the WCC to establish a petty cash fund with a \$500 cap.
- Modify the powers and duties of administrative law judges (ALJ) by striking language that allows an ALJ to assume duties within the Workers' Compensation Court of Existing Claims.

- Clarify language relating to the current practice of insurers paying the WCC an annual fee of \$1,000 and allow the WCC to levy the annual fee against marketing firms.
- Allow persons exempt from being covered under the AWCA to execute an Affidavit of Exempt Status. Execution of the affidavit establishes a rebuttable presumption that the executor is not an employee for the purposes of the AWCA and, therefore, is not eligible to seek workers compensation benefits against any contractor.
- Cap the application fee for an Affidavit of Exempt Status at \$50 and establishes penalties for knowingly providing false information on a notarized affidavit.
- Clarify that fines collected in connection with an employer's failure to obtain workers compensation coverage are to be deposited into the WCC Revolving Fund, not the Workers' Compensation Fund, and allows an injured employee of the delinquent employer to petition an ALJ to award benefits from the proceeds of the fine.
- Modify a provision relating to third party liability claims by removing death as a possible reason to bring an action against a third party.
- Make it the responsibility of a district court to determine the amount that an employer can claim on the net proceeds recovered from a third party liability lawsuit. Currently, the amount is set in statute as two-thirds of the recovery or the amount of the employer's subrogation lien, whichever is less.
- Increase the cap on temporary total disability (TTD) benefits to 100% of the state average weekly wage (SAWW) and allows benefits to continue past the 104-week limit if the WCC finds, by clear and convincing evidence, that the employee remains temporarily disabled and under active medical treatment.
- Give the employer the right to recover any overpayment of TTD benefit from a subsequent permanent partial disability (PPD) award if the overpayment is deemed justified.
- Allow medical treatment for TTD to be reinstated when the employee complies with the medical orders of the treating physician.
- Provide that an injured employee's actual earnings plus temporary partial disability (TPD) compensation cannot exceed the TTD rate.
- Allow a physician to use an alternate evaluation method approved by the WCC to determine the extent of a PPD.
- Increase the cap on weekly PPD compensation, including PPD compensation for amputation or permanent total loss of use of a scheduled member, from \$323 to \$391 per week.
- Strike language that allows for deferral of PPD awards when an injured employee reaches maximum medical improvement and returns back to work
- Strike language relating to the role of the Vocational Rehabilitation Director and increases the maximum amount of weeks that vocation rehabilitation services or training may be extended from 52 weeks to 104 weeks.
- Strike language that allows the cost of vocational rehabilitation training ordered by an ALJ to be deducted from any unpaid award or benefit of the employee if the employee refuses ordered services or training.
- Strike language that allows the employer or employer's insurer to deduct from compensation awarded to the employee any amount paid as tuition for vocational rehabilitation services.
- Allow awards for disfigurement to be entered earlier than 12 months after the injury if the treating physician deems the wound or incision to be fully healed.
- Allow an ALJ to order an employer to provide detoxification treatment for employees who are prescribed opioids or other narcotics.
- Strike language that suspends an employee's right to prosecute under the AWCA if an employee refuses to submit to a medical examination that is ordered by the WCC or requested by the employer or insurance carrier.
- Allow an employer or insurance carrier to audit or question the reasonableness and necessity of medical treatment contained in a bill for treatment covered by the stop-loss provision developed by the WCC.
- Change the maximum reimbursement rate for prescription drugs and compounded medications to 125 percent of the reimbursement rate established by the Center for Medicare and Medicaid Services for use in Oklahoma, plus an existing \$5 dispensing fee per prescription.
- Prohibit any physician from dispensing prescription drugs from his or office.
- Clarify that an employee's failure to obey a judgment of the WCC for an examination or treatment bars the right of the employee to further TTD compensation.
- Direct the WCC, upon the request of any party, to appoint an independent medical examiner to determine the reasonableness and necessity of any optional surgery recommended by a treating physician and either approve, deny, or modify the request for surgery within 60 days of receiving a report from the independent medical examiner.
- End TTD benefits if an employee misses two or more consecutive scheduled appointments for medical treatment without a valid reason.
- Prohibit facet injections or intravenous injections for the treatment of nonsurgical soft tissue injuries and provides that cumulative trauma that requires corrective surgery is not to be considered a soft tissue injury.

- Exempt injury reports submitted by an employer from being considered an open and confidential record under the Oklahoma Open Records Act and requires approval from the WCC for public disclosure of these records.
- Modify the criteria for determining whether an occupational disease is compensable.
- Clarify the one-year statute of limitation for filing a claim for benefits by requiring the employee to at least in good faith request a hearing for benefits with competent medical evidence to support the request within the one-year time frame.
- Increase the amount of time that a request for a hearing or additional compensation must be made for the case to not be automatically dismissed by a court from six months to one year.
- Allow notice of a hearing or judgment to be delivered by fax, email, or other electronic means with receipt of confirmation and allow a hearing to be held in any county of the state.
- Require payment for any prescription drugs prescribed by a treatment physician to be continued during the pendency of an appeal filed by an employer or the employer's insurance carrier.
- Authorize the WCC to reopen cases for review, including those based on a change of physical condition, within six months from the date of the last order in which monetary benefits were awarded or active medical treatment was provided.
- Remove the role of the WCC in approving fees for legal service.
- Strike language that requires the WCC to be notified of any party's intent to bring a claim against the Multiple Injury Trust Fund (MITF), including the requirement for direct legal fees to be paid from the fund.
- Make it permissive for employers to file a statement of controversion with the WCC instead of mandatory.
- Clarify that only claims covered by a joint petition to settle are covered under the settlement agreement.
- Prohibit the Oklahoma Supreme Court (OCS) from entertaining any proceeding to reverse, vacate, or modify any decision or award of the Commission banc or an ALJ unless the executive director of the WCC receives proof, in the form of a written undertaking, that the appellant will pay the amount of any award rendered, along with associated interest and all of the costs of the proceedings after the appeal has been decided by the OCS. Municipalities and other political subdivisions of the state are exempt from the making these written undertakings.
- Clarify that incarcerated individuals are not eligible for TTD benefits through the AWCA.
- Change the deadline for implementation of an electronic data interchange system from July 1, 2014, to a time frame to be reasonably determined by the WCC.
- Authorize certain employees of the WCC to testify on matters relating to the performance of the employee's duties if the employee in certain cases.
- Strike language that requires the WCC to mail a notice about the services provided by the counselor or ombudsman program to injured workers. Instead, this information can be published on the WCC's website.
- Require an employer to submit a signed memorandum of understanding and the facts with the WCC if an injured employee has not filed a claim for compensation and there is an understanding of the facts regarding the injury between the employee and the employer. Both parties must sign the form and it must be approved by an ALJ.
- Provide that a fee of \$140 is to be paid to the WCC for each case involving a medical fee dispute, claim for discrimination, or retaliation, or claim for benefits under the MITF.
- Replace references to the Workers' Compensation Fund with the Workers' Compensation Commission Revolving Fund.
- Modify the duties of the Advisory Council on Workers' Compensation by requiring the council to consult with the WCC instead of the OCS regarding oversight of independent medical examiners and removing the requirement for the council to review the Oklahoma Treatment Guidelines.
- Appropriate the first \$5 million of monies deposited into the MITF to the Workers' Compensation Commission Revolving Fund for fiscal year 2019 and the next \$4 million to the Workers' Compensation Administrative Fund for fiscal year 2019.
- Transfer all unexpended funds, assets, property, records, personnel, and any other outstanding financial obligations of the Workers' Compensation Court to the WCC except for personnel transferred to the Workers' Compensation Court of Existing Claims (CEC) on July 9, 2014.
- Direct the CEC to pay the expense of maintaining records of the court for as long as the Legislature appropriate funding to the court.
- Transfer the responsibility for filling a vacancy of the CEC from the WCC to the Governor and directs the Governor to select an existing member of the CEC as the presiding judge to serve a three-year term beginning on November 1, 2018.
- Transfer the responsibility to hear an appeal of a decision of the CEC from the WCC to the Court en banc or the OCS and provides that retired or former judges of the district court or Workers' Compensation Court may be designated to serve on the panel if there is an insufficient number of active judges available to make up the three-judge en banc panel.
- Repeal the Oklahoma Employee Injury Benefit Act and numerous other statutes in Title 85A within the AWCA.

SB 1249 amends **section 85A-36** of the Oklahoma Administrative Workers' Compensation Act, in part, to:
§85A-36. Liability other than immediate employer.

A. If a subcontractor fails to secure compensation required by ~~this act~~ the Administrative Workers' Compensation Act, the prime contractor shall be liable for compensation to the employees of the subcontractor unless there is an intermediate subcontractor who has workers' compensation coverage.

...

C. 1. a. ~~When a sole proprietorship or partnership fails to elect to cover the sole proprietor or partners under this act a subcontractor elects not to secure compensation and is not required to secure compensation pursuant to this title~~, the prime contractor is not liable under ~~this act~~ the Administrative Workers' Compensation Act for injuries sustained by the ~~sole proprietor or partners subcontractor or any person working with the subcontractor who is not considered an employee of the subcontractor pursuant to Section 2 of this title~~, and ~~if the sole proprietor or partners are injured person is not employees~~ an employee of the prime contractor.

b. (1) ~~A sole proprietor or the partners of a partnership who do not elect to be covered by this act and be deemed employees thereunder and who deliver to the prime contractor a current certification of noncoverage issued by the Commission~~ If a subcontractor has filed with the Commission an unexpired Affidavit of Exempt Status, the subcontractor and any person who works with the subcontractor but is not considered an employee of the subcontractor pursuant to Section 2 of this title shall be conclusively presumed not to be covered by the law or to be employees of the prime contractor during the term of his or her certification or any renewals thereof the affidavit.

(2) ~~A certificate of noncoverage may not be presented to a subcontractor who does not have workers' compensation coverage.~~

(3) ~~This provision shall not affect the rights or coverage of any employees of the sole proprietor or of the partnership~~ employee of a subcontractor.

2. The prime contractor's insurance carrier shall not be liable for injuries to the ~~sole proprietor or partners~~ subcontractor described in this section who have ~~provided a current certification of noncoverage~~ filed an unexpired Affidavit of Exempt Status, and the carrier shall not include compensation paid by the prime contractor to the ~~sole proprietor or partners~~ subcontractor described above in computing the insurance premium for the prime contractor.

3. a. ~~Any prime contractor who after being presented with a current certification of noncoverage by a sole proprietor or partnership compels the sole proprietor or partnership to pay or contribute to workers' compensation coverage of that sole proprietor or partnership shall be guilty of a misdemeanor.~~

b. ~~Any prime contractor who compels a sole proprietor or partnership to obtain a certification of noncoverage when the sole proprietor or partnership does not desire to do so shall be guilty of a misdemeanor.~~

c. ~~Any applicant who makes a false statement when applying for a certification of noncoverage or any renewals thereof shall be guilty of a felony.~~

D. 1. ~~A certification of noncoverage issued by the Commission shall be valid for two (2) years after the effective date stated thereon. Both the effective date and the expiration date shall be listed on the face of the certificate by the Commission. The certificate~~ Any individual or business entity that is not required to secure compensation pursuant to the requirements of the Administrative Workers' Compensation Act may execute an Affidavit of Exempt Status. The "Affidavit of Exempt Status" shall be a form prescribed by the Workers' Compensation Commission available on the Commission's website. The Commission may assess a non-refundable fee not to exceed Fifty Dollars (\$50.00) per individual or business entity for filing of an Affidavit of Exempt Status at the Commission. An Affidavit of Exempt Status executed and filed with the Commission shall expire at midnight two (2) years from its issue date, as noted on the face of the certificate the date filed. A new Affidavit of Exempt Status may be filed prior to expiration to renew an existing Affidavit of Exempt Status.

2. ~~The Commission may assess a fee not to exceed Fifty Dollars (\$50.00) with each application for a certification of noncoverage or any renewals thereof.~~

3. ~~Any certification of noncoverage issued by the Commission shall contain the social security number and notarized signature of the applicant. The notarization shall be in a form and manner prescribed by the Commission.~~

4. ~~The Commission may prescribe by rule forms and procedures for issuing or renewing a certification of noncoverage~~

a. ~~Knowingly providing false information on an executed affidavit shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00).~~

b. ~~In the event changed circumstances make securing compensation pursuant to the requirements of the Administrative Workers' Compensation Act necessary, the individual or business entity on whose behalf the affidavit was executed shall execute and file a Cancellation of Affidavit of Exempt Status. The Commission shall prescribe a form for cancellation of an affidavit which shall available on the Commission's website.~~

c. ~~Affidavits shall conspicuously state on the front thereof in at least ten-point, bold-faced print that it is a crime to falsify information on the form.~~

d. ~~The commission shall immediately notify the Workers' Compensation Fraud Unit in the Office of the Attorney General of any violations or suspected violations of this section. The Commission shall cooperate with the Fraud Unit in any investigation involving affidavits executed pursuant to this section.~~

~~The execution or filing of an affidavit shall not affect the rights or coverage of any employee of the affiant or business entity on whose behalf the affiant executes or files an affidavit.~~

3. Fees collected pursuant to this section shall be deposited in the State Treasury to the credit of the Workers Compensation Commission Revolving Fund.

E. If work is performed by an independent contractor on a single-family residential dwelling occupied by the owner, or the premises of such dwelling, or for a farmer whose cash payroll for wages, excluding supplies, materials, and equipment, for the preceding calendar year did not exceed One Hundred Thousand Dollars (\$100,000.00), such owner or farmer shall not be liable for compensation under ~~this act~~ the Administrative Workers' Compensation Act for injuries to the independent contractor or his or her employees.

F. If an owner of a project or job enters a contract with a contractor, and the owner of the project or job does not substantively form an employment relationship with its contractor, then the owner of the project or job shall not be liable for compensation for a compensable injury to any contractor or subcontractor in any tier or employee of any contractor or subcontractor in any tier.

SB 1340 amends and repeals multiple sections of the Oklahoma Administrative Workers' Compensation Act to:

- Modify definitions
- Prohibit eligibility for benefits under certain circumstances
- Modify certain jurisdiction
- Establish burden of proof to show certain violation
- Limit certain damage awards
- Modify requirements for certain compensable injury
- Modify requirements for usage of certain guidelines
- Clarify usage of certain guide
- Require Physician Advisory Committee to provide certain annual report
- Authorize certain notice by electronic means
- Modify required qualifications for certain commissioners
- Modify selection procedures for certain commissioners
- Remove authority for appointment of special commissioner
- Prohibit Commission from making determinations on constitutionality
- Modify required qualifications for certain administrative law judges
- Authorize certain review
- Modify authority to hear certain appeals
- Modify certain rulemaking procedures
- Require compliance with the Administrative Procedures Act
- Remove certain contract authority
- Modify certain advisory responsibilities of State Treasurer
- Establish procedures for Affidavit of Exempt Status
- Create misdemeanor offense
- Impose fine for certain offense
- Authorize assessment of certain fee
- Limit liability for injury to certain employees upon certain good faith reliance
- Modify procedures for certain third party claims
- Establish lien rights for certain recovery
- Modify requirements for recovery of benefits for temporary total disability
- Place cap on recovery for temporary partial disability
- Modify requirements for recovery of benefits for permanent partial disability
- Prohibit dual award of certain benefits
- Authorize commutation of certain benefit awards
- Modify requirements for recovery of benefits for permanent total disability
- Establish guidelines for certain vocational rehabilitation
- Modify requirements for recovery of benefits for amputation or permanent loss of use
- Modify requirements for change of physician
- Increase number of missed appointments required for loss of certain eligibility
- Modify requirements for recovery of benefits for nonsurgical soft tissue injury
- Modify requirements for recovery of benefits for occupational disease
- Delete certain definitions by modifying certain notice requirements
- Modify statutes of limitation for certain claims
- Modify requirements for claims for additional compensation
- Delete certain exception
- Modify procedures for certain claims for compensation

- Authorize appointment of administrative law judge to en banc panel under certain circumstances
- Decrease percentage of allowable recovery for certain attorney fees
- Prohibit approval of certain settlements
- Modify sources for the Self-insurance Guaranty Fund
- Modify threshold for certain assessment
- Modify certain assessment rate;
- Provide for transfer of excess funds
- Modify procedures for transfer of certain proceeds and unexpended funds
- Require publication of certain information on website
- Require certain information for filing of certain claim
- Modify procedures for certain appeals
- Modify procedures for selection of independent medical examiners
- Clarify Fund to receive certain deposits
- Conform language
- Update statutory references

HB 2722 amends **section 85A-2** of the Oklahoma Administrative Workers' Compensation Act, in part, as follows:

§85A-2. Definitions.

As used in the Administrative Workers' Compensation Act:

...

18...

b. The term "employee" shall not include:

...

(2) any person who is employed in agriculture, ranching or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars (\$100,000.00) wages for agricultural, ranching or horticultural workers, or any person who is employed in agriculture, ranching or horticulture who is not engaged in operation of motorized machines. This exemption applies to any period of time for which such employment exists, irrespective of whether or not the person is employed in other activities for which the exemption does not apply. If the person is employed for part of a year in exempt activities and for part of a year in nonexempt activities, the employer shall be responsible for providing workers' compensation only for the period of time for which the person is employed in nonexempt activities,

...

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
IN, NC, SC, TN	Amy Quinn	803-356-0851
MO, NE, NV, OK, SD	Carla Townsend	314-843-4001
AZ, IA, KS, KY	Clarissa Preston	561-945-4517
DC, MD, NM, VA, WV	David Benedict	804-380-3005
CO, FL	Dawn Ingham	561-893-3165
CT, ME, NH, RI	Justin Moulton	860-969-7903
HI, UT, VT	Laura Backus Hall	802-454-1800
AL, GA, LA, MS	Laura Hart Bryan	225-618-8168
AR, IL, TX	Terri Robinson	501-333-2835
Federal Issues	Tim Tucker	202-403-8526
AK, ID, MT, OR	Todd Johnson	503-892-8919

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