



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 workers compensation-related bills were enacted within the one-week period ending April 6, 2018.

Alabama

HB 192 was:

- Passed by the first chamber on February 20, 2018
- Included in NCCI's March 2, 2018 **Legislative Activity Report** (RLA-2018-09)
- Passed by the second chamber on March 27, 2018
- Included in NCCI's April 6, 2018 **Legislative Activity Report** (RLA-2018-14)
- Enacted on April 6, 2018, with an effective date of July 1, 2018

HB 192, in part, amends **sections 25-5-60, 25-5-66, 25-5-68, and 25-5-69** of the Alabama Industrial Relations and Labor Code as follows:

Section 25-5-60 Compensation for death.

...

(1) Persons Entitled to Benefits; Amount of Benefits.

...

e. Except as provided in subdivision (3), if compensation is being paid under this article to any dependent, the compensation shall cease upon the death or marriage of the dependent, unless otherwise provided in this article.

...

(2) Maximum and Minimum Compensation Awards. The compensation payable in case of death to persons wholly dependent shall be subject to a maximum and minimum weekly compensation as stated in Section 25-5-68, but if at the time of injury the employee receives earnings of less than the minimum stated in Section 25-5-68, then the compensation shall be the full amount of such earnings per week. The compensation payable to partial dependents shall be subject to a maximum and minimum weekly compensation as stated in Section 25-5-68, but if the income loss of the partial dependents by the death is less than the minimum weekly compensation stated in Section 25-5-68, then the dependents shall receive the full amount of their income loss. This compensation shall be paid during dependency, not exceeding 500 weeks, except as provided in subsection (f) of Section 25-5-68. Payments shall be made at the intervals when the earnings were payable, as nearly as may be, unless the parties otherwise agree.

(3) If a dependent is the surviving spouse of a law enforcement officer or firefighter killed as a result of injuries received while engaged in the performance of his or her duties, the compensation does not cease upon remarriage.

Section 25-5-66 Disposition of compensation upon remarriage of widow of employee who has another dependent.

(a) In case of the remarriage of a widow the surviving spouse of an employee who has another dependent, the unpaid balance of compensation, which would otherwise become due her, shall be paid to the dependent or may, on approval by the court, be paid

to some suitable person designated by the court for the use and benefit of the dependent. Payment to that person shall discharge the employer from any further liability.

(b) Subsection (a) does not apply to the surviving spouse of a law enforcement officer or firefighter who was killed as a result of injuries received while engaged in the performance of his or her duties.

Section 25-5-68 Maximum and minimum weekly compensation.

...

(d) In no event, except as provided for permanent total disability in subdivision (a)(4) of Section 25-5-57 or except for compensation benefits payable for permanent partial and temporary total disability in connection with a disability scheduled in subdivisions (1) and (3) of subsection (a) of Section 25-5-57 or except as provided in subsection (f), shall the total amount of compensation payable for an accident or an occupational disease exceed the product of 500 times the maximum weekly benefit applicable on the date of the accident.

...

(f) Notwithstanding any other provision of this article, the compensation benefits payable to a surviving dependent child of a law enforcement officer or firefighter who was killed as a result of injuries received while engaged in the performance of his or her duties shall not discontinue at least until the dependent child reaches the age of 18 years.

Section 25-5-69 Compensation to cease upon death or marriage of dependent; proportional benefits for dependents.

¶ Except when the dependent is the surviving spouse of a law enforcement officer or firefighter who was killed as a result of injuries received while engaged in the performance of his or her duties, if compensation is being paid under this article to any dependent, such compensation shall cease upon the death or marriage of such dependent. Where compensation is being paid under this chapter to any dependent, in no event shall such dependent receive more than the proportion which the amount received of the deceased employee's income during his or her life bears to the compensation provided under this article.

SB 283 was:

- Passed by the first chamber on March 13, 2018
- Included in NCCI's March 23, 2018 **Legislative Activity Report** (RLA-2018-12)
- Passed by the second chamber on March 22, 2018
- Included in NCCI's March 30, 2018 **Legislative Activity Report** (RLA-2018-13)
- Enacted on April 6, 2018, with an effective date of July 1, 2018

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 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.

Florida

HB 7087 was:

- Passed by the first chamber on March 5, 2018
- Amended, and passed by the second chamber on March 11, 2018
- Enacted on March 23, 2018, with an effective date of July 1, 2018

HB 7087, in part, adds new **Chapter 451** to the Florida Statutes as follows:

CHAPTER 451

MARKETPLACE CONTRACTORS

451.01. Definitions.—For purposes of this chapter, the term:

(1) "Household services" means:

(a) Furniture assembly;

(b) Interior painting;

(c) Television mounting;

(d) Local moving help, such as packing, lifting, loading, and rearranging household items, but excluding transporting items;

(e) Hanging pictures, mirrors, curtains, blinds, and shelves;

(f) Home cleaning;

(g) Installation of in-home technology that does not require a hardwired electrical connection; or

(h) Installing or replacing door hardware.

Household services do not include services that require licensure under chapter 489.

(2) “Marketplace contractor” means any individual who:

(a) Enters into an agreement with a marketplace platform to use the platform’s technology application to connect with third-party individuals or entities seeking temporary household services.

(b) In return for compensation, offers or provides temporary household services to third-party individuals or entities through the marketplace platform’s technology application.

(3) “Marketplace platform” or “platform” means an entity operating in this state which:

(a) Offers an online-enabled technology application service, website, or system that enables marketplace contractors to provide services to third-party individuals or entities seeking such temporary household services.

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

451.02 Marketplace contractors.—

(1) A marketplace contractor must be treated as an independent contractor, and not as an employee, of the marketplace platform for all purposes under state and local laws, regulations, and ordinances, including, but not limited to, chapters 440 and 443, if all of the following conditions are met:

(a) The marketplace platform does not unilaterally prescribe specific hours during which the marketplace contractor must be available to accept service requests submitted through the platform from third-party individuals or entities.

(b) The marketplace platform does not prohibit the marketplace contractor from using the technology application offered by other marketplace platforms.

(c) The marketplace platform does not restrict the contractor from engaging in any other occupation or business.

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

(e) The marketplace contractor bears all or substantially all of the marketplace contractor’s expenses incurred by the marketplace contractor in performing the services.

(f) The marketplace contractor is responsible for paying taxes on the marketplace contractor’s income.

(2) Subsection (1) applies to services performed by a marketplace contractor before July 1, 2018, if the conditions set forth in subsection (1) were satisfied when the services were performed.

(3) Compliance with subsection (1) is not mandatory to establish the existence of an independent contractor relationship. The exclusion of any person or service from this section does not create any presumption and is not admissible to deny the existence of an independent contractor relationship.

(4) Third-party individuals or entities seeking services through the marketplace platform and marketplace contractors must comply with chapter 440 in the same manner as if they had not connected through the marketplace platform.

(5) This section does not apply to:

(a) Services performed in the employ of the state, a political subdivision of the state, an Indian tribe, an instrumentality of a state, or any political subdivision of a state or an Indian tribe which is wholly owned by one or more states, political subdivisions, or Indian tribes, respectively, provided that such service is excluded from employment as defined in s. 3306 of the Federal Unemployment Tax Act.

(b) Services performed in the employ of a religious, charitable, educational, or other organization which is excluded from employment as defined in ss. 3301-3311 of the Federal Unemployment Tax Act, solely by reason of s. 3306(c)(8) of the act.

Iowa

SB 2257 was:

- Passed by the first chamber on February 19, 2018
- Passed by the second chamber on March 20, 2018
- Enacted on April 4, 2018, with an effective date of July 1, 2018

SB 2257 adds new **chapter 93** to the Code of Iowa as follows:

93.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “Governmental entity” means the same as defined in section 96.19.

2. “Indian tribe” means the same as defined in section 96.19.

3. a. “Marketplace contractor” means a person or organization, including an individual, corporation, limited liability company, partnership, sole proprietor, or other entity, that does all of the following:

(1) Enters into a written agreement with a marketplace platform to use the marketplace platform’s digital network to connect with individuals or entities that seek to obtain services from the marketplace contractor.

(2) Performs services for individuals or entities upon connection through a marketplace platform’s digital network in exchange for compensation or payment of a fee.

(3) Does not perform the services offered by the marketplace contractor at or from a physical business location that is operated by the marketplace platform in the state.

b. “Marketplace contractor” does not include a person or organization that performs services consisting of transporting freight, sealed and closed envelopes, boxes, parcels, or other sealed and closed containers for compensation.

4. “Marketplace platform” means a person or organization, including an individual, corporation, limited liability company, partnership, sole proprietor, or other entity, that operates a digital network to connect marketplace contractors to individuals or entities that seek to obtain the type of services offered by marketplace contractors.

93.2 Marketplace contractors as independent contractors—retroactivity.

1. A marketplace contractor shall be treated as an independent contractor, and not an employee of a marketplace platform, for all purposes under state or local law, including but not limited to chapters 87 and 96, if the following conditions are met:

a. The marketplace contractor and marketplace platform agree in writing that the marketplace contractor is engaged as an independent contractor and not an employee of the marketplace platform.

b. The marketplace platform does not unilaterally prescribe specific hours during which the marketplace contractor must be available to accept service requests submitted through the marketplace platform’s digital network.

c. The marketplace platform does not prohibit the marketplace contractor from engaging in outside employment or performing services through other marketplace platforms.

d. The marketplace contractor bears its own expenses incurred in performing services.

2. For services performed by a marketplace contractor prior to the effective date of this Act, a marketplace contractor shall be treated as an independent contractor and not an employee of a marketplace platform for all purposes under state or local law, including but not limited to chapters 87 and 96, if the conditions set forth in subsection 1 were satisfied at the time the services were performed.

3. When providing services that require an Iowa license, the marketplace contractor shall be responsible for obtaining the Iowa license and making such license available to the individuals or entities for whom the marketplace contractor is providing services.

4. This section shall not apply to any of the following:

a. Services performed by an individual in the employ of a governmental entity or Indian tribe, but only if the services are excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. §3301-3311, solely by reason of section 3306(c)(7) of that Act.

b. Services performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if the services are excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. §3301-3311, solely by reason of section 3306(c)(8) of that Act.

c. Services performed by a real estate broker or a real estate salesperson licensed pursuant to chapter 543B.

Kentucky

HB 388 was:

- Passed by the first chamber on March 6, 2018
- Included in NCCI’s March 16, 2018 **Legislative Activity Report** (RLA-2018-11)
- Amended and passed by the second chamber on March 20, 2018
- Included in NCCI’s March 30, 2018 **Legislative Activity Report** (RLA-2018-13)
- Enacted on April 2, 2018, with a projected effective date of July 13, 2018

HB 388 amends **sections 342.0011, 342.122, 342.1221, 342.1223, 342.1231, 342.1242, and 342.1243** of the Kentucky Workers Compensation Law as follows:

342.0011 Definitions for chapter.

As used in this chapter, unless the context otherwise requires:

...

(25) (a) “Premiums received” for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Department of Insurance by insurance companies, except that “premiums received” includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for

deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. For policies with provisions for deductibles with effective dates on or after January 1, 1995, assessments shall be imposed on premiums received as calculated by the deductible program adjustment. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, “premiums received” includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. For policies covering leased employees as defined in KRS 342.615, “premiums received” means premiums calculated using the experience modification factor of each lessee as defined in KRS 342.615 for each leased employee for that portion of the payroll pertaining to the leased employee.

...

(c) “Premium,” for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers’ compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. For policies with provisions for deductibles with effective dates on or after January 1, 1995, assessments shall be imposed as calculated by the deductible program adjustment. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, “premium” includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

...

(e) “Deductible program adjustment” means calculating premium and premiums received on a gross basis without regard to the following:

1. Schedule rating modifications, debits, or credits;

2. Deductible credits; or

3. Modifications to the cost of coverage from inception through and including any audit that are based on negotiated retrospective rating arrangements, including but not limited to large risk alternative rating options;

...

342.122 Special fund assessments—Annual adjustments—Reports—Central claim registry.

...

(2) (a) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. Receipt shall be considered timely through actual physical receipt or by postmark of the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.

(b) Beginning on January 1, 2020, all assessments shall be electronically remitted to the funding commission quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. Receipt shall be considered timely when filed and remitted using the appropriate electronic pay system as prescribed by the funding commission. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.

...

342.1221 Penalty and interest on late payment of assessments—Waiver.

Assessments levied and expenses owed pursuant to KRS 342.122 and Sections 6 and 7 of this Act and unpaid on the date on which they are due and payable shall bear interest at the rate specified in KRS 131.183 plus a penalty of one and one-half percent (1.5%) per month or portion thereof without proration from the date on which the assessment or expenses are ~~was~~ due and payable. The funding commission shall have the authority to waive part or all of the penalty, but not the interest, where it is shown to the

satisfaction of the commission that failure to timely pay assessments is due to reasonable cause. This authority shall extend to the coal workers' pneumoconiosis fund until it ceases to exist.

342.1223 Kentucky Workers' Compensation Funding Commission—Commission's relationship with Office of Financial Management within the Finance and Administration Cabinet.

...

(2) The commission shall:

...

(b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the Department of Financial Institutions, in investments described in KRS Chapter 386, except that the funding commission may, at its discretion, invest in ~~non-dividend-paying~~ equity securities;

...

(3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:

(a) To sue and be sued, complain, or defend, in its name;

(b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly. Notwithstanding any provision of KRS Chapter 18A to the contrary, officers and employees of the funding commission may be exempted from the classified service;

...

342.1231 Procedure for protesting special fund assessments—Expenses of audits, how paid.

(1) The funding commission may mail to the ~~assessment payer taxpayer~~ a notice of any assessment assessed by it. The assessment shall be final if not protested in writing to the funding commission within thirty (30) days from the date of notice. Payment for the assessment, penalty and interest, and expenses shall be received by the funding commission within thirty (30) days from the date the notice becomes final. The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made. Upon written request, the funding commission may extend the time for filing the supporting statement if it appears the delay is necessary and unavoidable. The refusal of such extension may be reviewed in the same manner as a protested assessment.

(2) After a timely protest has been filed, the ~~assessment payer taxpayer~~ may request a conference with the funding commission. The request shall be granted in writing stating the date and time set for the conference. The ~~assessment payer taxpayer~~ may appear in person or by representative. Further conferences may be held by mutual agreement.

(3) After considering the ~~assessment payer's taxpayer's~~ protest, including any matters presented at the final conference, the funding commission shall issue a final ruling on any matter still in controversy, which shall be mailed to the ~~assessment payer taxpayer~~. The ruling shall state that it is a final ruling of the funding commission, generally state the issues in controversy, the funding commission's position thereon and set forth the procedure for prosecuting an appeal to the Kentucky Claims Commission pursuant to KRS 49.220.

(4) The ~~assessment payer taxpayer~~ may request in writing a final ruling at any time after filing a timely protest and supporting statement. When a final ruling is requested, the funding commission shall issue such ruling within ~~sixty (60) thirty (30) days~~ or at the next board of directors meeting, whichever is later, from the date the request is received by the funding commission.

(5) After a final ruling has been issued, the ~~assessment payer taxpayer~~ may appeal to the Kentucky Claims Commission pursuant to KRS 49.220.

(6) The expenses incurred by the funding commission in conducting audits required in this chapter shall be paid by the audited entities ~~insurance companies~~ in accordance with administrative regulations promulgated by the funding commission

(7) Notwithstanding any provision to the contrary, a notice of assessment under subsection (1) of this section shall not be collected unless the notice of assessment is mailed to the assessment payer not later than five (5) years from the due date of the quarterly premium report or the date the amended quarterly premium report is filed, whichever is later. A quarterly premium report shall not be amended later than one (1) year after the due date of the quarterly premium report.

(8) Assessment payers shall preserve, retain, and provide all documents relevant to quarterly premium reports and subject to audits to the funding commission upon request during the completion of the audit.

(9) (a) The funding commission may mail the assessment payer notice of a refund amount to be returned to an insured. The insurance carrier shall pay the amount of the refund to the insured within sixty (60) days from the date of notice sent by the funding commission. If, after good faith efforts, the refund cannot be returned to the insured, the refund amount shall be remitted to the funding commission within thirty (30) days from the last date of attempting the refund.

(b) If a refund amount to an insured is unpaid on the date on which it is due, then that amount shall bear a penalty of one and one-half percent (1.5%) per month from that due date. The funding commission shall have the authority to waive part or all of the penalty where failure to pay is shown, to the satisfaction of the funding commission, to be for a reasonable cause.

(10) "Assessment payer" "Taxpayer" as used in this section means insurance carrier, self-insured group, and self-insured employer.

342.1242 Kentucky coal workers' pneumoconiosis fund—Liability for and manner of making payments for awards for coal workers' pneumoconiosis—Assessments to finance fund—When assessments cease.

...

(4) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be transferred to the Kentucky Employers' Mutual Insurance Authority, which is administering the coal workers' pneumoconiosis fund. In addition, the powers and responsibilities of the Kentucky Workers' Compensation Funding Commission including its fiduciary duties and responsibilities relating to assessments collected for the special fund pursuant to KRS 342.122, Section 3 of this Act, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply to assessments collected for the Kentucky coal workers' pneumoconiosis fund created pursuant to this section. Each entity subject to assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any and all information requested by the Kentucky Workers' Compensation Funding Commission necessary to carry out its powers and responsibilities relating thereto.

...

(9) The Kentucky Employers' Mutual Insurance Authority shall reimburse the funding commission for any expenses incurred with regard to the collection of assessments for the coal workers' pneumoconiosis fund and other incurred expenses related to the coal workers' pneumoconiosis fund.

342.1243 Transfer of the administration, assets, and liabilities of the Kentucky coal workers' pneumoconiosis fund—assessments on employers.

...

(8) When the Kentucky Workers' Compensation Funding Commission and the Kentucky Employers' Mutual Insurance Authority have determined final audits are closed and the liability of the fund is fully funded ~~that the Kentucky coal workers' pneumoconiosis fund has fully funded its liabilities,~~ then the authority for imposing assessment rates ~~assessments~~ pursuant to this section and KRS 342.1242 shall cease to exist, ~~and the Kentucky coal workers' pneumoconiosis fund shall be abolished.~~ Any remaining assessments received following the exhaustion of liabilities shall be refunded pro rata to all employers who have paid an assessment in the year that liabilities are fully funded. When all claim payouts are completed, the Kentucky coal workers' pneumoconiosis fund shall be abolished.

Tennessee

SB 2141 was:

- Passed by the first and second chambers on March 19, 2018
- Included in NCCI's March 30, 2018 **Legislative Activity Report** (RLA-2018-13)
- Enacted and effective on April 2, 2018

SB 2141 amends **section 50-6-106** of the Tennessee Workers' Compensation Law as follows:

50-6-106. Employments not covered.

This chapter shall not apply to:

...

(4) Farm or agricultural laborers and employers of those laborers; ~~Employers of farm or agricultural laborers may accept this chapter by purchasing a workers' compensation insurance policy, and may at any time withdraw that acceptance by canceling or not renewing the policy and providing notice to the employees;~~

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending April 6, 2018.

Arizona

SB 1100 was:

- Passed by the first chamber on March 20, 2018
- Included in NCCI's March 2, 2018 **Legislative Activity Report** (RLA-2018-09)
- Amended and passed by the second chamber on April 4, 2018

SB 1100 amends **section 23-941.01 Settlement of claims; exception; definitions** and adds new **section 23-941.03. Settlement of claims; supportive medical maintenance benefits; definition** to the Arizona Revised Statutes, in part, as follows:

23-941.01. Settlement of claims; full and final; exception; definitions

A. The interested parties to a claim may:

1. Settle and release all or any part of an accepted claim for compensation, benefits, penalties or interest.
2. If the period of temporary disability is terminated by ~~the carrier, special fund or self-insured employer~~ a final notice of claim status, award of the commission or stipulation of the interested parties, negotiate a full and final settlement of an accepted claim.

B. Any full and final settlement shall:

1. Be in writing.
2. Be signed by the carrier, special fund or self-insured employer or an authorized representative of the carrier, special fund or self-insured employer and the employee or the employee's authorized representative.
3. Acknowledge that the employee had the opportunity to seek legal advice and be represented by counsel.
4. Include a description of the employee's medical conditions that have been identified and contemplated at the time of the settlement agreement.
5. Have attached the information provided by the carrier, special fund or self-insured employer pursuant to subsection c, paragraphs 2 and 3 of this section.

~~C. If the employee is represented by counsel, the~~ A full and final settlement shall include the following signed attestations:

1. The employee understands the rights settled and released by the agreement ~~and was represented by counsel.~~
2. The employee has been provided information from the carrier, special fund or self-insured employer that outlines any reasonable anticipated future medical, surgical and hospital benefits relating to the claim, ~~and the projected cost of those benefits, and that provides an explanation of how those projected costs were determined~~ and a disclosure of the amount of the settlement that represents the settlement of future medical, surgical and hospital benefits.
3. The employee has been provided information from the carrier, special fund or self-insured employer that discloses the total amount of future indemnity benefits, the employee's rated age, if applicable, the employee's life expectancy, the source of the employee's life expectancy, the present value of future indemnity benefits, the discount rate used to calculate present value and the amount of the settlement that represents the settlement of future indemnity benefits.
- ~~3.~~ 4. The employee understands that monies received for future medical treatment associated with the industrial injury should be set aside to ensure that the costs of such the treatment will be paid.
4. 5. The parties have considered and taken reasonable steps to protect any interests of medicare, medicaid, the Indian health service and the United States department of veterans affairs, including establishing a medicare savings account if necessary.
- ~~5.~~ 6. The parties have conducted a search for and taken reasonable steps to satisfy any identified medical liens and unpaid medical charges.
7. Coercion, duress, fraud, misrepresentation or undisclosed additional agreements have not been used to achieve the full and final settlement.

D. If an administrative law judge of the commission determines that the requirements of subsection b of this section are satisfied, the attestations of subsection c of this section are present and the employee is represented by counsel, the administrative law judge shall approve the settlement.

~~D.E.~~ If the employee is not represented by counsel, the employee shall appear before an administrative law judge of the commission and the administrative law judge shall make specific factual findings regarding whether the requirements of subsection B and C subsection C, paragraphs 2, 3, 4 and 5 of this section are satisfied. The administrative law judge may not approve the settlement if the requirements of subsection B of this section are not met or if the settlement is not deemed fair and reasonable to the employee. The administrative law judge shall conduct a hearing and perform a detailed inquiry into the attestations provided by the unrepresented employee pursuant to subsection C of this section. The inquiry shall include whether the unrepresented employee understands the specific rights being settled and released, the information, computation and methodology provided by the carrier, special fund or self-insured employer, and the employee's responsibility to protect the interests of other payors and ensure the payment of future treatment costs.

~~E.~~ A full and final settlement is not valid and enforceable unless the full and final settlement is approved by the commission. When determining whether to approve a settlement, the commission shall consider whether the settlement is in the best interests of the employee based on the following criteria:

1. ~~Whether the employee's injuries are stabilized.~~
2. ~~The permanency of the employee's injuries.~~

F. The commission may not approve a full and final settlement if the requirements of subsections B and C of this section are not met.

FG. A lump sum full and final settlement payment shall be made to the employee within fifteen days after the award approving the settlement becomes final.

...

23-941.03. Settlement of claims; supportive medical maintenance benefits; definition

A. Any final settlement agreement involving undisputed entitlement to supportive medical maintenance benefits is not valid and enforceable until the final settlement agreement is approved by the commission.

B. The commission may approve a final settlement agreement involving undisputed entitlement to supportive medical maintenance benefits if the requirements of this section are satisfied.

C. Subject to the following requirements, the interested parties to a claim may enter into a final settlement and release of a claim for undisputed entitlement to supportive medical maintenance benefits after the period of temporary disability is terminated by a final notice of claim status or award of the commission. The carrier, special fund or self-insured employer shall submit a summary

of all reasonably anticipated future supportive medical maintenance benefits and the projected cost of the benefits for review by the employee. The summary shall also be included with the final settlement agreement filed with the commission. All medical conditions subject to the final settlement agreement must be described in the final settlement agreement. The final settlement provisions defined in this subsection shall apply only to future supportive medical maintenance benefits for the described condition.

D. The carrier, special fund or self-insured employer shall inform the attending physician of the approval of a final settlement agreement. Unless supportive medical maintenance benefits rendered before the date of the final settlement are subject to a dispute or payment for the treatment was included in the final settlement agreement, the carrier, special fund or self-insured employer shall remain responsible for payment for the treatment not covered by the final settlement agreement as provided by this chapter.

E. This section does not prohibit a settlement that does not constitute a final settlement.

F. For the purposes of this section, "final settlement" means a settlement in which the injured worker waives any future entitlement to supportive medical maintenance benefits for known conditions described in the agreement.

Hawaii

SB 2244 SD1 HD2 was:

- Passed by the first chamber on March 2, 2018
- Included in NCCI's March 9, 2018 *Legislative Activity Report* (RLA-2018-10)
- Amended and passed by the second chamber on April 5, 2018

SB 2244 SD1 HD2 creates new *sections 386-A* and *386-B*, and amends *section 386-21.7* of the Hawaii Workers' Compensation Law as follows:

§386-A Opioid therapy; qualifying injured employees; informed consent process. (a) Beginning on July 1, 2019, any health care provider authorized to prescribe opioids shall adopt and maintain a written policy or policies that include execution of a written agreement to engage in an informed consent process between the health care provider authorized to prescribe opioids and a qualifying injured employee.

(b) If the qualifying injured employee is unable to physically or mentally execute the written agreement pursuant to subsection (a), due to the injury, then the physician shall execute the agreement as soon as the employee's condition improves. At no time shall the employee be responsible for the payment of the medication prescribed.

(c) The department shall make available on its website a copy of the template for an opioid therapy informed consent process agreement developed by the department of health pursuant to section 329-38.5(b). The template shall be posted to the department's website no later than December 31, 2018.

(d) For the purposes of this section, "qualifying injured employee" means:

- (1) An injured employee requiring opioid treatment for more than three months;
- (2) An injured employee who is prescribed benzodiazepines and opioids together; or
- (3) An injured employee who is prescribed a dose of opioids that exceeds ninety morphine equivalent doses.

(e) A violation of this section shall not be subject to the penalty provisions of part IV of chapter 329.

§386-B Qualifying injured employees; initial concurrent prescriptions; opioids and benzodiazepines. (a) Initial concurrent prescriptions for opioids and benzodiazepines shall not be for longer than seven consecutive days unless a supply of longer than seven days is determined to be reasonably needed for the treatment of:

- (1) Pain experienced while the qualifying injured employee is in post-operative care;
- (2) Chronic pain and pain management;
- (3) Substance abuse or opioid or opiate dependence;
- (4) Cancer;

(5) Pain experienced while the qualifying injured employee is in palliative care; or

(6) Pain experienced while the qualifying injured employee is in hospice care;

provided that if a health care provider authorized to prescribe opioids issues a concurrent prescription for more than a seven-day supply of an opioid and benzodiazepine, the health care provider shall document in the qualifying injured employee's medical record the condition for which the health care provider issued the prescription and that an alternative to the opioid and benzodiazepine was not appropriate treatment for the condition.

(b) After an initial concurrent prescription for opioids and benzodiazepines has been made, a health care provider authorized to prescribe opioids may authorize subsequent prescriptions through a telephone consultation with the qualifying injured employee when the health care provider deems such action to be reasonably needed for post-operative care and pain management; provided that the health care provider shall consult with a qualifying injured employee in person at least once every ninety days for the duration during which the health care provider concurrently prescribes opioids and benzodiazepines to the qualifying injured employee.

(c) For the purposes of this section, "qualifying injured employee" has the same meaning as in section 386-A.

§386-21.7 Prescription drugs; pharmaceuticals.

(a) Notwithstanding any other provision to the contrary, immediately after a work injury is sustained by an employee and so long as reasonably needed, the employer shall furnish to the employee all prescription drugs as the nature of the injury requires; provided that initial concurrent prescriptions for opioids and benzodiazepines shall meet the requirements of section 386-B. The liability for the prescription drugs shall be subject to the deductible under section 386-100.

SB 2364 SD2 HD1 was:

- Passed by the first chamber on March 6, 2018
- Included in NCCI's March 16, 2018 **Legislative Activity Report** (RLA-2018-11)
- Amended and passed by the second chamber on April 6, 2018

SB 2364 SD2 HD1 adds a new section to the Hawaii Workers Compensation Law as follows:

§ 386- Payment by employer; duty to service provider; disagreement with service provider; resolution procedures. (a)

Notwithstanding any other law to the contrary, the employer shall pay for all medical services required by the employee for the compensable injury and the process of recovery. The employer shall not be required to pay for care unrelated to the compensable injury.

(b) The employer shall retain the right to investigate the claim, but shall not use the investigation to determine compensability as the basis of denial of medical services for the employee.

(c) If an employer disputes a claim for services rendered or a bill received, the employer shall notify the provider of services of that fact within thirty calendar days of receipt of the claim for services or bill. Failure by the employer to submit timely notice to the provider of services shall render the employer liable for the services provided or bill received until the employer satisfies the notice requirement and except as provided in subsection (d).

(d) Any employer who has received a claim for services rendered or a bill from a provider of services shall be liable for the claim or bill and, within sixty calendar days of receipt of the claim or bill, shall pay all charges listed in the claim for services rendered or the bill, except for items for which there is reasonable disagreement. After expiration of the sixty-calendar-day time period for payment, the provider of services may increase the total outstanding balance owed for undisputed services or charges by one per cent per month.

(e) If reasonable disagreement occurs, the employer shall:

(1) Pay all undisputed charges;

(2) Notify the provider of services of the denial of payment of any disputed charges and the reason for the denial within thirty calendar days of receipt of the bill or claim for services rendered; and

(3) Provide a copy of the denial to the employee.

The employer's denial shall include a statement as follows:

"IF THE PROVIDER OF SERVICES DOES NOT AGREE WITH THE EMPLOYER'S STATED REASON FOR DENIAL OF PAYMENT, THE PROVIDER OF SERVICES MAY FILE A BILL DISPUTE REQUEST WITH THE DIRECTOR OF THE HAWAII DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS. THE BILL DISPUTE REQUEST SHALL BE CLEARLY IDENTIFIED AS 'BILL DISPUTE REQUEST' IN CAPITAL LETTERS AND IN NO LESS THAN TEN POINT FONT ON THE FRONT OF THE FIRST PAGE OF THE REQUEST AND ON THE FRONT OF THE ENVELOPE IN WHICH THE REQUEST IS SENT. ANY BILL DISPUTE REQUEST SHALL BE FILED WITHIN THIRTY CALENDAR DAYS AFTER THE POSTMARK DATE OF THE EMPLOYER'S DENIAL OF PAYMENT. IF THE PROVIDER OF SERVICES FAILS TO SUBMIT A TIMELY BILL DISPUTE REQUEST, THE PROVIDER SHALL FORFEIT THE RIGHT TO DISPUTE THE EMPLOYER'S DENIAL OF PAYMENT."

(f) Upon receipt of a bill dispute request, the director shall send notice to the parties and the parties shall negotiate to resolve the disputed services or charges during the thirty-one calendar days following the date of the notice from the director. If the parties fail to enter into an agreement within the thirty-one calendar days, then within fourteen calendar days thereafter, either party may file a request in writing to the director to review the bill dispute request; provided that the requesting party shall send a notice of the request to the non-requesting party. Upon receipt of the request for review, the director shall send the parties a second notice requesting each party to file a position statement with the director, including substantiating documentation that describes the services and amounts in dispute and all actions taken to resolve the dispute during the thirty-one calendar day period of negotiation under this subsection. The director shall review the positions of the parties and render an administrative decision without a hearing. The director may assess a fine of up to \$1,000 payable to the general fund against any party if the director finds that the party has failed to negotiate in good faith. Denial of payment without reasonable cause shall be considered a failure to negotiate in good faith.

(g) An employee shall be liable for reimbursement of benefits or payments received under this section for any disputed claim that is found to be not compensable, whether received from an employer, insurer, or the special compensation fund. Reimbursement shall be made to the source from which the compensation was received, and may include recoupment by the insurer of all payments made for medical care, medical services, vocational rehabilitation services, and all other services rendered for payment under this section.

Kansas

HB 2184 was:

- Passed by the first chamber on May 3, 2017
- Substituted and passed by the second chamber on March 27, 2018

HB 2184 amends *section 44-510b* of the Kansas workers compensation act as follows:

44-510b. Compensation where death results from injury; compensation upon remarriage; apportionment; burial expenses; limitations on compensation; annual statement by surviving spouse.

Where death results from injury, compensation shall be paid as provided in K.S.A. 44-510h and 44-510i, and amendments thereto, and as follows:

(a) If an employee leaves any dependents wholly dependent upon the employee's earnings at the time of the accident or injury, all compensation benefits under this section shall be paid to ~~such the~~ dependent persons. There shall be an initial payment of ~~\$40,000~~ \$60,000 to the surviving legal spouse or a wholly dependent child or children or both. The initial payment shall not be subject to the 8% discount as provided in K.S.A. 44-531, and amendments thereto. The initial payment shall be immediately due and payable and apportioned 50% to the surviving legal spouse and 50% to the dependent children.

Thereafter, ~~such the~~ dependents shall be paid weekly compensation, except as otherwise provided in this section, in a total sum to all ~~such the~~ dependents, equal to 66 ⅔ % of the average weekly wage of the employee at the time of the accident or injury, computed as provided in K.S.A. 44-511, and amendments thereto, but in no event shall ~~such the~~ weekly benefits exceed the maximum weekly benefits provided in K.S.A. 44-510c, and amendments thereto, nor be less than a minimum weekly benefit of the dollar amount nearest to 50% of the state's average weekly wage as determined pursuant to K.S.A. 44-511, and amendments thereto, subject to the following:

(1) If the employee leaves a surviving legal spouse or a wholly dependent child or children, or both, who are eligible for benefits under this section, then all death benefits shall be paid to ~~such the~~ surviving spouse or children, or both, and no benefits shall be paid to any other wholly or partially dependent persons.

(2) A surviving legal spouse shall be paid compensation benefits for life, except as otherwise provided in this section.

(3) Any wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until ~~such the~~ dependent child becomes 18 years of age, unless the child is enrolled in high school. In that event, compensation shall continue until May 30th of the child's senior year in high school or until the child becomes 19 years of age, whichever is earlier.

A wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until ~~such the~~ dependent child becomes 23 years of age during any period of time that one of the following conditions is met:

(A) The wholly dependent child is not physically or mentally capable of earning wages in any type of substantial and gainful employment; or

(B) the wholly dependent child is a student enrolled full-time in an accredited institution of higher education or vocational education.

(4) If the employee leaves no legal spouse or dependent children eligible for benefits under this section but leaves other dependents wholly dependent upon the employee's earnings, ~~such the~~ other dependents shall receive weekly compensation benefits as provided in this subsection until death, remarriage or so long as ~~such the~~ other dependents do not receive more than 50% of their support from any other earnings or income or from any other source, except that the maximum benefits payable to all ~~such the~~ other dependents, regardless of the number of ~~such the~~ other dependents, shall not exceed a maximum amount of ~~\$18,500~~ \$100,000.

(b) Where the employee leaves a surviving legal spouse and dependent children who were wholly dependent upon the employee's earnings and are eligible for benefits under this section 50% of the maximum weekly benefits payable shall be apportioned to ~~such the~~ spouse and 50% to ~~such the~~ dependent children.

(c) If an employee does not leave any dependents who were wholly dependent upon the employee's earnings at the time of the injury but leaves dependents, other than a spouse or children, in part dependent on the employee's earnings, ~~such the~~ percentage of a sum equal to three times the employee's average yearly earnings but not exceeding ~~\$18,500~~ \$100,000 but not less than ~~\$2,500~~ \$25,000, as ~~such the~~ employee's average annual contributions which the employee made to the support of ~~such the~~ dependents during the two years preceding the date of the injury, bears to the employee's average yearly earnings during the contemporaneous two-year period, shall be paid in compensation to ~~such the~~ dependents, in weekly payments as provided in subsection (a), not to exceed ~~\$18,500~~ \$100,000 to all ~~such the~~ dependents.

(d) If an employee does not leave any dependents, either wholly or partially dependent upon the employee, a lump-sum payment of ~~\$25,000~~ \$100,000 shall be made to the legal heirs of ~~such the~~ employee in accordance with Kansas law. If the employer procured a life insurance policy with beneficiaries designated by the employee and in an amount not less than \$50,000, then the amount paid to the legal heirs under this section shall be reduced by the amount of the life insurance policy up to a maximum deduction of \$100,000. However under no circumstances shall ~~such the~~ payment escheat to the state. ~~Notwithstanding the provisions of this subsection, no such payment shall be required if the employer has procured a life insurance policy, with beneficiaries designated by the employee, providing coverage in an amount not less than \$18,500.~~

(e) The administrative law judge, except as otherwise provided in this section, shall have the power and authority to apportion and reapportion the compensation allowed under this section, either to wholly dependent persons or partially dependent persons, in accordance with the degree of dependency as of the date of the injury, except that the weekly payment of compensation to any and all dependents shall not exceed the maximum nor be less than the minimum weekly benefits provided in subsection (a).

(f) In all cases of death compensable under this section, the employer shall pay the reasonable expense of burial not exceeding ~~\$5,000~~ \$10,000. Where required, the employer shall pay the costs of a court-appointed conservator not to exceed ~~\$1,000~~ \$2,500.

(g) The marriage or death of any dependent shall terminate all compensation, under this section, to ~~such the~~ dependent except the marriage of the surviving legal spouse shall not terminate benefits to ~~such the~~ spouse. Upon the death of the surviving legal spouse or the marriage or death of a dependent child, the compensation payable to ~~such the~~ spouse or child shall be reapportioned to those, among the surviving legal spouse and dependent children, who remain eligible to receive compensation under this section.

(h) Notwithstanding any other provision in this section to the contrary, the maximum amount of compensation benefits payable under this section, including the initial payment in subsection (a) to any and all dependents by the employer shall not exceed a total amount of \$300,000 and when ~~such the~~ total amount has been paid the liability of the employer for any further compensation under this section to dependents, other than minor children of the employee, shall cease except that the payment of compensation under this section to any minor child of the employee shall continue for the period of the child's minority at the weekly rate in effect when the employer's liability is otherwise terminated under this subsection and shall not be subject to termination under this subsection until ~~such the~~ child becomes 18 years of age.

(i) Persons receiving benefits under this section shall submit an annual statement to the insurance carrier, self-insured employer or group-funded workers compensation pool paying the benefits, in ~~such the~~ form and containing ~~such the~~ information relating to eligibility for compensation under this section as may be required by rules and regulations of the director. If the person receiving benefits under this section is a surviving spouse or a dependent child who has reached the age of majority, ~~such the~~ person shall personally submit an annual statement. If the person receiving benefits under this section is a dependent child subject to a conservator, the conservator of ~~such the~~ child shall submit the annual statement. If ~~such the~~ person fails to submit an annual statement, the payer of benefits may notify the director of ~~such the~~ failure and the director shall notify the person of the failure by certified mail with return receipt. If ~~such the~~ person fails to submit the annual statement or fails to reasonably provide the required information within 30 days after receipt of the notice from the director, all compensation benefits paid under this section to ~~such the~~ person shall be suspended until the annual statement is submitted in proper form to the payer of benefits.

Maryland

HB 1592 was:

- Passed by the first chamber on March 15, 2018
- Included in NCCI's March 23, 2018 **Legislative Activity Report** (RLA-2018-12)
- Passed by the second chamber on April 3, 2018

HB 1592, in part, repeals and reenacts, with amendments, **section 9-212** 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.~~

SB 48 was:

- Passed by the first chamber on February 20, 2018
- Included in NCCI's March 2, 2018 **Legislative Activity Report** (RLA-2018-09)
- Passed by the second chamber on April 6, 2018

SB 48 amends **section 9-628. Compensation for less than 75 weeks** of the Maryland Workers Compensation Law, related to permanent partial disability benefits, to read as follows:

§ 9-628. Compensation for less than 75 weeks.

...

(a) "Public safety employee" defined.—

In this section, "public safety employee" means:

...

(9) a Baltimore County deputy sheriff, but only when the deputy sheriff sustains an accidental personal injury that arises out of and in the course and scope of performing duties directly related to:

(i) courthouse security;

(ii) prisoner transportation;

(iii) service of warrants;

(iv) personnel management; or

(v) other administrative duties; or

(10) a state correctional officer.

...

SB 575 was:

- Passed by the first chamber on March 6, 2018
- Included in NCCI's March 16, 2018 **Legislative Activity Report** (RLA-2018-11)
- Passed by the second chamber on April 6, 2018

SB 575 amends **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, 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:

...

(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~~

~~(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.

...

SB 851 was:

- Passed by the first chamber on March 19, 2018
- Included in NCCI's March 30, 2018 *Legislative Activity Report* (RLA-2018-13)
- Passed by the second chamber on April 5, 2018

SB 851, in part, repeals and reenacts, with amendments, **section 9-212** and repeals **section 9-1015** of the Maryland Worker's Compensation Act 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~~ 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.~~

SB 979 was:

- Passed by the first chamber on March 15, 2018
- Included in NCCI's March 23, 2018 **Legislative Activity Report** (RLA-2018-12)
- Passed by the second chamber on April 5, 2018

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.

SB 979 also includes 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.

Tennessee

HB 2304 was:

- Passed by the first chamber on March 26, 2018
- Included in NCCI's April 6, 2018 **Legislative Activity Report** (RLA-2018-14)
- Passed by the second chamber on April 2, 2018

HB 2304 amends **section 50-6-226** of the Tennessee Workers' Compensation Law as follows:

50-6-226. Fees of attorneys and physicians, and hospital charges.

...

(d) (1) In addition to attorneys' fees provided for in this section, the court of workers' compensation claims may award reasonable attorneys' fees and reasonable costs, including reasonable and necessary court reporter expenses and expert witness fees, for depositions and trials incurred when the employer:

...

(B) Wrongfully denies a claim by filing a timely notice of denial, or fails to timely initiate any of the benefits to which the employee is entitled under this chapter, including medical benefits under § 50-6-204 or temporary or permanent disability benefits under § 50-6-207, if the workers' compensation judge makes a finding that such benefits were owed at an expedited hearing or compensation hearing.

(2) Subdivision (d)(1)(B) shall apply to injuries that occur on or after July 1, 2016, ~~but shall not apply to injuries that occur after June 30, 2018.~~

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending April 6, 2018.

Alaska

HB 38 amends **sections 23.30.190** and **23.30.215** and adds **section 23.30.212** to the Alaska Workers' Compensation Act to read:

Sec. 23.30.190 Compensation for permanent partial impairment; rating guides.

(a) In case of impairment partial in character but permanent in quality, and not resulting in permanent total disability, the compensation is \$255,506 ~~\$177,000~~ multiplied by the employee's percentage of permanent impairment of the whole person. The percentage of permanent impairment of the whole person is the percentage of impairment to the particular body part, system, or function converted to the percentage of impairment to the whole person as provided under (b) of this section. The compensation

is payable in a single lump sum, except as otherwise provided in AS 23.30.041, but the compensation may not be discounted for any present value considerations.

...

(e) The director shall annually increase the amount payable under (a) of this section by a percentage equal to the percentage increase in the Consumer Price Index for urban wage earners and clerical workers for Anchorage, Alaska, during the previous calendar year, as determined by the United States Department of Labor, Bureau of Labor Statistics.

Sec. 23.30.212. Notice of death benefits. (a) If an injury causes death, on a form prescribed by the director, the employer shall notify the personal representative of the employee's estate of the compensation for death available under AS 23.30.215, the statute of limitations for obtaining workers' compensation benefits, and where to obtain a list of legal counsel and grief counselors who may be able to assist.

(b) If the identity of the personal representative of the employee's estate is not known by the employer, the employer shall notify one of the following:

(1) the employee's surviving spouse;

(2) the employee's mother or father;

(3) the employee's dependent;

(4) the employee's next of kin; or

(5) anyone otherwise entitled to recover death benefits under AS 23.30.215.

(c) In this section, "personal representative" has the meaning given in AS 13.06.050.

Sec. 23.30.215 Compensation for death.

(a) If the injury causes death, the compensation is known as a death benefit and is payable in the following amounts to or for the benefit of the following persons:

...

(4) if there is no widow or widower or child or children, then for the support of father, mother, grandchildren, brothers, and sisters, if dependent on ~~upon~~ the deceased at the time of injury, 42 percent of the spendable weekly wage of the deceased to those ~~such~~ beneficiaries, share and share alike, not to exceed \$100,000 ~~\$20,000~~ in the aggregate;

(5) \$5,000 to a surviving widow or widower, or equally divided among surviving children of the deceased if there is no widow or widower; and

(6) if there is no widow or widower or child or children, and the father, mother, grandchildren, brothers, and sisters were not dependent on the deceased at the time of injury, then the following amounts are payable in a lump sum:

(A) \$70,000 to the surviving parent, if there is only one surviving parent;

(B) \$35,000 to each surviving parent, if there are two surviving parents;

(C) \$70,000 divided equally among each surviving parent, if there are more than two surviving parents; or

(D) \$70,000 to the estate of the decedent, if there are no surviving parents.

...

(j) The death benefit payable to a person who is a child under (a)(2)(D) or (E) of this section shall terminate five years after the person is no longer considered a child under AS 23.30.395(8).

NCCI estimates that Alaska House Bill 38 (HB 38), if enacted in its current form, may result in an impact of between +2.3% (\$6M) and +2.8% (\$8M) on overall workers compensation system costs in Alaska.

Colorado

HB 1308 adds new **section 8-41-212** to the Workers' Compensation Act of Colorado as follows:

8-41-212. Exemptions—laws of other state furnish exclusive remedy—definitions.

(1) An employee who was hired or is regularly employed outside of Colorado by an out-of-state employer and the out-of-state employer of the employee are exempt from Articles 40 to 47 of this Title 8 while the employee is temporarily working for the out-of-state employer within Colorado if:

(a) The out-of-state employer has furnished coverage pursuant to the workers' compensation laws of the state in which the employee was hired or is regularly employed, which coverage applies to the employee while temporarily working in Colorado; and

(b) The state in which the employee is furnished coverage:

(I) Is contiguous to Colorado; and

(II) Recognizes this section and provides the same exemption from the application of its workers' compensation laws for Colorado employers whose employees are temporarily working in the contiguous state.

(2) For an out-of-state employee and out-of-state employer to which this section applies, the benefits provided under the workers' compensation laws of the state in which the employee is furnished coverage are the exclusive remedy against the out-of-state employer for any injury, whether resulting in death or not, that the employee incurs while working for the out-of-state employer in Colorado.

(3) The division may enter into an agreement with any workers' compensation division or similar agency of a contiguous state to promulgate rules consistent with this section to carry out the extraterritorial application of the workers' compensation or similar law of the agreeing state.

(4) Nothing in this section contravenes the legal obligations of Colorado employers to provide workers' compensation to their employees in compliance with articles 40 to 47 of this title 8.

(5) As used in this section:

(a) "Out-of-state employer" means an employer that is domiciled in another state.

(b) "Temporarily" or "temporarily working" means:

(i) A period of sustained work that does not exceed six months; or

(ii) Engaging in the interstate movement of goods or commodities.

Louisiana

HB 609 adds new **section RS 22: 2013.1** to the Louisiana Insurance Code to read:

§ 2013.1. Administration of large deductible policies and insured collateral

A. This Section shall apply to workers' compensation large deductible policies issued by an insurer subject to delinquency proceedings pursuant to this Chapter; however, this Section shall not apply to first party claims or to claims funded by a guaranty association net of the deductible unless Subsection C of this Section applies. Large deductible policies shall be administered in accordance with their terms, except to the extent the terms conflict with this Section.

B. For purposes of this Section, the following terms have the following meanings:

(1) "Collateral" means any cash, letters of credit, surety bond, or any other form of security posted by the insured, or by a captive insurer or reinsurer, to secure the insured's obligation under a large deductible policy to pay deductible claims or to reimburse the insurer for deductible claim payments. Collateral may also secure an insured's obligation to reimburse or pay to the insurer as may be required for other secured obligations.

(2) "Commercially reasonable" means to act in good faith using prevailing industry practices and making all reasonable efforts considering the facts and circumstances of the matter.

(3) "Deductible claim" means any claim, including a claim for loss and defense and cost containment expense, unless the expenses are excluded, under a large deductible policy that is within the deductible.

(4)(a) "Large deductible policy" means any of the following:

(i) Any combination of one or more workers' compensation policies and endorsements issued to an insured, and contracts or security agreements entered into between an insured and the insurer in which the insured has agreed with the insurer to do either of the following:

(aa) Pay directly the initial portion of any claim under the policy up to a specified dollar amount, or the expenses related to any claim.

(bb) Reimburse the insurer for its payment of any claim or related expenses under the policy up to the specified dollar amount of the deductible.

(ii) Any policy that contains an aggregate limit on the insured's liability for all deductible claims in addition to a per claim deductible limit.

(iii) Any policy that shifts a portion of the ultimate financial responsibility to pay claims from the insurer to the insured, even though the obligation to initially pay claims may remain with the insurer.

(iv) Any policy with a deductible of one hundred thousand dollars or greater.

(b) "Large deductible policy" shall not include any of the following:

(i) Policies, endorsements, or agreements that provide for the initial portion of any covered claim to be self-insured and further that the insurer shall have no payment obligation within the self-insured retention.

(ii) Policies that provide for retrospectively rated premium payments by the insured or reinsurance arrangements or agreements, except to the extent the arrangements or agreements assume, secure, or pay the policyholder's large deductible obligations.

(5) "Other secured obligations" means obligations of an insured to an insurer other than those under a large deductible policy, including but not limited to those under a reinsurance agreement or other agreement involving retrospective premium obligations, the performance of which is secured by collateral that also secures an insured's obligations under a large deductible policy.

C. Unless otherwise agreed by the responsible guaranty association, all large deductible claims, which are also covered claims as defined by the applicable guaranty association law, including those that may have been funded by an insured before liquidation, shall be turned over to the guaranty association for handling. To the extent the insured funds or pays the deductible claim, pursuant to an agreement by the guaranty fund or otherwise, the insured's funding or payment of a deductible claim will extinguish the obligations, if any, of the receiver or any guaranty association to pay the claim. No charge of any kind shall be made against the receiver or a guaranty association on the basis of an insured's funding or payment of a deductible claim.

D.(1) To the extent a guaranty association pays any deductible claim for which the insurer would have been entitled to reimbursement from the insured, a guaranty association shall be entitled to the full amount of the reimbursement, and available collateral as provided for in this Section to the extent necessary to reimburse the guaranty association. Reimbursements paid to

the guaranty association pursuant to this Subsection shall not be treated as distributions pursuant to R.S. 22:2025 or as early access payments pursuant to R.S. 22:2008(C), 2034, and 2037.

(2) To the extent that a guaranty association pays a deductible claim that is not reimbursed either from collateral or by insured payments, or incurs expenses in connection with large deductible policies that are not reimbursed pursuant to this Section, the guaranty association shall be entitled to assert a claim for those amounts in the delinquency proceeding.

(3) Nothing in this Subsection shall limit any rights of the receiver or a guaranty association that may otherwise exist pursuant to applicable law to obtain reimbursement from insureds for claims payments made by the guaranty association under policies of the insurer or for the guaranty association's related expenses, including but not limited to those provided for in R.S. 22:2061.1, or existing under similar laws of other states.

E.(1) The receiver shall collect reimbursements owed for deductible claims as provided for in this Section, and shall take all commercially reasonable actions to collect the reimbursements. The receiver shall promptly bill insureds for reimbursement of deductible claims that are any of the following:

(a) Paid by the insurer prior to the commencement of delinquency proceedings.

(b) Paid by a guaranty association upon receipt by the receiver of notice from a guaranty association of reimbursable payments.

(c) Paid or allowed by the receiver.

(2) If the insured does not make payment within the time specified in the large deductible policy, or within sixty days after the date of billing if no time is specified, the receiver shall take all commercially reasonable actions to collect any reimbursements owed.

(3) Neither the insolvency of the insurer, nor its inability to perform any of its obligations under the large deductible policy, shall be a defense to the insured's reimbursement obligation under the large deductible policy.

(4) Except for gross negligence, an allegation of improper handling or payment of a deductible claim by the insurer, the receiver, or any guaranty association shall not be a defense to the insured's reimbursement obligations under the large deductible policy.

F.(1) Subject to the provisions of this Subsection, the receiver shall use collateral, when available, to secure the insured's obligation to fund or reimburse deductible claims or other secured obligations or other payment obligations. A guaranty association shall be entitled to collateral as provided for in this Subsection to the extent needed to reimburse a guaranty association for the payment of a deductible claim. Any distributions made to a guaranty association pursuant to this Subsection shall not be treated as distributions pursuant to R.S. 22:2025 or as early access payments pursuant to R.S. 22:2008(C), 2034, and 2037.

(2) All claims against the collateral shall be paid in the order received and no claim of the receiver, including those described in this Subsection, shall supersede any other claim against the collateral as provided for in Paragraph (4) of this Subsection.

(3) The receiver shall draw down collateral to the extent necessary in the event that the insured fails to do any of the following:

(a) Perform its funding or payment obligations under any large deductible policy.

(b) Pay deductible claim reimbursements within the time specified in the large deductible policy or within sixty days after the date of the billing if no time is specified.

(c) Pay amounts due to the estate for preliquidation obligations.

(d) Timely fund any other secured obligation.

(e) Timely pay expenses.

(4) Claims that are validly asserted against the collateral shall be satisfied in the order in which the claims are received by the receiver.

(5) Excess collateral may be returned to the insured as determined by the receiver after a periodic review of claims paid, outstanding case reserves, and a factor for incurred but not reported claims.

G. The receiver may deduct from the collateral or from the deductible reimbursements reasonable and actual expenses incurred in connection with the collection of the collateral and deductible reimbursements.

H. This Section shall not limit or adversely affect any rights or powers a guaranty association may have pursuant to applicable state law to obtain reimbursement from certain classes of policyholders for claims payments made by the guaranty association under policies of the insolvent insurer, or for related expenses the guaranty association incurs.

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
HI, UT	Brett Barratt	801-209-7443
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
VT	Laura Backus Hall	802-454-1800
AL, GA, LA, MS	Laura Hart Bryan	225-618-8168
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