



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 May 11, 2018.

Georgia

HB 878 was:

- Passed by the first chamber on March 1, 2018
- Included in NCCI's March 9, 2018 **Legislative Activity Report** (RLA-2018-10)
- Amended and passed by the second chamber on March 21, 2018
- Included in NCCI's March 30, 2018 **Legislative Activity Report** (RLA-2018-13)
- Enacted on May 7, 2018, with an effective date of July 1, 2018

HB 878 amends **section 33-24-44.1—Procedure for cancellation by insured and notice** of the Official Code of Georgia Annotated as follows:

§ 33-24-44.1. Procedure for cancellation by insured and notice

(a) An insured may request cancellation of an existing insurance policy by returning the original policy to the insurer or by making a ~~written~~ request for cancellation of an insurance policy to the insurer or its duly authorized agent orally, electronically, or in writing stating a future date on which the policy is to be canceled. In the event of oral cancellation the insurer, shall, within 10 days provide such insured, electronically or in writing, confirmation of such requested cancellation. The insurer or its duly authorized agent may require that the insured provide written, electronic, or other recorded verification of the request for cancellation prior to such cancellation taking effect. Such cancellation shall be accomplished in the following manner:

(1) If only the interest of the insured is affected, the policy shall be canceled on the later of the date the returned policy or ~~written~~ request is received by the insurer or its duly authorized agent or the date specified in the ~~written~~ request; provided, however, that upon receipt of a ~~written~~ request for cancellation from an insured, an insurer may waive the future date requirement by confirming the date and time of cancellation ~~in writing~~ to the insured and the insurer shall document in its policy file the request for cancellation along with the date of the requested cancellation;

...

Louisiana

HB 370 was:

- Passed by the first chamber on March 28, 2018
- Included in NCCI's April 6, 2018 **Legislative Activity Report** (RLA-2018-14)
- Passed by the second chamber on April 25, 2018
- Included in NCCI's May 4, 2018 **Legislative Activity Report** (RLA-2018-18)
- Enacted on May 11, 2018, with an effective date of August 1, 2018

HB 370 creates new **chapter 19** in the Louisiana Insurance Code to read:

CHAPTER 19. ELECTRONIC DELIVERY OF INSURANCE DOCUMENTS AND NOTICES

§2461. Definitions

As used in this Chapter, the following definitions apply:

(1) "Delivered by electronic means" means either of the following:

(a) Delivery to an electronic mail address at which a party has consented to receive notices or documents.

(b) Posting on an electronic network or site accessible via the internet, mobile application, computer, mobile device, tablet, or any other electronic device, together with separate notice of the posting provided by electronic mail to the address at which the party has consented to receive notice or by any other delivery method that has been consented to by the party.

(2) "Party" means any recipient of any notice or document required as part of an insurance transaction, including but not limited to an applicant, an insured, a policyholder, or an annuity contract holder.

§2462. Electronic delivery of insurance documents and notices

A. Subject to the requirements of this Section, any notice to a party or any other document required by law in an insurance transaction or that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means if the electronic means meet the requirements of the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq.

B. Delivery of a notice or document in accordance with this Section shall be considered equivalent to and have the same effect as any delivery method required by law, including delivery by first class mail, first class mail with postage prepaid, certified mail, certificate of mail, or certificate of mailing.

C. A notice or document may be delivered by electronic means by an insurer to a party pursuant to this Section if all of the following apply:

(1) The party has affirmatively consented electronically, or confirmed consent electronically, in a manner that reasonably demonstrates that the party can access information in the electronic form that will be used for notices or documents delivered by electronic means to which the party has given consent, and the party has not withdrawn the consent.

(2) The party, before giving consent, is provided with a clear and conspicuous statement informing the party of all of the following:

(a) The hardware and software requirements for access to and retention of a notice or document delivered by electronic means.

(b) The types of notices and documents to which the party's consent would apply.

(c) The right of the party to withdraw consent to have a notice or document delivered by electronic means, at any time, and any conditions or consequences imposed in the event consent is withdrawn.

(d) The procedures a party must follow to withdraw consent to have a notice or document delivered by electronic means and to update the party's electronic mail address.

(e) The right of a party to have a notice or document delivered, upon request, in paper form.

D. An insurer shall take all measures reasonably calculated to ensure that delivery by electronic means pursuant to this Section results in receipt of the notice or document by the party.

§2463. Change in hardware or software requirements

After the consent of a party is given, in the event a change in the hardware or software requirements needed to access or retain a notice or document delivered by electronic means creates a material risk that the party will not be able to access or retain a subsequent notice or document to which the consent applies, the insurer shall not deliver a notice or document to the party by electronic means unless the insurer complies with R.S. 22:2462 and provides the party with a statement that describes all of the following:

(1) The revised hardware and software requirements for access to and retention of a notice or document delivered by electronic means.

(2) The right of the party to withdraw consent without the imposition of any condition or consequence that was not disclosed at the time of initial consent.

§2464. Applicability

A. The provisions of this Section shall not be construed to affect requirements related to content or timing of any notice or document required by any other provision of law.

B. If a provision of this Title or other applicable law requiring a notice or document to be provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

C. This Chapter shall not apply to a notice or document delivered by an insurer in an electronic form before the effective date of this Chapter to a party who, before that date, has consented to receive the notice or document in an electronic form otherwise allowed by law.

§2465. Contracts and policies not affected

The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party shall not be denied solely because of the failure of the insurer to obtain electronic consent or confirmation of consent of the party in accordance with the provisions of this Chapter.

§2466. Withdrawal of consent

A. A withdrawal of consent by a party shall not affect the legal effectiveness, validity, or enforceability of a notice or document delivered by electronic means to the party before the withdrawal of consent is effective.

B. A withdrawal of consent by a party shall be effective within a reasonable period of time after receipt of the withdrawal by the insurer.

C. Failure by an insurer to comply with any provision of R.S. 22:2462 or 20 2463 may be treated, at the election of the party, as a withdrawal of consent for purposes of this Chapter.

§2467. Prior consent to receive notices or documents in an electronic form

If the consent of a party to receive certain notices or documents in an electronic form is on file with an insurer before the effective date of this Chapter, and an insurer intends to deliver additional notices or documents to the party in an electronic form pursuant to this Chapter, then prior to delivering the additional notices or documents electronically, the insurer shall comply with the provisions of 28 R.S. 22:2462 and shall provide the party with a statement that describes both of the following:

- (1) The notices or documents that shall be delivered by electronic means that were not previously delivered electronically.
- (2) The party’s right to withdraw consent to have notices or documents delivered by electronic means, without the imposition of any condition or consequence that was not disclosed at the time of initial consent.

§2468. Alternative method of delivery required

An insurer shall deliver a notice or document by any other delivery method permitted by law other than electronic means if either of the following occurs:

- (1) The insurer attempts to deliver the notice or document by electronic means and has a reasonable basis for believing that the notice or document has not been received by the party.
- (2) The insurer becomes aware that the electronic mail address provided by the party is no longer valid.

§2469. Limitation of liability

An insurance producer shall not be subject to civil liability for any harm or injury that occurs because of a party’s election to receive any notice or document by electronic means or by an insurer’s failure to deliver or a party’s failure to receive a notice or document by electronic means.

Maryland

HB 1499 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 30, 2018
- Included in NCCI’s April 6, 2018 **Legislative Activity Report** (RLA-2018-14)
- Enacted on May 8, 2018, with an effective date of October 1, 2018

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

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

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

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

§ 27-402. Scope of subtitle

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

- ...
- (12) the Maryland Health Insurance Plan; and
- (13) a governmental self-insurer group formed in accordance with § 9-404 of the labor and Employment Article;
- (14) an employer who self-insures or participates in a self-insurance group in accordance with § 9-405 of the labor and employment article; and
- ~~(13)~~ (15) an agent, employee, or representative of an entity described in items (1) through (12) (14) of this section.

§ 27-801. Definitions

- ...
- (c) “Insurance fraud” means:

...

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

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

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

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

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

...

§ 27-802. Reporting suspected insurance fraud

(a)

...

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

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

...

HB 1500 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 March 30, 2018
- Included in NCCI's April 6, 2018 **Legislative Activity Report** (RLA-2018-14)
- Enacted on May 8, 2018, with an effective date of October 1, 2018

HB 1500 repeals and reenacts, with amendments, **section 9-902** of the Maryland Labor and Employment Code as follows:

§ 9-902. Action against third party after award or payment of compensation

...

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

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

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

(i) the compensation already paid or awarded; and

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

...

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

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

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

HB 1500 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.

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
- Included in NCCI's April 13, 2018 **Legislative Activity Report** (RLA-2018-15)
- Enacted on May 8, 2018, with an effective date of October 1, 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.

Oklahoma

SB 1249 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 25, 2018
- Included in NCCI's May 4, 2018 *Legislative Activity Report* (RLA-2018-18)
- Enacted on May 7, 2018, with an effective date of August 1, 2018

SB 1249 amends **section 85A-36** of the Oklahoma Administrative Workers' Compensation Act as follows:

§85A-36. Liability other than immediate employer.

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

B. 1. Any contractor or the contractor's insurance carrier who shall become liable for the payment of compensation on account of injury to or death of an employee of his or her subcontractor may recover from the subcontractor the amount of the compensation paid or for which liability is incurred.

2. The claim for the recovery shall constitute a lien against any monies due or to become due to the subcontractor from the prime contractor.

3. A claim for recovery shall not affect the right of the injured employee or the dependents of the deceased employee to recover compensation due from the prime contractor or his or her insurance carrier.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending May 11, 2018.

Alaska

HB 79 was:

- Passed by the first chamber on March 12, 2018
- Included in NCCI's March 23, 2018 **Legislative Activity Report** (RLA-2018-12)
- Amended and passed by the second chamber on May 11, 2018

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

- Allow the department of labor and workforce development to receive a greater percentage of the annual service fees that insurers pay
- Clarify that penalties for late reports accrue to the workers' safety and compensation administration account

- Make technical changes to allow electronic filing of documents
- Allow the division director to prescribe the format for reporting injuries to the division
- Add publications to a list that the department of labor and workforce development may incorporate, including future amended versions, into regulation
- Phase out the second injury fund, setting an end date for the fund’s acceptance of new reimbursement claims, and clarify that the fund will continue to pay reimbursement claims until all liability for previously accepted claims to the second injury fund, and claims ordered to be paid from that fund, have been satisfied
- Provide for a definition of “independent contractor”
- Eliminate the requirement that corporate executive officers seek the division’s approval before opting out of workers compensation coverage for themselves, and clarify the requirements for opting out
- Eliminate a requirement that the board approve attorney fees as part of a settlement when fees are the sole issue in the settlement that requires board approval
- Define “employee”
- Repeal AS 23.30.050(f) and 23.30.155(q) relating to the second injury fund and methods of paying benefits
- Create a Legislative Workers’ Compensation Working Group to act as an interim committee to continue work and develop new legislation for consideration during the 31st Alaska State Legislature
- Amend the uncodified law of the State of Alaska, by adding transitional language and clarifying that subject to appropriation, the balance of the second injury fund lapses into the general fund after all liability for previously accepted claims to the second injury fund, and claims ordered to be paid from that fund, have been satisfied
- Amend the uncodified law of the State of Alaska, by authorizing the department to initiate the regulatory process before the effective date

Louisiana

HB 579 was:

- Passed by the first chamber on April 12, 2018
- Included in NCCI’s April 20, 2018 *Legislative Activity Report* (RLA-2018-16)
- Amended and passed by the second chamber on May 9, 2018

HB 579, in part, amends and reenacts *section 40:1046 Recommendation of marijuana for therapeutic use; rules and regulations; Louisiana Board of Pharmacy and the adoption of rules and regulations relating to the dispensing of recommended marijuana for therapeutic use; the Department of Agriculture and Forestry and the licensure of a production facility* of the Louisiana Health and Safety law to stipulate that employers and their workers compensation insurers shall not be obligated or ordered to pay for recommended or prescribed medical marijuana in claims arising under present law relative to workers compensation.

Vermont

HB 731 was:

- Passed by the first chamber on March 1, 2018
- Included in NCCI’s March 9, 2018 *Legislative Activity Report* (RLA-2018-10)
- Amended and passed by the second chamber on May 8, 2018

HB 731 amends various sections of the Vermont Labor Code, including, but not limited to the following:

Section 1

§ 710. Unlawful discrimination

(a) No person, firm, or corporation shall refuse to employ any applicant for employment because ~~such~~ the applicant asserted a claim for workers’ compensation benefits under this chapter or under the law of any state or of the United States. Nothing in this section shall require a person to employ an applicant who does not meet the qualifications of the position sought.

(b) No person shall discharge or discriminate against an employee from employment because ~~such~~ the employee asserted or attempted to assert a claim for benefits under this chapter or under the law of any state or of the United States.

...

(d) An employer shall not retaliate or take any other negative action against an individual because the employer knows or suspects that the individual has filed a complaint ~~with the Department or other authority~~, or reported a violation of this chapter, or has testified, assisted, or cooperated in any manner with the Department or other appropriate governmental agency or department in an investigation of misclassification, discrimination, or other violation of this chapter.

(e) The Attorney General or a State’s Attorney may enforce the provisions of this section by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance, and conducting civil investigations in accordance with the procedures established in 9 V.S.A. §§ 2458-2461 as though ~~discrimination under a violation of~~ this section were an unfair act in commerce.

(f) The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this ~~subchapter-section~~.

In addition, **HB 731** includes the following language:

Section 2

Workers' compensation rate of contribution

For fiscal year 2019, after consideration of the formula in 21 V.S.A. § 711(b) and historical rate trends, the General Assembly has established that the rate of contribution for the direct calendar year premium for workers' compensation insurance shall remain at the rate of 1.4 percent. The contribution rate for selfinsured workers' compensation losses and workers' compensation losses of corporations approved under 21 V.S.A. chapter 9 shall remain at one percent.

Section 3

Potential delegation of rate setting authority; report

On or before January 15, 2019, the Commissioner of Labor shall submit a written report to the House Committees on Commerce and Economic Development and on Ways and Means and the Senate Committees on Economic Development, Housing and General Affairs and on Finance regarding the potential for delegating the authority to set the Workers' Compensation Administration Fund rate of contribution for the direct calendar year premium for workers' compensation insurance to the Commissioner of Labor. In particular, the report shall:

(1) describe how the Department calculates the rate of contribution that it annually proposes to the General Assembly pursuant to 21 V.S.A. § 711(b);

(2) identify any advantages and disadvantages of the General Assembly's delegating to the Commissioner of Labor authority to establish annually the rate of contribution for the direct calendar year premium for workers' compensation insurance; and

(3) identify any legislative, regulatory, and administrative changes that would need to be made in order to delegate to the Commissioner the authority to establish annually the rate of contribution for the direct calendar year premium for workers' compensation insurance.

Section 4

2014 Acts and Resolves No. 199, Sec. 54a is amended to read:

Sec. 54a. REPEAL

21 V.S.A. § 643a shall be repealed on July 1, ~~2018~~ 2023.

BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending May 11, 2018.

BILLS VETOED BY GOVERNOR

The following workers compensation-related bill was vetoed by the governor within the one-week period ending May 11, 2018.

Louisiana

HB 609 was:

- Passed by the first chamber on April 5, 2018
- Included in NCCI's April 13, 2018 **Legislative Activity Report** (RLA-2018-15)
- Passed by the second chamber on May 1, 2018
- Included in NCCI's May 11, 2018 **Legislative Activity Report** (RLA-2018-19)
- Vetoed by the governor on May 11, 2018

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, NV, UT	Brett Barratt	801-401-6464
MO, NE, 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
AR, IL, TX	Terri Robinson	501-333-2835
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This report is informational and is not intended to provide an interpretation of state and federal legislation.