



LEGISLATIVE ACTIVITY REPORT



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Regulatory Services

June 1, 2018

RLA-2018-22

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 25, 2018.

Tennessee

SB 1649 was:

- Passed by the first chamber on April 24, 2018
- 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 21, 2018, with an effective date of January 1, 2019, for the new section below

SB 1649, in part, adds a new section to **Title 49 Education, Chapter 11 Career and Technical Education, Part 1—General Provisions** of the Tennessee Code to read:

- (a) An employer that accepts or employs a student who is participating in workbased learning coordinated through the student's LEA or a state institution of higher education, including, but not limited to, Tennessee colleges of applied technology:
- (1) Shall not be liable for actions relating to that student unless the employer acted willfully or with gross negligence; and
- (2) May elect to provide workers' compensation insurance coverage to compensate a participating student for any injury that is covered under the Workers' Compensation Law, compiled in title 50, chapter 6. Notwithstanding subdivision (a)(1), if an employer elects to provide workers' compensation insurance coverage pursuant to this subdivision (a)(2):
- (A) The coverage shall serve as the participating student's exclusive remedy for any compensable injury that is covered under the Workers' Compensation Law; and (B) The employer shall not disclaim the participating student's eligibility for such coverage.
- (b) An LEA or state institution of higher education that coordinates work-based learning for students shall maintain liability insurance coverage for all participating students. If an employer elects to provide workers' compensation insurance coverage to a participating student pursuant to subdivision (a)(2), then the LEA or state institution of higher education shall maintain liability insurance coverage to compensate the participating student for any injury that is not covered under the Workers' Compensation Law.
- (c) For purposes of this section, an employer shall not be prohibited from employing a student who is under the age of eighteen (18); provided, that the employer is in compliance with state and federal law.

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
- Included in NCCI's May 18, 2018 **Legislative Activity Report** (RLA-2018-20)

- Enacted on May 21, 2018, with an effective date of July 1, 2018, for sections 1, 2, and 3; and an effective date of May 21, 2018, for section 4

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 SECOND CHAMBER

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending May 25, 2018.

BILLS PASSING FIRST CHAMBER

There were no relevant workers compensation-related bills that passed the first chamber within the one-week period ending May 25, 2018.

BILLS VETOED BY GOVERNOR

The following workers compensation-related bill was vetoed by the governor within the one-week period ending May 25, 2018.

Maryland

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
- Included in NCCI's April 13, 2018 *Legislative Activity Report* (RLA-2018-15)
- Vetoed by the governor on May 25, 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
~~(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.
- ...

***SB 575** was vetoed because it is a duplicate bill. Identical bill **HB 1499** was enacted on May 8, 2018.

FEDERAL ISSUES

Issue	Update
TRIPRA Implementation	<p>NCCI, in conjunction with the state independent rating agencies, has completed the 2018 Federal Insurance Office (FIO) workers compensation data call. As directed by FIO, all designated carriers writing workers compensation coverage were required to provide terrorism insurance-related data elements through NCCI, which coordinated efforts in conjunction with independent state rating bureaus, monopolistic workers compensation states, and US territories. The workers compensation data set was transmitted prior to the May 15 deadline.</p> <p>FIO will use the 2018 workers compensation data in its congressionally mandated report on the effectiveness of the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) and the impact on the federal government, which is due to Congress by June 30. NCCI provided comments on the impact of the Terrorism Risk Insurance Program (TRIP) on workers compensation. Those comments were provided in response to a notice published in the <i>Federal Register</i> on March 16 requesting input from stakeholders on the effectiveness of TRIP.</p>
Opioids	<p>The House of Representatives Subcommittee on Workers Protections of the Education and the Workforce Committees held a hearing in early May on opioids use in the Federal Employees' Compensation Act (FECA) program. Subcommittee members raised concerns regarding the public health and cost implications of opioids on injured workers receiving benefits under the FECA program. The Subcommittee heard from public and private sector witnesses on the extent of the implications of the opioid issue on the program and approaches used in the state-based workers compensation program to address the issue. Witnesses recommended that the FECA program adopt elements that appear to have reduced the use of opioids in the state system. Provisions addressing the opioid issue in the FECA program could be included in broader systemic reform legislation.</p>
Air Ambulances	<p>Insurance industry stakeholders are continuing efforts to include a provision in the Federal Aviation Administration (FAA) Reauthorization Act of 2018. The provision would establish a federal advisory committee to make recommendations for the promulgation of a rule to require air ambulance operators to clearly disclose charges for air transportation services separately from charges for non-air transportation medical services provided while onboard an aircraft and to provide other consumer protections for customers of air ambulance operators.</p> <p>Additionally, Sen. Jon Tester (MT) introduced legislation earlier this congressional session to address air ambulance issues. SB 471 would clarify the Airline Deregulation Act of 1978 to allow states to enact or enforce laws or regulations relating to network participation, reimbursement, price transparency, and balance billing for air carriers that provide air ambulance services.</p>

The bills included in the following section have been filed, but have not yet passed the first chamber.

STATE LEGISLATIVE ACTIVITY

State	Update
Rhode Island	<p>The annual Workers Compensation Omnibus bill was introduced in both houses of the Rhode Island Legislature as HB 8215 and SB 2924. The bills would:</p> <ul style="list-style-type: none"> • Require any corporate officers or limited liability company members wishing to waive their previously claimed common law right of action to also provide written notice to their workers compensation insurance carrier • Enlarge the workers compensation advisory council from 16 to 17 members • Empower the administrator to act as a notary public • Rename the uninsured employers fund as the uninsured protection fund and provide for implementation in 2019 • Impose certain limitations on payments to injured employees from the uninsured protection fund • Authorize the fund to promulgate rules and regulations necessary to effectuate the provisions and overall purpose of the uninsured protection fund

STATE COMMITTEE ACTIVITY

State	Update
Montana	The Montana Economic Affairs Interim Committee/SJR 27 Subcommittee is continuing to hold hearings regarding the structure of the workers compensation system in Montana. There are no active discussions regarding changing benefits for injured employees. The next committee meeting is scheduled for July 9.

OTHER ITEMS OF INTEREST

State	Update
Florida	A rule development workshop for 69L-31, F.A.C was held on Wednesday, May 30. The subject area addressed procedures for the resolution of reimbursement disputes between workers compensation carriers and health care providers.
Georgia	HB 795 related to the powers and duties of the Commissioner of Labor was vetoed by the Governor following the end of the session.
Missouri	<p>On May 22, in a case involving a claim for benefits made by the estate of a deceased worker, the Supreme Court of Missouri, in <i>Accident Fund Insurance Co. v. Casey</i>, upheld the constitutionality of a Missouri workers compensation law providing additional benefits for mesothelioma occupational disease claims filed after January 1, 2014. Under the law, Missouri employers may accept and insure their liability for the additional mesothelioma benefits. The court ruled that the employer’s current workers compensation policy and insurer—which was not the insurer when the employee was last exposed to asbestos in 1990—provide coverage for the additional mesothelioma benefits.</p> <p>The court also found that the law did not violate Missouri’s prohibition on retrospective laws.</p>
South Dakota	<p>On April 18, the Department of Labor and Regulation issued proposed rules to amend its Workers Compensation Medical Fee Schedule. The reasons for adopting these rules are to change references to the most current version of the relative values manual the department uses and to revise the conversion factors for some medical services. A public hearing was held May 14 in Pierre, SD, with a comment deadline of May 18.</p> <p><i>NCCI estimates that the proposed changes to the South Dakota Medical Fee Schedule, if adopted, could result in an impact of +0.1% (\$0.2M) on South Dakota workers compensation system costs.</i></p>

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