



# LEGISLATIVE ACTIVITY REPORT



The nation's most experienced provider of workers compensation information, tools, and services

Regulatory Services

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State or Federal Issues Contacts: Please refer to the list of State Relations Executives at the end of this report.

## LEGISLATIVE ACTIVITY—LEGISLATIVE SESSION UPDATES

*This report includes descriptions and/or excerpts of relevant bills that passed the first chamber, passed the second chamber, or were enacted during the specific periods. In addition, a recap of significant legislative and judicial activity impacting the workers compensation system is included in the first report published each month. This report is issued on a weekly basis throughout the legislative season and provides updates on the content of these bills if and when they progress through the legislative process. This report covers bills from states where NCCI provides ratemaking services (see state list under Contact Information) and the US Congress.*

### BILLS ENACTED

There were no relevant workers compensation-related bills enacted within the one-week period ending January 25, 2019.

### BILLS PASSING SECOND CHAMBER

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending January 25, 2019.

### BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending January 25, 2019.

#### Virginia

**SB 1030** amends and reenacts **section 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer** of the Virginia Workers' Compensation Act as follows:

**§ 65.2-402. Presumption as to death or disability from respiratory disease, hypertension or heart disease, cancer.**

...

C. Leukemia or pancreatic, prostate, rectal, throat, ovarian or breast, colon, brain, or testicular cancer causing the death of, or any health condition or impairment resulting in total or partial disability of, any volunteer or salaried firefighter, Department of Emergency Management hazardous materials officer, commercial vehicle enforcement officer or motor carrier safety trooper employed by the Department of State Police, or full-time sworn member of the enforcement division of the Department of Motor Vehicles having completed 12 years of continuous service ~~who has a contact with a toxic substance encountered in the line of duty~~ shall be presumed to be an occupational disease, suffered in the line of duty, that is covered by this title, unless such presumption is overcome by a preponderance of competent evidence to the contrary. ~~For the purposes of this section, a "toxic substance" is one which is a known or suspected carcinogen, as defined by the International Agency for Research on Cancer, and which causes, or is suspected to cause, leukemia or pancreatic, prostate, rectal, throat, ovarian or breast cancer.~~

...

**SB 1729** amends and reenacts **section 65.2-605.1. Prompt payment; limitation on claims** of the Virginia Workers' Compensation Act as follows:

**§ 65.2-605.1. Prompt payment; limitation on claims.**

...

G. No health care provider shall submit, nor shall the Commission adjudicate, any claim to the Commission seeking additional payment for medical services rendered to a claimant before July 1, 2014, if the health care provider has previously accepted payment for the same medical services pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Section 901 et seq.

H. The Commission, by January 1, 2016, shall establish a schedule pursuant to which employers, employers' workers' compensation insurance carriers, and providers of workers' compensation medical services shall be required, by a date determined by the Commission that is no earlier than July 1, 2016, and no later than December 31, 2018, to adopt and implement infrastructure under which (i) providers of workers' compensation medical services (providers) shall submit their billing, claims, case management, health records, and all supporting documentation electronically to employers or employers' workers' compensation insurance carriers, as applicable (payers) and (ii) payers shall return actual payment, claim status, and remittance information electronically to providers that submit their billing and required supporting documentation electronically. The Commission shall establish standards and methods for such electronic submissions and transactions that are consistent with International Association of Industrial Accident Boards and Commission Medical Billing and Payment guidelines. The Commission shall determine the date by which payers and providers shall be required to adopt and implement the infrastructure, which determinations shall be based on the volume and complexity of workers' compensation cases in which the payer or provider is involved, the resources of the payer or provider, and such other criteria as the Commission determines to be appropriate.

## FEDERAL ISSUES

Issue	Update
<p><b>116th Congress Convenes</b></p>	<p>On January 3, 2019, the 116th Congress convened, bringing several notable changes. With Democrats assuming control of the House of Representatives, the focus of several committees that may consider legislation impacting state-based workers compensation will very likely shift. House leadership and committee chairs are still formulating issues of focus and priorities for the coming year. However, there is some informed speculation that the House may undertake an examination of the workers compensation system through hearings or by requesting reports from agencies such as the Government Accountability Office or the Congressional Research Service.</p> <p>The last significant committee hearings in the House on the state system were in 2010 (111th Congress) and 2012 (112th Congress). Those hearings primarily focused on the nexus between state workers compensation systems and federal programs.</p> <p>One of the top priorities for insurance industry stakeholders in the 116th Congress will likely be reauthorizing the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA) of 2015 which, absent congressional action, will expire on December 31, 2020. Insurance industry stakeholders, and the broader business community, are in the early stages of developing an educational and legislative strategy for reauthorizing TRIPRA.</p>

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

## STATE LEGISLATIVE ACTIVITY

State	Update
<p><b>Connecticut</b></p>	<p><b>HB 5883</b> requires that each workers compensation insurance policy in this state provides coverage for detoxification for each injured employee who, as a result of a covered injury sustained by such employee, consumes opioid drugs for a continuous period of not less than one year.</p> <p><b>SB 164</b> amends chapter 568 of the general statutes to include mental or emotional impairments resulting from visually witnessing the death or aftermath of death that was caused by another human being within the definition of "personal injury" so that affected individuals may be eligible for workers compensation benefits.</p> <p><b>SB 171</b> expands the definition of injury in the Workers' Compensation Act to include certain mental or emotional impairments.</p>
<p><b>Florida</b></p>	<p><b>HB 429</b> amends Florida Statutes. The changes include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Creating a new section to authorize Florida Insurance Guaranty Association employees to adjust losses</li> <li>• Providing that such employees are not required to be licensed adjusters</li> <li>• Revising assessments levied by the Florida Office of Insurance Regulation against workers compensation insurers</li> <li>• Requiring such insurers to recoup assessments by applying specified percentages to certain policies</li> </ul>

	<ul style="list-style-type: none"> <li>• Providing that assessments paid by an insurer constitute advances of funds to the Florida Workers' Compensation Insurance Guaranty Association (association) under certain circumstances</li> <li>• Revising requirements for insurers' reconciliation reports to the association</li> </ul>
<b>Hawaii</b>	<p><b>HB 263</b> establishes, for the purposes of receiving workers compensation benefits, a rebuttable presumption that any firefighter, emergency medical service personnel, or law enforcement officer diagnosed with post-traumatic stress disorder incurred that injury while in the course of employment.</p> <p><b>HB 1534/SB 1523</b> amend Hawaii's Workers' Compensation Law requiring coverage for pharmaceuticals to specifically include medical cannabis when an authorized healthcare provider certifies that the benefits outweigh the risks and explains the potential risks and benefits to the injured worker. The bills also require the Department of Labor to develop a fee schedule for medical cannabis reimbursement rates and prohibits payment for paraphernalia, with limited exceptions.</p>
<b>Illinois</b>	<p><b>HB 269</b> permits the Illinois Workers' Compensation Commission to, if an employer's business is declared to be extra hazardous, issue a work-stop order while awaiting a ruling from the Commission or while awaiting proof of insurance by the employer. It also:</p> <ul style="list-style-type: none"> <li>• Provides that investigative actions must be acted on within 90 days of the issuance of a complaint</li> <li>• Raises the maximum allowable penalty for noncompliance with certain insurance requirements from \$2,000 to \$10,000</li> <li>• Doubles the maximum allowable penalties to \$1,000 per day, with a minimum penalty of \$20,000, for employers found to be in noncompliance more than once</li> <li>• Provides that an employer with two or more violations may no longer self-insure or purchase an insurance policy from a private broker for one year or until all penalties are paid, during which time the employer must purchase insurance from the Assigned Risk Pool through the National Council on Compensation Insurance</li> </ul>
<b>Maine</b>	<p><b>LD 312</b> prohibits charging minimum premiums in connection with a workers compensation policy.</p> <p><b>LD 407</b> establishes the "Healthy Maine Act" to provide universal healthcare in the state effective July 1, 2022. Healthy Maine would assume responsibility for payment of all reasonable and necessary medical expenses incurred by workers who suffer injuries or illnesses arising out of, and in the course of, their employment. The bill requires legislation necessary to implement the provisions of the act be submitted to the legislature by January 15, 2020. The bill would include the repeal or amendment, as appropriate, of the sections of the Maine Workers Compensation Act of 1992 concerning the provision of medical care for workers who suffer injuries or illnesses arising out of, and in the course of, their employment and payment of premiums for medical benefits.</p>
<b>Missouri</b>	<p><b>HB 48</b> defines Emergency Worker and establishes a rebuttable presumption that PTSD in an emergency worker during his or her service or within three years of the date of last service will be a compensable occupational disease.</p> <p><b>HB 123</b> amends an enumerated beneficiary for certain occupational disease benefits from "children" to "dependent children."</p> <p><b>HB 248/HB 262</b> provide that Administrative Law Judges of the Division of Workers' Compensation be subject to a retention vote and establishes term limits of six years, which cannot be exceeded unless reappointed by the division.</p> <p><b>SB 71</b> excludes from workers compensation premium, monetary bonuses paid by an employer to an employee of up to 3% of the employee's yearly compensation from such employer; and it also excludes contributions made by an employer to an employee's individual retirement account, if such account is authorized under state or federal law.</p> <p><b>SB 156</b> permits the Second Injury Fund to pay death benefits and ongoing medical expenses, but not past medical expenses, relating to claims for injuries occurring prior to January 1, 2014, consistent with a temporary or final award that includes future medical benefits.</p> <p><b>SB 212</b> provides that the death, disability, or impairment of health of any first responder will be considered as being based on an occupational disease provided that certain enumerated conditions are met.</p>

	<p><b>SB 281</b> provides that if, preceding the date of injury or death, an employee who is on active duty as a first responder is diagnosed with a mental impairment, and such person was not previously diagnosed with such an impairment, then the impairment shall presumptively be considered an occupational disease and will be presumed to have arisen out of, and in the course of, employment. This presumption may be rebutted by the employer or insurer. One or more compensable mental impairment claims arising out of a single accident will constitute a single injury. Furthermore, a mental impairment will not be considered an occupational disease if it results from a disciplinary action, work evaluation, job transfer, layoff, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer.</p>
<b>New Hampshire</b>	<p><b>HB 252</b> establishes a committee to study labor statutes RSA 273 through RSA 283 which include workers compensation under RSA 281 and associated administrative rules.</p> <p><b>HB 285</b> declares that workers compensation rate filings are open to public inspection upon approval.</p> <p><b>HB 342</b> clarifies the confidentiality of reports and other information related to workers compensation audits provided to the department of labor by the insurance department.</p> <p><b>SB 59</b> adds acute stress disorder and post-traumatic stress disorder to the definition of injury under workers compensation. It reestablishes the commission to study the incidence of post-traumatic stress disorder in first responders and whether such disorders should be covered under workers compensation. <i>NCCI is analyzing this measure to determine potential cost impact.</i></p> <p><b>SB 61</b> permits an employer providing construction labor, or a construction industry organization, to file a civil action against an employer in the construction industry to recover workers compensation insurance premium amounts that were required to be paid by the defendant. Workers compensation carriers may be granted intervenor status in those cases or seek arbitration against the defendant.</p> <p><b>SB 99</b> adds the term “similarly remunerative” to the definition of “gainful employment” and removes the language establishing a 262-week limitation on temporary and permanent partial disability. <i>NCCI is analyzing this measure to determine potential cost impact.</i></p>
<b>New Mexico</b>	<p><b>HB 324</b> adds post-traumatic stress disorder (PTSD) and mental health disorder for firefighters, as diagnosed by a physician or psychologist, to the list of conditions presumed to be caused by employment.</p>
<b>Oklahoma</b>	<p><b>HB 1124</b> expands the definition of compensable injury to exclude injury where the accident was caused by marijuana used without possession of a state-issued medical marijuana license.</p> <p><b>HB 2271</b> expands the compensability of a mental injury to police officers, firefighters, EMTs, or persons working in emergency services who are likely to be among the first people to arrive and assist at the scene of an emergency and who suffer a mental injury or illness related to duties performed responding to the emergency.</p> <p><b>HB 2367</b> proposes comprehensive reform with varied amendments to the Administrative Workers’ Compensation Act.</p> <p><b>HB 2410</b>, in part, increases the Multiple Injury Trust Fund assessment from 6% to 7%.</p> <p><b>SB 305</b> prohibits employers from taking certain actions against employees who are medical marijuana license holders.</p>
<b>Rhode Island</b>	<p><b>SB 85</b>, the Federal Furloughed Employees Protection Act, in part, suspends obligations for furloughed federal employees to make payments on installment contracts including those relating to insurance premiums.</p>
<b>South Carolina</b>	<p><b>HB 3106</b> includes the same changes proposed in <b>SB 51</b>. However, it also expands the health conditions that are currently presumed to have arisen out of, and in the course of, employment for firefighters. Specifically, South Carolina (SC) law currently allows a presumption for coverage of heart disease or respiratory disease for firefighters, unless the contrary is shown by competent evidence. This bill would expand the presumption to cover disease of the heart, lungs, or respiratory tract, brain cancer, colon cancer, esophageal cancer, intestinal cancer, lung cancer, melanoma, mesothelioma, multiple myeloma, non-melanoma skin cancer, oral cavity cancer, prostate cancer, rectal cancer, testicular cancer, non-Hodgkin’s lymphoma, and stomach cancer.</p>

	<p>Additionally, current SC law states that in order to be entitled to this presumption, a firefighter must have had a physical examination by a competent physician, prior to entering service as a firefighter, that did not reveal any evidence of such conditions. The employer would have the responsibility for obtaining the physical examination. Should the fire department employer fail to require or obtain a physical examination upon the firefighter entering service, the employee would be considered to have successfully passed the examination. Finally, current law also requires that the condition developed while the firefighter was actively engaged in fighting a fire or within 24 hours from the date of last service in the activity. This bill would eliminate that limitation.</p> <p><b>HB 3352</b> provides that workers compensation settlement agreements are unenforceable to the extent that they are conditioned upon the release of certain legal claims by the injured employee or his dependents. It provides that the offer of settlement agreements that include such conditions constitutes bad faith per se. This bill is written broadly, and it is unclear whether an employer would continue to have exposure for any aspects of the workers compensation claim post-settlement.</p> <p><b>SB 51</b> defines first responders and provides that stress, mental injuries, and mental illness would be compensable for first responders if they are medically diagnosed as post-traumatic stress disorder arising from the first responder's direct involvement in a significant traumatic experience or situation (without regard for whether the experience or situation was extraordinary or unusual in comparison to the normal working conditions of a first responder's employment).</p>
<b>Utah</b>	<p><b>HB 154</b> establishes a working group, made up of representatives from various groups within the Utah Labor Commission, to study first responders' workers compensation coverage due to "mental stress." The final report is due September 30, 2019.</p> <p><b>SB 76</b> gives authority to the Labor Commission to authorize add-on fees from 25–35%, dependent on the level of the court in which the claim is resolved, under certain circumstances, including for medical claims, indemnity benefits awarded under \$5,000, and if the claim is appealed through the court system.</p>
<b>Vermont</b>	<b>HB 14</b> proposes to extend benefit payments in workers compensation claims to the prescription of marijuana.
<b>West Virginia</b>	<p><b>SB 114</b> provides workers compensation benefits to first responders diagnosed by a psychiatrist as having post-traumatic stress disorder resulting from an event that occurred during their employment.</p> <p><b>SB 260</b> provides, under certain circumstances, benefits to employees with pneumoconiosis. In all cases before the Occupational Pneumoconiosis Board, where there has been an x-ray diagnosis of pulmonary massive fibrosis or complicated pneumoconiosis without impairment, the claimant will be granted a 25% permanent partial disability award by the commissioner. The award of 25% herein will be offset from any future permanent partial disability award recommended by the Occupational Pneumoconiosis Board and granted by the commissioner or claims administrator.</p>

## STATE COMMITTEE ACTIVITY

State	Update
<b>Idaho</b>	The Industrial Commission's Workers' Compensation Advisory Committee meeting is scheduled for Wednesday, February 6, 2019.
<b>Oregon</b>	The Management-Labor Advisory Committee meeting is scheduled for Friday, February 8, 2019. The meeting will include a discussion of PTSD occupational disease presumption legislation and vocational assistance legislative changes.

## OTHER ITEMS OF INTEREST

State	Update
Tennessee	<p>The Bureau of Workers' Compensation held a public rulemaking hearing on January 17, 2019, to consider revisions to the medical fee schedule. Currently, the maximum allowable reimbursements (MARs) for professional services are based on Medicare's Tennessee-adjusted relative value units (RVUs), a conversion factor, and a multiplier that varies by professional service category. The revised rules, proposed to be effective July 1, 2019, would result in the following changes:</p> <ul style="list-style-type: none"> <li>• Professional Services Fee Schedule: <ul style="list-style-type: none"> <li>○ Update to be based on 2018 RVUs from 2017 RVUs</li> <li>○ Update the conversion factor of 33.9764 to the most recent conversion factor from Medicare's physician fee schedule of 35.9996</li> </ul> </li> <li>• Advanced Practice Nurses (APNs) and Physician Assistants (PAs) <ul style="list-style-type: none"> <li>○ Apply the service category multiplier of the collaborating physician, which range from 100% to 275% depending on service category, in determining the MAR</li> </ul> </li> <li>• Psychologists: <ul style="list-style-type: none"> <li>○ Increase the service category multiplier from 100% to 130%</li> </ul> </li> <li>• Speech Therapists: <ul style="list-style-type: none"> <li>○ Clarify that speech therapists are subject to the same service category multiplier as applies to physical and occupational therapy</li> </ul> </li> <li>• Hospital Inpatient: <ul style="list-style-type: none"> <li>○ Update the per diem rates and stop-loss thresholds by the percentage change in the physician conversion factor (as per above)</li> </ul> </li> </ul> <p><i>NCCI has estimated that these changes could result in an estimated impact of +1.5% on overall workers compensation system costs in Tennessee.</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
SC, TN	Amy Quinn	561-893-3812
HI, NM, NV, UT	Brett Barratt	801-401-6464
IL, MO, OK	Carla Townsend	561-893-3819
AZ, KS, KY	Clarissa Preston	561-945-4517
DC, MD, VA, WV	David Benedict	804-380-3005
CO, FL	Dawn Ingham	561-893-3165
IN, NC	Michelle Smith	561-893-3016
CT, ME, NH, RI	Justin Moulton	860-969-7903
VT	Laura Backus Hall	802-454-1800
AL, GA, LA, MS	Laura Hart Bryan	225-635-4481
IA, NE, SD	Stephanie Paswaters	303-200-6728
AR, TX	Terri Robinson	501-333-2835
Federal Issues	Tim Tucker	202-403-8526
AK, ID, MT, OR	Todd Johnson	561-893-3814

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