



LEGISLATIVE ACTIVITY REPORT



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Regulatory Services

March 1, 2019

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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 February 22, 2019.

BILLS PASSING SECOND CHAMBER

There were no relevant workers compensation-related bills that passed the second chamber within the one-week period ending February 22, 2019.

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending February 22, 2019.

Kentucky

HB 151, in part, amends *sections 304.47-020 and 304.47-050* of the Insurance Code of Kentucky to read as follows:

304.47-020. Fraudulent insurance acts—Penalties—Compensatory damages—Application of section.

...

(2) ~~(a) Except as provided in paragraphs (b) and (c) of this subsection, A person convicted of a violation of subsection (1) of this section shall be guilty of a Class A misdemeanor, unless where the aggregate of the claim, benefit, or money referred to in subsection (1) of this section is less than or equal to five hundred dollars (\$500), and shall be punished by:~~

~~(a) 1. Five hundred dollars (\$500) or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony imprisonment for not more than one (1) year;~~

~~(b) 2. Ten thousand dollars (\$10,000) or more but less than one million dollars (\$1,000,000), in which case it is a Class C felony A fine, per occurrence, of not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or~~

~~(c) 3. One million dollars (\$1,000,000) or more, in which case it is a Class B felony Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.~~

~~(3) (b) A Except as provided in paragraph (c) of this subsection, where the claim, benefit, or money referred to in subsection (1) of this section exceeds an aggregate of five hundred dollars (\$500), a person convicted of a violation of subsection (1) of this section shall be guilty of a felony and shall be punished by:~~

~~1. Imprisonment for not less than one (1) nor more than five (5) years;~~

~~2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or~~

~~3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.~~

~~(c) Any person, with the purpose to establish or maintain a criminal syndicate, or to facilitate any of its activities, as set forth in KRS 506.120(1), shall be guilty of engaging in organized crime, a Class B felony, if he or she engages in any of the activities set forth in KRS 506.120(1).~~

(4) A person convicted of a crime established in this section ~~and~~ shall be punished by:

(a) ~~1~~ Imprisonment for a term:

1. Not to exceed the period set forth in KRS 532.090 if the crime is a Class A misdemeanor; or

2. Within the periods set forth in KRS 532.060 if the crime is a Class D, C, or B felony ~~not less than ten (10) years nor more than twenty (20) years;~~

(b) ~~2~~ A fine, per occurrence, of:

1. For a misdemeanor, not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or

2. For a felony, not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation, or twice the amount of gain received as a result of the violation; whichever is greater; or

(c) ~~3~~ Both imprisonment and a fine, as set forth in subparagraphs 1. and 2. of this paragraph.

(5) ~~(d)~~ In addition to imprisonment, the assessment of a fine, or both, a person convicted of a crime established in violation of paragraph (a), (b), or (c) of subsection (2) of this section may be ordered to make restitution to any victim who suffered a monetary loss due to any actions by that person which resulted in the adjudication of guilt, and to the division for the cost of any investigation. The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.

(6) ~~(3)~~ Any person damaged as a result of a violation of any provision of this section shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.

(7) ~~(4)~~ The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in subsection (6) ~~(3)~~ of this section.

304.47-050. Reports of possible fraudulent insurance acts—Investigation—Notification of prosecutor—Immunity from civil liability.

...

(2) The following persons, individuals having knowledge or believing that a fraudulent insurance act or any other act or practice which may constitute a felony or misdemeanor under this subtitle is being or has been committed, shall send to the division a report or information pertinent to the knowledge or belief and additional relevant information that the commissioner or the commissioner's employees or agents may require:

(a) Any professional practitioner licensed or regulated by the Commonwealth, except as provided by law;

(b) Any private medical review committee;

(c) Any insurer, agent, or other person licensed under this chapter; ~~and~~

(d) The following Kentucky Boards:

1. Board of Medical Licensure;

2. Board of Chiropractic Examiners;

3. Board of Nursing;

4. Board of Physical Therapy;

5. Board of Occupational Therapy; and

6. Board for Massage Therapy; and

(e) Any employee of the persons named in paragraphs (a) to (d) ~~(e)~~ of this subsection.

(3) The division or its employees or agents shall review this information or these reports and select the information or reports that, in the judgment of the division, may require further investigation. The division shall then cause an investigation of the facts surrounding the information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this subtitle is being committed.

(4) The following Department of Workers' Claims shall provide the division access to all relevant information the commissioner may request:

(a) The Department of Workers' Claims; and

(b) The boards named in subsection (2)(d) of this section.

...

(8) In the absence of malice, fraud, or gross negligence, ~~the following no insurer or agent authorized by an insurer to act on its behalf, law enforcement agency, the Department of Workers' Claims, their respective employees, or an insured shall not~~ be subject to any civil liability for libel, slander, or related cause of action by virtue of filing reports or for releasing or receiving any information pursuant to this subsection:

(a) An insurer;

- (b) An agent authorized by an insurer to act on its behalf;
- (c) A law enforcement agency;
- (d) The Department of Workers' Claims;
- (e) The boards named in subsection (2)(d) of this section;
- (f) Employees of the persons named in paragraphs (d) and (e) of this subsection; or
- (g) An insured.

Montana

SB 78 amends *section 39-71-704* of the Montana Workers' Compensation Act as follows:

39-71-704. Payment of medical, hospital, and related services—fee schedules and hospital rates—fee limitation.

(1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

- ...
- (f) (i) The benefits provided for in this section terminate 60 months from the date of injury or diagnosis of an occupational disease. A worker may request reopening of medical benefits that were terminated under this subsection (1)(f) as provided in 39-71-717.
- ...
- (iii) If an injured worker has received medical benefits within 12 months of when the injured worker's medical benefits are due to terminate under subsection (1)(f)(i), the insurer shall notify the injured worker between 90 and 120 days prior to the date of benefit termination that the injured worker's benefits are due to expire. The notification under this subsection (1)(f)(iii) must also describe available remedies for addressing the termination of benefits. If an insurer is currently paying medical benefits 90 days prior to when the injured worker's medical benefits are due to terminate, the insurer shall provide notification to the injured worker and the injured worker's attorney, if applicable, that the injured worker's benefits will cease, of the date the benefits will terminate, and of available remedies. Notice must be sent to the injured worker's last-known mailing address and the injured worker's attorney, if applicable. The fact of payment of medical benefits after the insurer gives notice does not constitute a reason, in and of itself, sufficient to justify reopening medical benefits. However, an insurer that fails to notify the injured worker and, if applicable, the injured worker's attorney shall continue to pay the injured worker's benefits until notification is made.
- ...

Utah

HB 55 Substitute, in part, amends the Utah Workers' Compensation Act, *section 34A-2-110. Workers' compensation insurance fraud—Elements—Penalties—Notice*, to clarify that the Insurance Department may investigate and enforce certain provisions of the Workers' Compensation Act.

HB 232 Substitute amends *section 34A-2-104. "Employee," "worker," and "operative" defined—Specific circumstances—Exemptions* and creates *section 39-1-65. Pay and care of soldiers and airmen disabled while on state active duty* of the Utah Workers' Compensation Act to provide that members of the Utah National Guard are covered under workers compensation if injured or disabled while on state active duty.

West Virginia

SB 266, in part, amends *section 23-5-15* of the Code of West Virginia as follows:

§23-5-15. Appeals from final decisions of board; ~~to Supreme Court of Appeals~~; procedure; costs.

a) Review of any final decision of the board, including any order of remand, may be prosecuted by either party or by the Workers' Compensation Commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, to the Supreme Court of Appeals within ~~thirty~~ 30 days from the date of the final order by filing a petition therefor with the court against the board and the adverse party or parties as respondents: Provided, that petition for review of any final decision of the board entered after June 30, 2020 shall be made to the Intermediate Court of Appeals as required by subsection (e) of this section. Unless the petition for review is filed within the 30-day period, no appeal or review shall be allowed, and such time limitation is a condition of the right to such appeal or review and hence jurisdictional. The Clerk of the Supreme Court of Appeals shall notify each of the respondents, ~~and~~ the Workers' Compensation Commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, of the filing of such petition. The board shall, within 10 days after receipt of the notice, file with the clerk of the court the record of the proceedings ~~had~~ before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. If review is granted to a nonresident of this state, he or she shall be required to execute and file with the clerk before an order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him or her. The board may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review is granted or the certified question is docketed for hearing, the clerk shall notify the board, ~~and~~ the parties ~~litigant~~ or their attorneys, ~~and~~ the Workers' Compensation Commission, the

successor to the commission, and other private insurance carriers and self-insured employers, whichever is applicable, of that fact by mail. If a review is granted or the certified question docketed, the case shall be heard by the court in the same manner as in other cases, except that neither the record nor briefs need be printed. Every review granted or certified question docketed prior to ~~thirty~~ 30 days before the beginning of the term, shall be placed upon the docket for that term. The Attorney General shall, without extra compensation, represent the board in such cases. The court shall determine the matter brought before it and certify its decision to the board and to the commission. The cost of the proceedings on petition, including a reasonable attorney's fee, not exceeding \$30 to the claimant's attorney, shall be fixed by the court and taxed against the employer if the latter is unsuccessful. If the claimant, or the commission (in case the latter is the applicant for review) is unsuccessful, the costs, not including attorney's fees, shall be taxed against the commission, payable out of the Workers' Compensation Fund, or shall be taxed against the claimant, in the discretion of the court: ~~But~~ Provided, however, that there shall be no cost taxed upon a certified question.

...
(e) Review of final decisions entered after June 30, 2020.—

(1) The Intermediate Court of Appeals shall have jurisdiction to review a final decision of the board entered after June 30, 2020. A petition for review of a final order of the board shall be made to the Intermediate Court of Appeals and must comply with the requirements of subsections (a) through (d), inclusive, of this section, when such requirements do not conflict with the provisions of §51-11-1 et seq. of this code.

(2) All petitions for review pursuant to this section shall be afforded a full and meaningful review and an opportunity to be heard by the Intermediate Court of Appeals, and a written decision on the merits shall be issued as a matter of right. A party in interest may petition the Supreme Court of Appeals for discretionary review of a final order or judgment of the Intermediate Court of Appeals pursuant to this section, in accordance with rules promulgated by the Supreme Court of Appeals.

(3) Notwithstanding the requirements of this subsection, the board may certify to the Supreme Court of Appeals and request its decision of any question of law arising upon the record, pursuant to the requirements of subsection (a) of this section.

FEDERAL ISSUES

Issue	Update
TRIPRA of 2015	NCCI continues to work with the US Department of Treasury's Federal Insurance Office (FIO) and state regulators (through the National Association of Insurance Commissioners [NAIC]) on their respective workers compensation terrorism insurance coverage data calls since they began in 2016. For the 2019 terrorism data calls, NCCI (and the independent bureaus) have been designated by both FIO and the NAIC as the sources for workers compensation data. Each of these designations relieves individual carriers from having to provide workers compensation data to the respective entities. NCCI is planning to respond to the data calls on or before the 2019 deadline (March 1 for NAIC and May 15 for FIO).
Air Ambulance Regulation	<p>Last year, legislation reauthorizing the Federal Aviation Administration (FAA) was enacted; it created the Air Ambulance and Patient Billing Advisory Committee (Advisory Committee). The Advisory Committee will make recommendations to the secretaries of the Department of Transportation and the Department of Health and Human Services for federal regulations that respond to concerns of state regulators, insurers, and consumer groups on the impact of air ambulance costs on individuals (i.e., balance billing), as well as the healthcare and workers compensation systems.</p> <p>Specifically, the Advisory Committee is charged with recommending to the FAA options to improve transparency and the disclosure of charges and fees for air ambulance services. The recommendations are to be included in a report to Congress. North Dakota Insurance Commissioner Jon Godfreed is the state insurance regulator on the Advisory Committee.</p>

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

STATE LEGISLATIVE ACTIVITY

State	Update
Arizona	<p>HB 2460:</p> <ul style="list-style-type: none"> • Prohibits an employer from taking certain actions with respect to a first responder or public safety employee who has been exposed to certain psychologically traumatic events. It prohibits the employer from: <ul style="list-style-type: none"> ○ Subjecting the public safety employee to an independent medical examination (IME)

	<ul style="list-style-type: none"> ○ Requiring the public safety employee to use accrued paid vacation leave, personal leave, or sick leave to receive treatment from a licensed mental health professional, as authorized by the section ● Establishes a rebuttable legal presumption that a first responders' post-traumatic stress disorder is an occupational disease arising out of, and in the course of, employment, if: <ul style="list-style-type: none"> ○ The first responder receives or has received treatment from a licensed counselor ○ A licensed mental health professional providing treatment determines that the first responder has post-traumatic stress disorder resulting from performance of job duties <p>This presumption may be rebutted by a preponderance of the evidence that there is a specific cause of the post-traumatic stress disorder other than the service-connected exposure</p> <ul style="list-style-type: none"> ● Allows an employee receiving active treatment pursuant to ARS § 38-672 one year after the date of the last licensed counseling visit to file a compensation claim <p>HB 2461 allows an IME required by the Industrial Commission of Arizona (ICA), the employer, or the workers compensation insurer to be performed by a "master's level clinician."</p> <p>HB 2462 requires any physician who performs an IME required by the ICA, the employer, or the workers compensation insurer to be "located in this state."</p>
Georgia	<p>SB 135:</p> <ul style="list-style-type: none"> ● Provides that certain care, treatment, services, and items prescribed by an authorized physician for noncatastrophic injuries will not be subject to the 400-week maximum period cap ● Increases the total compensation payable to a surviving spouse as a sole dependent at the time of death to \$270,000 ● Increases benefits for total disability to a maximum of \$675 per week and temporary partial disability to \$450 maximum per week ● Changes certain provisions related to workers compensation administration and benefits, as well as provisions relating to the eligibility for appointment as an administrative law judge emeritus of the State Board of Workers' Compensation
Iowa	<p>SF 349, in part, provides that if an injured employee who has a preexisting disability that was caused by a prior injury arising out of, and in the course of, employment with the same employer, and the preexisting disability was compensable under the employee's present injury, the employer is liable for the combined disability that is caused by the injuries, measured in relation to the employee's condition immediately prior to the first injury. In this instance, the employer's liability for the combined disability will be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer.</p>
Illinois	<p>HB 2634 limits attorney fees to 15%, rather than 20%, of the sum that would be due for 364 weeks of permanent total disability based upon the employee's average weekly wage.</p> <p>HB 2792:</p> <ul style="list-style-type: none"> ● Makes existing medical fee schedules inoperative after August 31, 2020 ● Provides that the Workers' Compensation Commission (Commission) will establish new medical fee schedules applicable on and after September 1, 2020, in accordance with specified criteria ● Provides for 4 nonhospital fee schedules and 14 hospital fee schedules applicable to different geographic areas of the state ● Sets forth a procedure for petitioning the Commission if a maximum fee causes a significant limitation on access to quality healthcare in either a specific field of healthcare services or a specific geographic limitation on access to healthcare <p>SB 1943 provides that, with respect to employers correctly classified within the construction industry, the amount charged to the insured for workers' compensation and employers' liability insurance will be based upon hours worked by employees in specific job categories or classifications, not the wages or salaries paid to the employees.</p>
Kansas	<p>HB 2012 replaces the workers compensation prevailing factor standard with a substantial factor standard.</p> <p>HB 2013 amends the edition of the American Medical Association's (AMA) medical guide used to determine impairment for awarding workers compensation benefits.</p>

	<p>HB 2014 amends the statute that disallows workers compensation benefits to exclude fighting or horseplay when work related.</p> <p>HB 2016 allows injured workers who are receiving their Social Security benefits to keep the full amount of their workers compensation.</p> <p>SB 92 removes references to the sixth edition of the <i>AMA Guides</i> for evaluation of permanent impairment, thereby reverting to the fourth edition.</p>
Kentucky	<p>HB 40 provides workers compensation benefits for a psychological, psychiatric, or stress-related change to first responders that is not a direct result of a physical injury during the work-related incident.</p> <p>HB 53 establishes standards for determining whether people who work in the construction industry are independent contractors or employees required to be covered by workers compensation insurance.</p> <p>HB 75 eliminates the requirement that “B” readers performing occupational disease evaluations must be licensed in Kentucky and be board-certified pulmonary specialists and allows the Commissioner of the Department of Workers’ Claims (Commissioner) to select physicians to act as “B” readers in occupational disease claims.</p> <p>HB 350:</p> <ul style="list-style-type: none"> • Restores lifetime medical benefits in workers compensation claims • Eliminates the requirement that “B” readers performing occupational disease evaluations must be licensed in Kentucky and be board-certified pulmonary specialists • Allows the Commissioner to select physicians to act as “B” readers in occupational disease claims
Maine	<p>LD 600 changes the standard of proof required to demonstrate entitlement to compensation for a mental injury caused by stress, so that it is the same standard as is required with respect to physical injuries. In addition, this bill specifies that a work-related injury that aggravates a preexisting mental condition may result in a compensable disability, just as aggravating a preexisting physical condition may.</p> <p>LD 601 establishes annual cost of living adjustments for workers compensation benefits.</p> <p>LD 758 clarifies work search requirements related to partial incapacity.</p> <p>LD 809 disallows benefits for employees who were intoxicated at the time of their injury or death. It clarifies that intoxication includes intoxication from an illegal drug, marijuana, or alcohol.</p> <p>LD 819 establishes additional requirements related to requests for predetermination of independent contractor status.</p> <p>LD 942 entitles injured workers to medical use of marijuana, as a treatment for that injury, if certified by a medical provider and requires employers to directly reimburse employees for both the costs of obtaining a medical marijuana certificate and the costs of medical marijuana.</p> <p>LD 947 extends the notice of injury period in the Workers’ Compensation Act from 30 days to 180 days for claims that have a date of injury on or after January 1, 2020.</p>
Oregon	<p>HB 2087 increases civil penalty caps imposed by the Department of Consumer and Business Services for violations of certain workers compensation statutes or required practices. The penalty assessed by the director of the department may not exceed \$4,000 for each violation or \$180,000 in aggregate for violations during a calendar year.</p>
Rhode Island	<p>HB 5305/SB 242 extends the effective date of the Uninsured Protection Fund to September 1, 2019</p>
Texas	<p>HB 1946 eliminates relativities currently produced by the Department of Insurance as a basis of rates.</p>
Utah	<p>HB 154 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.</p>

Vermont	<p>HB 67 creates an exemption from the workers compensation requirements for workers engaged in equine care and management for an employer whose annual payroll is less than \$10,000.00.</p> <p>HB 220 permits the attorney general to enforce complaints of employee misclassification under the workers compensation and unemployment insurance laws.</p>
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OTHER ITEMS OF INTEREST

State	Update
Louisiana	On February 18, the Louisiana Supreme Court denied a petition for writ of certiorari in <i>Barber, et al. v. Louisiana Workforce Commission</i> . The writ was filed on November 19, 2018, seeking to overturn the decision of the Louisiana First Circuit Court of Appeal that found that Louisiana’s medical treatment guidelines were constitutional.

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.