



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 March 1, 2019.

### BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending March 1, 2019.

#### Idaho

##### SB 1028 was:

- Passed by the first chamber on February 12, 2019
- Included in NCCI's February 22, 2019 **Legislative Activity Report** (RLA-2019-06)
- Passed by the second chamber on February 28, 2019

**SB 1028** amends **section 72-451** of the Idaho Worker's Compensation Law to read as follows:

##### **72-451. Psychological Accidents and Injuries.**

**(1)** Psychological injuries, disorders or conditions shall not be compensated under this title, unless the following conditions are met:

**(a)** Such injuries of any kind or nature emanating from the workplace shall be compensated only if caused by accident and physical injury as defined in section 72-102(18)(a) through (18)(c), Idaho Code, or only if accompanying an occupational disease with resultant physical injury, except that a psychological mishap or event may constitute an accident where:

**(i)** It results in resultant physical injury ~~so~~ as long as the psychological mishap or event meets the other criteria of this section; ~~and~~ ;

**(ii)** It is readily recognized and identifiable as having occurred in the workplace; ~~;~~ and

**(iii)** It must be the product of a sudden and extraordinary event; ~~and~~

**(2 b)** No compensation shall be paid for such injuries arising from conditions generally inherent in every working situation or from a personnel-related action including, but not limited to, disciplinary action, changes in duty, job evaluation or employment termination; ~~and~~

**(3 c)** Such accident and injury must be the predominant cause as compared to all other causes combined of any consequence for which benefits are claimed under this section; ~~and~~

**(4 d)** Where psychological causes or injuries are recognized by this section, such causes or injuries must exist in a real and objective sense; ~~and~~

**(5 e)** Any permanent impairment or permanent disability for psychological injury recognizable under the Idaho worker's compensation law must be based on a condition sufficient to constitute a diagnosis using the terminology and criteria of the American psychiatric association's diagnostic and ~~statistics~~ statistical manual of mental disorders, third edition revised, or any successor manual promulgated by the American psychiatric association, and must be made by a psychologist, or psychiatrist duly licensed to practice in the jurisdiction in which treatment is rendered; and

**(6 f)** Clear and convincing evidence that the psychological injuries arose out of and in the course of the employment from an accident or occupational disease as contemplated in this section is required.

(2) Nothing herein in subsection (1) of this section shall be construed as allowing compensation for psychological injuries from psychological causes without accompanying physical injury.

(3) The provisions of subsection (1) of t This section shall apply to accidents and injuries occurring on or after July 1, 1994, and to causes of action for benefits accruing on or after July 1, 1994, notwithstanding that the original worker's compensation claim may have occurred prior to July 1, 1994.

(4) Notwithstanding subsection (1) of this section, post-traumatic stress injury suffered by a first responder is a compensable injury or occupational disease when the following conditions are met:

(a) The first responder is examined and subsequently diagnosed with post-traumatic stress injury by a psychologist, a psychiatrist duly licensed to practice in the jurisdiction where treatment is rendered, or a counselor trained in post-traumatic stress injury; and

(b) Clear and convincing evidence indicates that the post-traumatic stress injury was caused by an event or events arising out of and in the course of the first responder's employment.

(5) No compensation shall be paid for such injuries described in subsection (2) of this section arising from a personnel-related action including, but not limited to, disciplinary action, changes in duty, job evaluation, or employment termination.

(6) As used in subsection (4) of this section:

(a) "Post-traumatic stress injury" means a disorder that meets the diagnostic criteria for post-traumatic stress disorder or post-traumatic stress injury specified by the American psychiatric association's diagnostic and statistical manual of mental disorders, fifth edition revised, or any successor manual promulgated by the American psychiatric association.

(b) "First responder" means:

(i) A peace officer as defined in section 19-5101(d), Idaho Code, when employed by a city, county, or the Idaho state police;

(ii) A firefighter as defined in sections 59-1391(f) and 72-1403(A), Idaho Code;

(iii) A volunteer emergency responder as defined in section 72-102(32), Idaho Code;

(iv) An emergency medical service provider, or EMS provider, certified by the department of health and welfare pursuant to sections 56-1011 through 56-1018B, Idaho Code, and an ambulance-based clinician as defined in the rules governing emergency medical services as adopted by the department of health and welfare; and

(v) An emergency communications officer as defined in section 19-5101(f), Idaho Code.

(7) Subsections (4) through (6) of this section are effective for first responders with dates of injury or manifestations of occupational disease on or after July 1, 2019.

## Utah

**HB 232 Substitute** was:

- Passed by the first chamber on February 20, 2019
- Included in NCCI's March 1, 2019 *Legislative Activity Report* (RLA-2019-07)
- Passed by the second chamber on March 1, 2019

**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.

## BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending March 1, 2019.

## Hawaii

**HB 389 HD1** amends *section 386-79* of the Hawaii Workers' Compensation Law as follows:

**§386-79 Medical examination by employer's physician.**

(a) After an injury and during the period of disability, the employee, whenever ordered by the director of labor and industrial relations, shall submit to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer. The employee shall have the right to have a physician, surgeon, or chaperone designated and paid by the employee present at the examination, which right, however, shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability. The employee shall also have the right to record such examination by a recording device designated and paid for by the employee; provided that the examining physician or surgeon approves of the recording.

Any person selected or appointed to perform an independent medical examination or permanent impairment rating examination pursuant to this section shall examine the employee within calendar days of the person's receipt of the notice of the selection or appointment. The employee shall be provided a copy of the report of the independent medical examination or permanent impairment rating examination no later than calendar days after the date of the examination.

If an employee refuses to submit to, or the employee or the employee's designated chaperone in any way obstructs such examination, the employee's right to claim compensation for the work injury shall be suspended until the refusal or obstruction ceases and no compensation shall be payable for the period during which the refusal or obstruction continues.

...

**HB 389 HD1** also amends **section 4** of Act 172, Session Laws of Hawaii 2017 as follows:

**Section 4.** This Act shall take effect upon its approval ~~provided that on June 30, 2019, this Act shall be repealed and section 386-79, Hawaii Revised Statute, shall be reenacted in the form in which it read on the day before the effective date of this Act.~~

In addition, **HB 389 HD1** includes the following clause:

This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

**HB 390 HD1** amends **section 4** of Act 172, Session Laws of Hawaii 2017 to make permanent Act 172, Session Laws of Hawaii 2017, which:

- Grants employees the right to have a chaperone present during a medical examination relating to a workers compensation work injury and, with the approval of the examining physician or surgeon, to record the examination
- Provides that if an employee or employee's chaperone obstructs the medical examination, the employee's right to workers compensation will be suspended until the refusal or obstruction ceases

**HB 390 HD1** also amends **section 4** of Act 172, Session Laws of Hawaii 2017 as follows:

**Section 4.** This Act shall take effect upon its approval ~~provided that on June 30, 2019, this Act shall be repealed and section 386-79, Hawaii Revised Statute, shall be reenacted in the form in which it read on the day before the effective date of this Act.~~

**HB 912 HD1** adds a new section to the Hawaii Workers' Compensation Law to read:

**§386- Payment by employer for compensable injuries.**

(a) Notwithstanding any law to the contrary, the employer shall pay for all medical services required by the employee related to the compensable injury and the employee's rehabilitation. The employer shall not be required to pay for medical services unrelated to the compensable injury.

(b) If the employer elects to controvert the employee's claim for medical services or any portion thereof, the employer shall provide notice of the denial to the health care provider within sixty calendar days of the date that the employer receives the bill from the health care provider. In the event that the employer fails to dispute the employee's claim with the health care provider within the sixty-day period, the employer shall be liable for the services provided, with reasonable evidence showing that the billing was received.

(c) The employer shall pay for all charges billed within sixty calendar days of receipt of such charges; except for items where:

(1) There is a reasonable disagreement; and

(2) The employer has submitted timely notice as required under subsection (b).

(d) If more than sixty calendar days has lapsed between the employer's receipt of an undisputed billing and date of payment, payment of the billing shall be increased by one per cent per month of the outstanding balance.

## Indiana

**SB 358** amends **sections 22-3-3-10, 22-3-3-22, 22-3-7-16, and 22-3-7-19** of the Indiana Code to read as follows:

**22-3-3-10. Injuries schedule**

...

(j) Compensation for permanent partial impairment shall be paid according to the degree of permanent impairment for the injury determined under subsection (i) and the following:

...

(15) With respect to injuries occurring on and after July 1, 2016, and before July 1, 2019, for each degree of permanent impairment from one (1) to ten (10), one thousand seven hundred fifty dollars (\$1,750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand nine hundred fifty-two dollars (\$1,952) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand one hundred eighty-six dollars (\$3,186) per degree; for each degree of permanent impairment above fifty (50), four thousand sixty dollars (\$4,060) per degree.

(16) With respect to injuries occurring on and after July 1, 2019, and before July 1, 2020, for each degree of permanent impairment from one (1) to ten (10), one thousand seven hundred eighty-five dollars (\$1,785) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand nine hundred ninety-one dollars (\$1,991) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand two hundred fifty dollars (\$3,250) per degree; for each degree of permanent impairment above fifty (50), four thousand one hundred forty-one dollars (\$4,141) per degree.

(17) With respect to injuries occurring on and after July 1, 2020, and before July 1, 2021, for each degree of permanent impairment from one (1) to ten (10), one thousand eight hundred twenty-one dollars (\$1,821) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), two thousand thirty-one dollars (\$2,031) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand three hundred fifteen dollars (\$3,315) per degree; for each degree of permanent impairment above fifty (50), four thousand two hundred twenty-four dollars (\$4,224) per degree.

(18) With respect to injuries occurring on and after July 1, 2021, for each degree of permanent impairment from one (1) to ten (10), one thousand eight hundred fifty-seven dollars (\$1,857) per degree; for each degree of permanent impairment from eleven (11) to

thirty-five (35), two thousand seventy-two dollars (\$2,072) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand three hundred eighty-one dollars (\$3,381) per degree; for each degree of permanent impairment above fifty (50), four thousand three hundred eight dollars (\$4,308) per degree.

(k) The average weekly wages used in the determination of compensation for permanent partial impairment under subsections (i) and (j) shall not exceed the following:

...

(17) With respect to injuries occurring on or after July 1, 2016, and before July 1, 2019, one thousand one hundred seventy dollars (\$1,170).

(18) With respect to injuries occurring on or after July 1, 2019, and before July 1, 2020, one thousand one hundred ninety-three dollars (\$1,193).

(19) With respect to injuries occurring on or after July 1, 2020, and before July 1, 2021, one thousand two hundred seventeen dollars (\$1,217).

(20) With respect to injuries occurring on or after July 1, 2021, one thousand two hundred forty-one dollars (\$1,241).

### **22-3-3-22. Awards; computation**

...

(j) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

...

(12) with respect to injuries occurring on and after July 1, 2015, and before July 1, 2016:

(A) not more than one thousand one hundred five dollars (\$1,105); and

(B) not less than seventy-five dollars (\$75); ~~and~~

(13) with respect to injuries occurring on and after July 1, 2016, and before July 1, 2019:

(A) not more than one thousand one hundred seventy dollars (\$1,170); and

(B) not less than seventy-five dollars (\$75);

(14) with respect to injuries occurring on and after July 1, 2019, and before July 1, 2020:

(A) not more than one thousand one hundred ninety-three dollars (\$1,193); and

(B) not less than seventy-five dollars (\$75);

(15) with respect to injuries occurring on and after July 1, 2020, and before July 1, 2021:

(A) not more than one thousand two hundred seventeen dollars (\$1,217); and

(B) not less than seventy-five dollars (\$75); and

(16) with respect to injuries occurring on and after July 1, 2021:

(A) not more than one thousand two hundred forty-one dollars (\$1,241); and

(B) not less than seventy-five dollars (\$75).

...

(t) The maximum compensation, exclusive of medical benefits, that may be paid for an injury under any provision of this law or any combination of provisions may not exceed the following amounts in any case:

...

(13) With respect to an injury occurring on and after July 1, 2016, and before July 1, 2019, three hundred ninety thousand dollars (\$390,000).

(14) With respect to an injury occurring on and after July 1, 2019, and before July 1, 2020, three hundred ninety-eight thousand dollars (\$398,000).

(15) With respect to an injury occurring on and after July 1, 2020, and before July 1, 2021, four hundred six thousand dollars (\$406,000).

(16) With respect to an injury occurring on and after July 1, 2021, four hundred fourteen thousand dollars (\$414,000).

### **22-3-7-16. Disablements; awards**

...

(l) With respect to disablements occurring on and after July 1, 1991, compensation for permanent partial impairment shall be paid according to the degree of permanent impairment for the disablement determined under subsection (k) and the following:

...

(15) With respect to disablements occurring on and after July 1, 2016, and before July 1, 2019, for each degree of permanent impairment from one (1) to ten (10), one thousand seven hundred fifty dollars (\$1,750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand nine hundred fifty-two dollars (\$1,952) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand one hundred eighty-six dollars (\$3,186) per degree; for each degree of permanent impairment above fifty (50), four thousand sixty dollars (\$4,060) per degree.

(16) With respect to disablements occurring on and after July 1, 2019, and before July 1, 2020, for each degree of permanent impairment from one (1) to ten (10), one thousand seven hundred eighty-five dollars (\$1,785) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand nine hundred ninety-one dollars (\$1,991) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand two hundred fifty dollars (\$3,250) per degree; for each degree of permanent impairment above fifty (50), four thousand one hundred forty-one dollars (\$4,141) per degree.

(17) With respect to disablements occurring on and after July 1, 2020, and before July 1, 2021, for each degree of permanent impairment from one (1) to ten (10), one thousand eight hundred twenty-one dollars (\$1,821) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), two thousand thirty-one dollars (\$2,031) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand three hundred fifteen dollars (\$3,315) per degree; for each degree of permanent impairment above fifty (50), four thousand two hundred twenty-four dollars (\$4,224) per degree.

(18) With respect to disablements occurring on and after July 1, 2021, for each degree of permanent impairment from one (1) to ten (10), one thousand eight hundred fifty-seven dollars (\$1,857) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), two thousand seventy-two dollars (\$2,072) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand three hundred eighty-one dollars (\$3,381) per degree; for each degree of permanent impairment above fifty (50), four thousand three hundred eight dollars (\$4,308) per degree.

(m) The average weekly wages used in the determination of compensation for permanent partial impairment under subsections (k) and (l) shall not exceed the following:

...

(17) With respect to disablements occurring on or after July 1, 2016, and before July 1, 2019, one thousand one hundred seventy dollars (\$1,170).

(18) With respect to disablements occurring on or after July 1, 2019, and before July 1, 2020, one thousand one hundred ninety-three dollars (\$1,193).

(19) With respect to disablements occurring on or after July 1, 2020, and before July 1, 2021, one thousand two hundred seventeen dollars (\$1,217).

(20) With respect to disablements occurring on or after July 1, 2021, one thousand two hundred forty-one dollars (\$1,241).

...

#### **22-3-7-19. Awards; computation; average weekly wages**

...

(j) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

...

(12) with respect to disablements occurring on and after July 1, 2015, and before July 1, 2016:

(A) not more than one thousand one hundred five dollars (\$1,105); and

(B) not less than seventy-five dollars (\$75); and

(13) with respect to disablements occurring on and after July 1, 2016, and before July 1, 2019:

(A) not more than one thousand one hundred seventy dollars (\$1,170); and

(B) not less than seventy-five dollars (\$75);

(14) with respect to disablements occurring on and after July 1, 2019, and before July 1, 2020:

(A) not more than one thousand one hundred ninety-three dollars (\$1,193); and

(B) not less than seventy-five dollars (\$75);

(15) with respect to disablements occurring on and after July 1, 2020, and before July 1, 2021:

(A) not more than one thousand two hundred seventeen dollars (\$1,217); and

(B) not less than seventy-five dollars (\$75); and

(16) with respect to disablements occurring on and after July 1, 2021:

(A) not more than one thousand two hundred forty-one dollars (\$1,241); and

(B) not less than seventy-five dollars (\$75).

...

(t) The maximum compensation that shall be paid for occupational disease and the results of an occupational disease under this chapter or under any combination of the provisions of this chapter may not exceed the following amounts in any case:

...

(13) With respect to disability or death occurring on and after July 1, 2016, and before July 1, 2019, three hundred ninety thousand dollars (\$390,000).

(14) With respect to disability or death occurring on and after July 1, 2019, and before July 1, 2020, three hundred ninety-eight thousand dollars (\$398,000).

(15) With respect to disability or death occurring on and after July 1, 2020, and before July 1, 2021, four hundred six thousand dollars (\$406,000).

(16) With respect to disability or death occurring on and after July 1, 2021, four hundred fourteen thousand dollars (\$414,000).

...

## Montana

**HB 214** amends various sections of the Montana Code Annotated and creates a new section in *Title 39. Labor, Chapter 71. Workers' Compensation* (section 1 below) to read as follows:

### Section 1.

#### State compensation insurance fund coverage.

(1) If the department of administration elects coverage under compensation plan No. 2 under the provisions of 39-71-403, the state compensation insurance fund provided for in 39-71-2313 may choose to provide and manage workers' compensation coverage for its own employees under plan No. 3.

(2) If the state compensation insurance fund chooses coverage under compensation plan No. 3 as provided for in subsection (1), the state compensation insurance fund is exempt from 39-71-403.

(3) For the purposes of this chapter, if the state compensation insurance fund elects coverage under compensation plan No. 3, the state compensation insurance fund is the employer and the terms, conditions, and provisions of plan No. 3 are exclusive, compulsory, and obligatory upon both the employer and the employee.

### Section 2.

#### **2-15-1019. Board of directors of state compensation insurance fund—legislative liaisons.**

...

(3) The board may provide for its own office space and the office space of the state fund. The board shall elect board leadership.

(4) The board consists of seven voting members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

...

### Section 3.

#### **2-17-506. Definitions.**

In this part, unless the context requires otherwise, the following definitions apply:

...

(10) (a) "State agency" means any entity of the executive branch, including the university system.

(b) The term does not include the state compensation insurance fund provided for in 39-71-2313.

...

### Section 4.

#### **2-17-516. Exemptions—university system—office of public instruction—national guard—state fund.**

...

(9) The state compensation insurance fund provided for in 39-71-2313 is exempt from this part.

### Section 5.

#### **18-4-123. Definitions.**

In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

...

(11) (a) "Governmental body" means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(b) The term does not include the state compensation insurance fund provided for in 39-71-2313.

### Section 6.

#### **18-4-132. Application.**

...

(3) This chapter does not apply to:

...

(e) ~~contracts entered into by the state compensation insurance fund to procure insurance-related services;~~

...

### Section 7.

**39-71-403. ~~Plan three exclusive for state agencies—election of plan by public corporations~~ State agency coverage—public corporation coverage—financing of self-insurance fund—exemption for university system—definitions—rulemaking.**

(1) (a) Except as provided in [section 1] and subsection (5), ~~if a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. of this section, the department of administration shall elect workers' compensation insurance coverage on behalf of all state agencies and manage the coverage under the terms, conditions, and provisions of compensation plan No. 2 or plan No. 3. The state agency is the employer for purposes of the compensation plan selected pursuant to this section.~~ Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the state agency.

The state agency shall pay the sums ~~into the state fund~~ at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.

(b) (i) ~~Subject to subsection (5), the department of administration, provided for in 2-15-1001, shall manage~~ The department of administration shall elect coverage under compensation plan No. 2 or plan No. 3 to provide workers' compensation insurance coverage for all state agencies except the state compensation insurance fund if the state compensation insurance fund exercises the option in [section 1]. The plan selected by the department of administration is to be exclusive, compulsory, and obligatory upon both the employer and the employee.

(ii) ~~The state fund insurer for the selected plan~~ shall provide the department of administration with all information regarding the state agencies' coverage.

(iii) ~~Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent~~ Contingent upon mutual agreement between the department of administration and the state fund, ~~the state fund~~ plan No. 2 or plan No. 3 insurer, the plan No. 2 or plan No. 3 insurer shall issue one or more policies for all state agencies.

...

(2) (a) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation, other than a state agency.

(b) A public corporation electing coverage under compensation plan No. 1 may purchase reinsurance or may issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects coverage under plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund ~~must~~ may be used only to pay claims covered by this chapter and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

...

(5) For the purposes of subsection ~~(1)(b)~~ (1)(a), the judicial branch or the legislative branch may choose not to have the department of administration manage its workers' compensation policy.

(6) The department of administration may adopt rules to implement ~~subsection (1)(b)(i)~~ this section.

...

## **Section 8.**

### **39-71-2201. Election to be bound by plan—captive reciprocal insurers.**

(1) Any employer ~~except those specified in 39-71-403~~ may, by filing an election to become bound by compensation plan No. 2, insure the employer's liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact ~~such~~ workers' compensation business in this state.

...

## **Section 9.**

### **39-71-2315. Management of state fund—powers and duties of board—business plan required.**

...

(7) The state fund board of directors shall establish in-house guidelines for procurement of insurance-related services and shall include guidelines for the solicitation of submissions of information regarding insurance-related services from more than one vendor. The board may include guidelines for the circumstances when business necessity or expedience may preclude the solicitation of submissions from more than one vendor. ~~The board may also include in the guidelines the exemptions to the procurement process in 18-4-132.~~

## **Section 10.**

**Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 1]. **Section 11.**

**Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**SB 234** amends **sections 39-71-403, 39-71-2201, and 39-71-2316** of the Montana Workers Compensation Act and creates new sections to read as follows:

**Section 1.**

**39-71-403. ~~Plan three exclusive for state agencies—election of plan by public corporations~~ State agency coverage—public corporation coverage—financing of self-insurance fund—exemption for university system—definitions—rulemaking.**

(1) (a) Except as provided in [section 3] and subsection (5), ~~if a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Of this section, the department of administration shall elect workers' compensation insurance coverage on behalf of all state agencies and manage the coverage under the terms, conditions, and provisions of compensation plan No. 1, plan No. 2, or plan No. 3. The department shall elect a plan that insures all state agencies. If the department elects workers' compensation insurance coverage under compensation plan no. 2, the insurer must have an A financial strength rating from a major financial services entity. The state agency is the employer for purposes of the compensation plan selected pursuant to this section. Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the state agency. The state agency shall pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.~~

(b) (i) ~~Subject to subsection (5), the department of administration, provided for in 2-15-1001, shall manage~~ The department of administration shall elect coverage under one compensation plan to provide workers' compensation insurance coverage for all state agencies except the state compensation insurance fund if the state compensation insurance fund exercises the option in [section 3]. The plan selected by the department of administration is to be exclusive, compulsory, and obligatory upon both the employer and the employee.

(ii) ~~The state fund insurer for the selected plan shall provide the department of administration with all information regarding the state agencies' coverage.~~

(iii) ~~Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent~~ Contingent upon mutual agreement between the department of administration and the state fund, the state fund plan No. 2 or plan No. 3 insurer, the plan No. 2 or plan No. 3 insurer shall issue one or more policies for all state agencies.

...

(2) (a) ~~A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation, other than a state agency or with the department of administration as provided in subsection (2)(b).~~

(b) ~~The department of administration on behalf of all state agencies, except as provided in [section 3], may join with a public corporation to elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3. The department shall elect a plan that insures all state agencies. If the department elects workers' compensation insurance coverage under compensation plan no. 2, the insurer must have an A financial strength rating from a major financial services entity. Until notes or bonds described in [section 2(3)(c)] and subsection (3) of this section are fully paid, the funds described in [section 2(2)(c)] and subsection (3)(a) of this section must remain separate.~~

(c) ~~A public corporation~~ If electing coverage under compensation plan No. 1, a public corporation may purchase reinsurance or may issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) ~~A public corporation, other than a state agency, that elects coverage under plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must may be used only to pay claims covered by this chapter and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).~~

(b) (i) ~~A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation, including 15-10-420, to the contrary. The revenue derived from the sale of the bonds and notes may not be used for any other purpose.~~

...

(iii) Two or more public corporations, ~~other than state agencies,~~ may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

...

(5) For the purposes of subsection ~~(1)(b)~~ (1)(a), the judicial branch or the legislative branch may choose not to have the department of administration manage its workers' compensation policy.

(6) The department of administration may adopt rules to implement ~~subsection (1)(b)(i)~~ this section.

(7) As used in this section, the following definitions apply:

(a) "Public corporation" ~~includes~~ has the meaning provided in 39-71-116 except that a state agency is excluded and the Montana university system is included.

...

## **Section 2.**

### **Election of plan No. 1 by department of administration—rulemaking.**

(1) If the department of administration elects coverage under compensation plan No. 1 as provided in 39-71-403, the department of administration is subject as a plan No. 1 insurer to the provisions of Title 39, chapter 71, except parts 21 and 26.

(2) The department of administration shall:

(a) ensure that the plan is operated in an actuarially sound manner and that the plan maintains reserves sufficient to liquidate incurred but not yet reported claim liability;

(b) issue separate notices of coverage to state agencies, subject to the provisions of [section 3]; and

(c) establish a self-insurance workers' compensation proprietary fund type to be used only to:

(i) pay claims for compensation and benefits provided for in this chapter and for actual and necessary expenses required for the efficient administration of claims and the fund and for equipment or programs to reduce the incidence of claims;

(ii) discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. The time limit of this subsection (2)(c)(ii) does not apply to liabilities accrued for the compensation and benefits under subsection (2)(c)(i), which may extend for more than 1 year.

(iii) pay the costs of reinsurance or the costs associated with the sale and issuance of bonds or notes provided for in this section, including debt service; and

(iv) pay assessments required under this chapter for any other plan No. 1 insurer.

(3) The department of administration may:

(a) purchase reinsurance;

(b) contract with a third-party administrator;

(c) through the board of investments, issue bonds or notes to cover unfunded liabilities caused by a catastrophic event or for the purpose of establishing, in whole or in part, the self-insurance workers' compensation proprietary fund provided for under subsection (2)(c). Bonds or notes issued under this subsection (3)(c) do not constitute a general obligation of the state and are not general obligation bonds. The bonds or notes must be paid for with the proceeds from the proprietary fund established under subsection (2)(c).

(d) adopt rules to implement the provisions of this section.

## **Section 3.**

### **State compensation insurance fund coverage.**

(1) If the department of administration elects coverage under compensation plan No. 1 or plan No. 2 under the provisions of 39-71-403, the state compensation insurance fund provided for in 39-71-2313 may choose to provide and manage workers' compensation coverage for its own employees under plan No. 3.

(2) If the state compensation insurance fund chooses coverage under compensation plan No. 3 as provided for in subsection (1), the state compensation insurance fund is exempt from 39-71-403.

(3) For the purposes of this chapter, if the state compensation insurance fund elects coverage under compensation plan No. 3, the state compensation insurance fund is the employer and the terms, conditions, and provisions of plan No. 3 are exclusive, compulsory, and obligatory upon both the employer and the employee.

## **Section 4.**

### **39-71-2201. Election to be bound by plan—captive reciprocal insurers.**

Any employer ~~except those specified in 39-71-403~~ may, by filing an election to become bound by compensation plan No. 2, insure the employer's liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such workers' compensation business in this state.

...

## **Section 5.**

### **39-71-2316. Powers of state fund.**

For the purposes of carrying out its functions, the state fund may:

...

(p) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund; and

(g) upon approval of the board, contract with the department of administration to serve as a third-party administrator if the department of administration elects coverage for state agencies under compensation plan No. 1.

...

#### Section 6.

**Codification instruction.** [Sections 2 and 3] are intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [sections 2 and 3].

#### Section 7.

**Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

## New Mexico

**HB 324** amends *section 52-3-32.1* of the New Mexico Workers' Compensation Act to read as follows:

#### **52-3-32.1. Firefighter Occupational ~~Disease~~ Conditions.—**

...

B. If a firefighter is diagnosed with one or more of the following ~~diseases~~ conditions after the period of employment indicated, ~~which disease and the condition~~ was not revealed during an initial employment medical screening examination or during a subsequent medical review pursuant to the Occupational Health and Safety Act and rules promulgated pursuant to that act, the ~~disease condition~~ is presumed to be proximately caused by employment as a firefighter:

...

(11) multiple myeloma after fifteen years; ~~and~~

(12) hepatitis, tuberculosis, diphtheria, meningococcal disease and methicillin-resistant staphylococcus aureus appearing and diagnosed after entry into employment; ~~or~~

(13) posttraumatic stress disorder diagnosed by a physician or psychologist that results in physical impairment, primary or secondary mental impairment or death.

C. The presumptions created in ~~Subsection~~ Subsections B and D of this section may be rebutted by a preponderance of evidence in a court of competent jurisdiction showing that the firefighter engaged in conduct or activities outside of employment that posed a significant risk of contracting or developing a described ~~disease~~condition.

...

E. When any presumptions created in this section do not apply, it shall not preclude a firefighter from demonstrating a causal connection between employment and ~~disease~~ condition or injury by a preponderance of evidence in a court of competent jurisdiction.

F. Medical treatment based on the presumptions created in this section shall be provided by an employer as for a job-related ~~illness~~ condition or injury unless and until a court of competent jurisdiction determines that the presumption does not apply. If the court determines that the presumption does not apply or that the ~~illness~~ condition or injury is not job related, the employer's workers' compensation insurance provider shall be reimbursed for health care costs by the medical or health insurance plan or benefit provided for the firefighter by the employer.

## Oregon

**HB 2087** amends *section 656.745* of the Oregon Workers' Compensation Law to read:

#### **656.745 Civil penalty for inducing failure to report claims; failure to pay assessments; failure to comply with statutes, rules or orders; amount; procedure.**

(1) (a) The Director of the Department of Consumer and Business Services shall assess a civil penalty against an employer or insurer ~~who~~ that intentionally or repeatedly induces claimants for compensation to fail to report accidental injuries, causes employees to collect accidental injury claims as off-the-job injury claims, persuades claimants to accept less than the compensation due or makes it necessary for claimants to resort to proceedings against the employer to secure compensation due.

(b) The director may not assess under this subsection more than \$2,000 for each violation or more than \$40,000 in the aggregate for violations during a calendar year. Each violation, or each day during which a violation continues, constitutes a separate violation.

(2) (a) The director may assess a civil penalty against an employer, self-insured employer, insurer, managed care organization or service company that:

~~(a)~~ (A) Fails to pay assessments or other payments due to the director under this chapter and is in default; or

~~(b)~~ (B) Fails to comply with statutes, rules or orders of the director regarding reports or other requirements necessary to carry out the purposes of this chapter.

(b) The director may not assess under this subsection a civil penalty against a self-insured employer, insurer or service company that exceeds \$4,000 for each violation or \$180,000 in the aggregate for violations during a calendar year. Each violation, or each day during which a violation continues, constitutes a separate violation.

(c) The director may not assess under this subsection a civil penalty against an employer, except a self-insured employer, or managed care organization that exceeds \$2,000 for each violation or \$40,000 in the aggregate for violations during a calendar year. Each violation, or each day during which a violation continues, constitutes a separate violation.

(3) Except as specified in ORS 656.780, the director may assess a penalty under subsection (2) of this section against a service company only for claims processing performance deficiencies revealed in annual audits associated with claims processing performance. The director may assess only one penalty for each separate violation by an employer, insurer or service company for deficiencies revealed in annual audits associated with claims processing performance.

~~(4) A civil penalty shall be not more than \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three-month period. Each violation, or each day a violation continues, shall be considered a separate violation.~~

~~(5) (4) ORS 656.735 (4) to (6) and 656.740 also apply to orders and penalties assessed under this section.~~

**HB 2406 amends *section 656.033* of the Oregon Workers' Compensation Law to read:**

**656.033 Coverage for participants in work experience or school directed professional training programs.**

~~(1) All persons participating as trainees in a work experience program or school directed professional education project of a school district as defined in ORS 332.002 in which such persons are enrolled, including persons with mental retardation in training programs, are considered as workers of the district subject to this chapter for purposes of this section. Trainees placed in a work experience program with their resident school district as the training employer shall be subject workers under this section when the training and supervision are performed by noninstructional personnel. All persons participating as trainees in a work experience program or a school directed professional education project of a school district, as defined in ORS 332.002, in which such persons are enrolled, including persons with intellectual disabilities in training programs, are workers of the district subject to this chapter for purposes of this section. Trainees placed in a work experience program with the trainees' resident school district as the training employer are subject workers under this section if the training and supervision are performed by noninstructional personnel.~~

...

~~(3) The premium cost for coverage under this section shall be~~ is based on an assumed hourly wage which is approved by the Director of the Department of Consumer and Business Services. Such assumed wage is to be used only for calculation purposes under this chapter and without regard to ORS chapter 652 or ORS 653.010 to 653.565 and 653.991. A self-insured district shall submit such assumed wage rates to the director. If the director finds that the rates are unreasonable, the director may fix appropriate rates to be used for purposes of this section.

(4) The school district shall furnish the insurer, or in the case of self-insurers, the director, with an estimate of the total number of persons enrolled in ~~its~~ the school district's work experience program or school directed professional education project and shall notify the insurer or director of any significant changes ~~therein~~ in the program or project. Persons covered under this section are entitled to the benefits of this chapter. However, such persons are not entitled to benefits under ORS 656.210 or 656.212. ~~They~~ The persons are entitled to such benefits if injured as provided in ORS 656.156 and 656.202 while performing any duties arising out of and in the course of ~~their participation~~ participating in the work experience program or school directed professional education project, provided the duties being performed are among those:

...

~~(5) The~~ Filing of claims for benefits under this section is the exclusive remedy of a trainee or a beneficiary of the trainee for injuries compensable under this chapter against the state, ~~its~~ the state's political subdivisions, the school district board, ~~its~~ the members, officers and employees of the school district board, or any employer, regardless of negligence.

(6) The provisions of this section ~~shall be inapplicable~~ do not apply to any trainee who has earned wages for such employment.

(7) As used in this section, "school directed professional education project" means an on-campus or off-campus project supervised by school personnel ~~and which that~~ is an assigned activity of a local professional education program approved pursuant to operating procedures of the State Board of Education. A school directed professional education project must be of a practicum experience nature, performed outside of a classroom environment and extending beyond initial instruction or demonstration activities. Such projects are limited to logging, silvicultural thinning, slash burning, fire fighting, stream enhancement, woodcutting, reforestation, tree surgery, construction, printing and manufacturing involving formed metals.

(8) Notwithstanding subsection (1) of this section, a school district may elect to make trainees subject workers under this chapter for school directed professional education projects not enumerated in subsection (7) of this section by making written request to the district's insurer, or in the case of a self-insured district, the director, with coverage to begin no sooner than the date the request is received by the insurer or director. The request for coverage ~~shall~~ must include a description of the work to be performed under the project and an estimate of the number of participating trainees. The insurer or director shall accept a request that meets the criteria of this section.

## Utah

**HB 267** establishes *Chapter 66. Prescription Drug Affordability Act* in the Utah Health Code to read as follows:

## **Chapter 66. Prescription Drug Affordability Act**

### **Part 1. General Provisions**

#### **26-66-101. Title.**

This chapter is known as the “Prescription Drug Affordability Act.”

#### **26-66-102. Definitions.**

As used in this chapter:

(1) “Drug” means the same as that term is defined in Section 58-17b-102.

(2) “Health insurer” means:

(a) an insurer who offers health care insurance as that term is defined in Section 31A-1-301;

(b) for health benefits offered to state employees under Section 49-20-202, the Public Employees’ Benefit and Insurance Program created in Section 49-20-103; or

(c) a workers’ compensation insurer:

(i) authorized to provide workers’ compensation insurance in the state; or

(ii) that is a self-insured employer as defined in Section 34A-2-201.5.

(3) “Pharmaceutical manufacturer” means:

(a) a person that is engaged in the manufacturing of drugs or pharmaceutical devices that are available for purchase by residents of the state; or

(b) a person that is responsible for setting the price of a drug or device that is available for purchase by residents of the state on behalf of a person described in this Subsection (3).

(4) “Prescription drug importation program” means the Canadian Prescription Drug Importation Program established under Section 26-66-301.

(5) “Secretary” means the secretary of the United States Department of Health and Human Services.

### **Part 2. Application and Certification**

#### **26-66-201. Application for approval of prescription drug importation program and certification of Canadian drug importation.**

(1) The department shall submit to the secretary:

(a) no later than July 31, 2019, a brief letter of intent to seek approval for a program to allow for the importation of prescription drugs from Canada into the state under the provisions of 21 U.S.C. Sec. 384(l); and

(b) no later than December 31, 2019, an application for:

(i) the approval of a program to allow for the importation of prescription drugs from Canada into the state under the provisions of 21 U.S.C. Sec. 384(l); and

(ii) certification by the secretary to the United States Congress, in accordance with 21 U.S.C. Sec. 384(l), that importation of Canadian prescription drugs will:

(A) pose no additional risk to the public’s health and safety; and

(B) result in a significant reduction in the cost of covered products to the American consumer.

(2) The application described in Subsection (1)(b) shall contain:

(a) the findings of any prescription drug importation study that is available to the department;

(b) a description of the prescription drug importation program designed by the department in accordance with the provisions of this chapter, including measures that will be taken to:

(i) comply with existing state and federal law; and

(ii) reduce the risk to the public’s health and safety; and

(c) an estimate of the reduction in the cost of covered products and health insurance premiums to Utah consumers.

(3) If the department does not believe that the department will be able to submit the application described in Subsection (1)(b) before December 31, 2019, the department shall report to the Health and Human Services Interim Committee before December 31, 2019, on:

(a) the reason for the delay in submitting the application;

(b) any steps that the department has taken to prepare the application; and

(c) when the department believes that the application will be ready for submission.

(4) If the application for the prescription drug importation program is not approved by the secretary, the department shall submit a new application in accordance with the requirements in Subsection (2) on or before December 1 of each year until the earlier of:

(a) approval of the prescription drug importation program by the secretary; or

(b) January 1, 2024.

(5) On or before December 1 of each year that the department submits an application under Subsection (2) or (4), the department shall submit a written report to the Health and Human Services Interim Committee regarding the results of the application and any updated findings and recommendations.

### **Part 3. Canadian Prescription Drug Importation Program**

**26-66-301. Canadian Prescription Drug Importation Program.**

The department shall establish a Canadian Prescription Drug Importation Program in accordance with the provisions in this chapter.

**26-66-302. Program requirements.**

The prescription drug importation program established under Section 26-66-301 shall:

- (1) only allow for the importation of prescription drugs that have been identified by the department in the pharmaceutical importation list described in Section 26-66-303;
- (2) monitor consumer prices to ensure that market competition and routine health plan administration provide significant savings for Utah consumers;
- (3) specify the actions that the department, the Insurance Department, and the Department of Commerce will take if market competition and routine health plan administration does not result in significant savings for Utah consumers;
- (4) only use Canadian suppliers regulated under relevant Canadian federal or provincial laws;
- (5) if required by the secretary, establish a process to ensure the purity, chemical composition, and potency of imported products;
- (6) ensure that imported prescription drugs will not be distributed, dispensed, or sold outside of the state;
- (7) ensure that the program does not import a generic prescription drug that would violate United States patent laws;
- (8) comply with the track and trace requirements in Title II of the Drug Security and Quality Act, 4 U.S.C. Sec. 360eee, et seq., before imported prescription drugs come into possession of the wholesaler;
- (9) ensure that the supply and distribution chain is in compliance with applicable United States federal and state law after imported prescription drugs are in the possession of the wholesaler;
- (10) ensure that the prescription drug importation program is adequately financed through an efficient approach that does not jeopardize significant consumer savings;
- (11) require publication of a wholesaler's acquisition cost of each imported prescription drug;
- (12) for an imported prescription drug, require a participating pharmacy to disclose upon request the price of the drug that the participating pharmacy will charge to a patient who is not covered by a health plan or contract;
- (13) include an audit function described in Section 26-66-304; and
- (14) ensure that participation by a wholesaler, health insurer, health care provider, or consumer is voluntary.

**26-66-303. Pharmaceutical importation list.**

- (1)(a) The department shall coordinate with the Utah State Board of Pharmacy to develop and periodically revise a pharmaceutical importation list in accordance with this section.
- (b) The department may coordinate with a working group created under the direction of the Utah State Board of Pharmacy to satisfy the requirement in Subsection (1)(a).
- (2) The pharmaceutical importation list described in Subsection (1)(a):
  - (a) shall include prescription drugs that:
    - (i) may be imported from Canada under applicable United States federal and state law; and
    - (ii) are expected to generate substantial savings for Utah consumers; and
  - (b) may not include a prescription drug that may not be imported under applicable United States federal and state law.
- (3) A participating health insurer shall provide the department and the Utah State Board of Pharmacy or the designees of the Utah State Board of Pharmacy with any information requested by the department regarding the net per unit cost of the health insurer's top 20 high-cost drugs and the quantity of those drugs dispensed by the health insurer to covered individuals.
- (4) The information described in Subsection (3):
  - (a) shall only be requested and used for the purpose of developing the pharmaceutical importation list or enforcing provisions of this chapter;
  - (b) is proprietary information that the department, the Utah State Board of Pharmacy, or a designee of the Utah State Board of Pharmacy may not disclose to any person;
  - (c) is a private record for the purpose of Title 63G, Chapter 2, Government Records Access and Management Act; and
  - (d) may not contain personally identifiable personal health care information that is protected by the Health Insurance Portability and Accountability Act as defined in Section 31A-1-301.
- (5) The department shall:
  - (a) review the pharmaceutical importation list every three months to ensure that the pharmaceutical importation list continues to meet the requirements in Subsection (2); and
  - (b) establish policies and procedures by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for updating the pharmaceutical importation list in accordance with Subsection (5)(a).

**26-66-304. Audits.**

(1) The prescription drug importation program established under Section 26-66-301 shall include audits of suppliers, importers, wholesalers, retail pharmacies, health insurers, and other persons who participate in the prescription drug importation program as appropriate and necessary.

(2) The audit function in Subsection(1) shall:

(a) include a review of the:

(i) methodology used to determine the prescription drugs with the greatest potential for savings;

(ii) process used to ensure that Canadian suppliers are of high quality, high performance, and in full compliance with Canadian laws;

(iii) methods used to ensure that imported prescription drugs under the prescription drug importation program are not shipped, sold, or dispensed outside the state once in the possession of the wholesaler or the wholesaler's contractors; and

(iv) processes used to ensure that imported prescription drugs are pure, unadulterated, potent, and safe; and

(b) ensure that Utah consumers benefit from significant savings by verifying that:

(i) participating pharmacies and administering providers are not charging rates that jeopardize significant consumer savings to any consumer or participating health plan;

(ii) the prescription drug importation program is adequately financed to support all administrative functions while generating significant consumer savings;

(iii) the prescription drug importation program does not put consumers at a higher health and safety risk than if the program did not exist;

(iv) the prescription drug importation program continues to provide Utah consumers with substantial savings on imported prescription drugs; and

(v) a participating pharmacy's ability to negotiate professional fees is not impeded.

(3) The department shall coordinate with the Insurance Department and the Department of Commerce to conduct audits in accordance with this section and to enforce the provisions of this chapter.

#### **26-66-305. Implementation.**

(1) The department is responsible for implementing the provisions of the prescription drug importation program upon:

(a) certification by the secretary to the United States Congress, in accordance with 21 U.S.C. Sec. 384(l), that importation of Canadian prescription drugs will:

(i) pose no additional risk to the public's health and safety; and

(ii) result in a significant reduction in the cost of covered products to the American consumer;

(b) approval by the secretary of the prescription drug importation program;

(c) satisfying any other requirements of state and federal law for the importation of prescription drugs from Canada; and

(d) collecting fees under Subsection (3)(a) sufficient to cover the startup costs of the prescription drug program.

(2) The department shall implement the prescription drug importation program by contracting with any wholesale pharmacy that:

(a) is licensed to operate in the state as a class C pharmacy under Section 58-17b-302;

(b) complies with the program requirements described in Section 26-66-302; and

(c) agrees to any additional conditions of participation that may be established by the department in accordance with the requirements of federal law and this chapter.

(3) (a) The department shall establish fees, in accordance with Section 63J-1-504, on an entity that participates in the prescription drug importation program to cover all startup and implementation costs of the prescription drug program.

(b) The Insurance Department may establish fees, in accordance with Section 63J-1-504, on an insurer that participates in the prescription drug importation program to take an action specified by the department under Subsection 26-66-302(3) or Subsection 26-66-304(3).

(c) (i) A fee collected by the department under Subsection (3)(a) is a dedicated credit for use by the department to implement this chapter.

(ii) A fee collected by the Insurance Department under Subsection (3)(b) is a dedicated credit for use by the Insurance Department to perform the functions described in Subsection (3)(b).

(d) The fees in Subsections (3)(a) and (b) may not exceed the amount necessary to cover the cost the department incurs to implement this chapter.

(e) The department shall deposit into the General Fund the fees described in Subsection (3)(a) as a dedicated credit to be used solely to pay for the cost of implementing this chapter.

(4) Before the conditions described in Subsection (1) are satisfied, the department:

(a) may, to the extent allowed under United State federal and state law:

(i) design the prescription drug importation program; and

(ii) negotiate with wholesalers in Canada and the United States regarding the potential implementation of the prescription drug importation program; and

(b) may not:

(i) allow the importation of any prescription drugs under this chapter; or

(ii) implement any provisions of the prescription drug importation program that would violate United States federal or state law.

**26-66-401. Pharmaceutical manufacturer—Prohibited conduct—Penalties.**

(1) A pharmaceutical manufacturer may not:

(a) take any action, by agreement, unilaterally, or otherwise, that has the effect of fixing or otherwise controlling the price that a pharmaceutical supplier, distributor, or dispenser charges or advertises for pharmaceuticals in the drug importation program; or  
(b) discriminate against a pharmaceutical supplier, distributor, or dispenser based on whether the supplier, distributor, or dispenser participates in the prescription drug importation program.

(2) The attorney general may bring a civil action or seek an injunction against any person who violates a provision of this section, and may seek any remedy available to the attorney general for violations of Title 76, Chapter 10, Part 31, Utah Antitrust Act.

HB 267 also makes the following amendments to the Utah Code Annotated:

**631-1-226. Repeal dates, Title 26.**

...

(11) Title 26, Chapter 66, Prescription Drug Affordability Act, is repealed July 1, 2029.

**631-1-276. Repeal dates, Title 76.**

(1) Subsection 76-10-526(15) is repealed July 1, 2018.

(2) Subsection 76-10-3104(3), referencing anticompetitive activities regarding prescription drugs, is repealed July 1, 2029.

**76-10-3104. Illegal anticompetitive activities.**

(1) Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is declared to be illegal.

(2) It shall be unlawful for any person to monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of trade or commerce.

(3) For purposes of the importation of prescription drugs under Title 26, Chapter 66, Prescription Drug Affordability Act, in addition to the activities described in Subsections (1) and (2), a unilateral act in the form of a trust or otherwise, in restraint of trade or commerce, is unlawful.

SB 161 Third Substitute, in part, amends **section 31A-15-103** of the Utah Insurance Code to read as follows:

**31A-15-103. Surplus lines insurance—Unauthorized insurers.**

(1) Notwithstanding Section 31A-15-102, when this state is the home state as defined in Section 31A-3-305, a nonadmitted insurer may make an insurance contract for coverage of a person in this state and on a risk located in this state, subject to the limitations and requirements of this section.

...

(5) A nonadmitted insurer may not issue workers' compensation insurance coverage to an employer located in this state, except:

(a) for stop loss coverage issued to an employer securing workers' compensation under Subsection 34A-2-201(2);

(b) a cannabis production establishment as defined in Section 4-41a-102; or

(c) a medical cannabis pharmacy as defined in Section 26-61a-102.

...

## West Virginia

SB 531 amends and reenacts **section 23-5-7** of the Code of West Virginia:

**§23-5-7. Compromise and settlement.**

(a) The claimant, the employer, and the Workers' Compensation Commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, may negotiate a final settlement of any and all issues in a claim wherever the claim is in the administrative or appellate processes: *Provided*, That in the settlement of medical benefits for nonorthopedic occupational disease claims, the claimant shall be represented by legal counsel: *Provided, however*, That for the purposes of this section, the term "nonorthopedic occupational disease claim" does not include an occupational hearing loss or hearing impairment claim. If the employer is not active in the claim, the commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, may negotiate a final settlement with the claimant and the settlement shall be made a part of the claim record. Except in cases of fraud, no issue that is the subject of an approved settlement agreement may be reopened by any party, including the commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable. Any settlement agreement may provide for a lump-sum payment or a structured payment plan, or any combination thereof, or any other basis as the parties may agree. If a self-insured employer later fails to make the agreed-upon payment, the commission shall assume the obligation to make the payments and shall recover the amounts paid or to be paid from the self-insured employer and its sureties or guarantors, or both, as provided in §23-2-5 or §23-2-5a of this code.

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**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.

<b>State</b>	<b>State Relations Executive</b>	<b>Phone Number</b>
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
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
CO, 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.