



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

LEGISLATIVE ACTIVITY—LEGISLATIVE SESSION UPDATES

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

BILLS ENACTED

The following workers compensation-related bills were enacted within the one-week period ending March 15, 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
- Included in NCCI's March 8, 2019 **Legislative Activity Report** (RLA-2019-08)
- Enacted on March 12, 2019, with an effective date of July 1, 2019 (provisions of this act will be null, void, and of no force and effect on and after July 1, 2023)

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

(5) 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) 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.

Mississippi

SB 2864 was:

- Passed by the first chamber on February 6, 2019
- Included in NCCI's February 15, 2019 **Legislative Activity Report** (RLA-2019-05)
- Passed by the second chamber on March 4, 2019
- Included in NCCI's March 15, 2019 **Legislative Activity Report** (RLA-2019-09)
- Enacted on March 12, 2019, with an effective date of July 1, 2019

SB 2864 amends **sections 83-23-109** and **83-23-115** of the Mississippi Insurance Guaranty Association Law as follows:

§ 83-23-109. Definitions.

As used in this article:

...

(f) "Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this article applies issued by an insurer, if such insurer becomes an insolvent insurer and ~~(1)~~(i) the claimant or insured is a resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event; or ~~(2)~~(ii) the property from which the claim arises is permanently located in this state.

"Covered claim" shall not include any amount awarded as punitive or exemplary damages; or sought as a return of premium under any retrospective rating plan; or due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise and shall preclude recovery thereof from the insured of any insolvent carrier to the extent of the policy limits. "Covered claim" shall not include any claim that would otherwise be a covered claim under this article that has been rejected or denied by any other state guaranty fund based upon that state's statutory exclusions regarding the insured's net worth.

...

(h) "Member insurer" means any person who ~~(1)~~(i) writes any kind of insurance to which this article applies under Section 83-23-105, including the exchange of reciprocal or interinsurance contracts, and ~~(2)~~(ii) is licensed to transact insurance in this state.

...

§ 83-23-115. Powers and duties of association.

(1) The association shall:

(a)...

In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises. Notwithstanding any other provisions of this article, a covered claim shall not include a claim filed with the association after final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

...

Nebraska

LB 380 was:

- Passed by the legislature on March 7, 2019*
- Included in NCCI's March 15, 2019 **Legislative Activity Report** (RLA-2019-09)
- Enacted on March 12, 2019, with a projected effective date of September 7, 2019

LB 380, in part, amends **sections 44-2403, 44-2406, and 44-2407** of the Nebraska Revised Statutes to read as follows:

44-2403. Terms, defined.

As used in the Nebraska Property and Liability Insurance Guaranty Association Act, unless the context otherwise requires:

...

(4)(a) Covered claim shall mean an unpaid claim ~~which has been timely filed with the liquidator~~ as provided for in the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act and which arises out of and is within the coverage of an insurance policy to which the Nebraska Property and Liability Insurance Guaranty Association Act applies issued by a member insurer that becomes insolvent after May 26, 1971, and (i) the claimant or insured is a resident of this state at the time of the insured event or (ii) the property from which the claim arises is permanently located in this state. Covered claim shall also include the policyholder's unearned premiums paid by the policyholder on an insurance policy to which the act applies issued by a member insurer that becomes insolvent on or after July 9, 1988. Nothing in this section shall be construed to supersede, abrogate, or limit the common-law ownership of accounts receivable for earned premium, unearned premium, or unearned commission;

(b) Covered claim shall not include any amount due any reinsurer, insurer, liquidator, insurance pool, or underwriting association, as subrogation recoveries or otherwise, a ~~policy deductible or self-insured portion of the claim, a claim for any premium calculated on a retrospective basis, any premiums subject to adjustment after the date of liquidation, or any amount due an attorney or adjuster as fees for services rendered to the insolvent insurer.~~ Covered claim shall also not include any amount as punitive or exemplary damages or any amount claimed for incurred but not reported damages. Covered claim shall also not include any claim filed with the guaranty fund after the earlier of twenty-five months after the date of the order of liquidation or the final date set by the court for the filing of claims against the liquidator or receiver. This subdivision ~~Subdivision (4)(b) of this section~~ shall not prevent a person from presenting the excluded claim to the insolvent insurer or its liquidator, but the claim shall not be asserted against any other person, including the person to whom benefits were paid or the insured of the insolvent insurer, except to the extent that the claim is outside the coverage or is in excess of the limits of the policy issued by the insolvent insurer;

...

44-2406. Claims; filing; determination.

(1) The association shall be obligated only to the extent of the covered claims existing prior to the date a member ~~insurer~~ company becomes an insolvent insurer or arising within thirty days after it has been determined that the insurer is an insolvent insurer, before the policy expiration date, if less than thirty days after such determination, or before the insured replaces the policy or on request effects cancellation, if he or she does so within thirty days of such dates, but such obligation shall include only ~~the that~~ the amount of each covered claim ~~that does not exceed which is in excess of one hundred dollars and is less than three hundred thousand dollars, except that the association shall pay the amount required by law on any covered claim arising out of a workers' compensation policy. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises. The association shall be obligated on covered claims, including those under a workers' compensation policy, for unearned premiums only for the that~~ amount of each covered claim ~~that does not exceed which is in excess of one hundred dollars and is less than ten thousand dollars per policy.~~

...

(4) A third party having a covered claim against any insured of an insolvent ~~member~~ insurer may file such claim with the director pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, and the association shall process such claim in the manner specified in subsections (2) and (3) of this section. The filing of such claim shall constitute an unconditional general release of all liability of such insured in connection with the claim unless the association thereafter denies the claim for the reason that the insurance policy issued by the insolvent ~~insurer~~ member company does not afford coverage or unless the claimant, within thirty days from the date of filing his or her claim with the director, files with the director a written demand that the claim be processed in the liquidation proceedings as a claim not covered by the Nebraska Property and Liability Insurance Guaranty Association Act.

44-2407. Association; duties; powers; enumerated.

(1) The association shall:

(a) Allocate claims paid and expenses incurred among the three accounts separately and assess member insurers separately for each account in the amounts necessary to pay the obligations of the association under section 44-2406, the expenses of handling covered claims, the cost of examinations under sections 44-2412 and 44-2413, and other expenses authorized by the Nebraska Property and Liability Insurance Guaranty Association Act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of such member insurer, on the basis of the insurance in the account involved, bears to the net direct written premiums of all member insurers for the same period and in the same account for the calendar year preceding the date of the assessment ~~the member insurer becomes an insolvent insurer. After an initial assessment has been made for an insolvency, any subsequent assessments for that insolvency may be calculated in the same manner as the initial assessment and may use the same calendar year's net direct written premiums as were used in determining the original assessment.~~ The association may make an assessment for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer, not to exceed fifty dollars per member ~~insurer company~~ in any one year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. Except for such administrative assessment, no member insurer may be assessed in any year on any account an amount greater than one percent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. The association may defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact business as an insurer. Deferred assessments shall be paid when such payment will not reduce capital or surplus below such required minimum amounts. Such deferred assessments when paid shall be refunded to those member ~~insurers companies~~ that received larger assessments by virtue of such deferment or, in the discretion of any such ~~insurer company~~, credited against future assessments. No member insurer may pay a dividend to shareholders or policyholders while such insurer has an unpaid deferred assessment;

(b) Handle claims through its employees or through one or more insurers or other persons designated by the association as a servicing facility, except that the designation of a servicing facility shall be subject to the approval of the director and such designation may be declined by a member insurer;

(c) Reimburse any servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and such other expenses of the association as are authorized by the Nebraska Property and Liability Insurance Guaranty Association Act; ~~and~~

(d) Issue to each insurer paying an assessment under this section a certificate of contribution in appropriate form and terms as prescribed by the director for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. The insurer may offset against its premium and related retaliatory tax liability to this state pursuant to sections 44-150 and 77-908 accrued with respect to business transacted in such year an amount equal to twenty percent of the original face amount of the certificate of contribution, beginning with the first calendar year after the year of issuance through the fifth calendar year after the year of issuance. ~~If should~~ the association ~~recovers recover~~ any sum representing amounts previously written off by member insurers and offset against premium and related retaliatory taxes imposed by sections 44-150 and 77-908, such recovered sum shall be paid by the association to the ~~director Director of Insurance~~ who shall handle such funds in the same manner as provided in Chapter 77, article 9; -

(e) Be deemed the insolvent insurer to the extent of the association's obligation for covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer, subject to the limitations provided in the act, as if the insurer had not become insolvent, with the exception that the liquidator shall retain the sole right to recover any reinsurance proceeds. The association's rights under this section include, but are not limited to, the right to pursue and retain salvage and subrogation recoveries on paid covered claim obligations to the extent paid by the guaranty fund; and

(f) Have access to insolvent insurer records. The liquidator of an insolvent insurer shall permit access by the association or its authorized representatives, and by any similar organization in another state or its authorized representatives, to the insolvent insurer's records which are necessary for the association or such similar organization in carrying out its functions with regard to covered claims. In addition, the liquidator shall provide the association or its representative or such similar organization with copies of such records upon the request and at the expense of the association or similar organization.

(2) The association may:

...

(d) Sue or be sued, and such power to sue shall include the power and right to intervene as a party before any court that has jurisdiction over an insolvent insurer as defined by such act;

...

(g) Bring any action against any third-party administrator, agent, attorney, or other representative of the insolvent insurer to obtain custody and control of all files, records, and electronic data related to an insolvent insurer that is appropriate or necessary for the association, or a similar organization in another state, to carry out duties under such act Refund to the member insurers in proportion to the contribution of each member insurer to any account that amount by which the assets of the account exceed the liabilities if, at the end of any calendar year, the board of directors finds that the assets of the association in the account exceed the liabilities of that account as estimated by the board of directors for the coming year.

LB 380 also includes the following language:

All proceedings arising out of a claim under a policy of insurance written by an insolvent insurer shall be stayed for one hundred twenty days from the date of entry of the order of liquidation to permit proper defense by the association of all such pending causes of action. Nothing in this section shall be deemed to limit the powers of a receiver appointed pursuant to the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act or to stay any proceeding brought pursuant to such act.

***Note:** Nebraska has only one chamber in its legislature. After the legislature passes a bill, it goes to the governor for consideration.

Utah

SB 76 was:

- Amended and passed by the first chamber on February 5, 2019
- Included in NCCI's February 15, 2019 **Legislative Activity Report** (RLA-2019-05)
- Passed by the second chamber on February 13, 2019
- Included in NCCI's February 22, 2019 **Legislative Activity Report** (RLA-2019-06)
- Enacted and effective on March 11, 2019

SB 76 repeals and reenacts **section 34A-1-309** of the Utah Labor Code as follows:

34A-1-309. Attorney feesAdd-on fees.

~~For an adjudication of a workers' compensation claim where only medical benefits are at issue, reasonable attorney fees may be awarded in accordance with and to the extent allowed by rule adopted by the Utah Supreme Court and implemented by the Labor Commission.~~

(1) As used in this section:

(a) "Carrier" means a workers' compensation insurance carrier, the Uninsured Employers' Fund, an employer that does not carry workers' compensation insurance, or a self-insured employer as defined in Section 34A-2-201.5.

(b) "Indemnity compensation" means a workers' compensation claim for indemnity benefits that arises from or may arise from a denial of a medical claim.

(c) "Medical claim" means a workers' compensation claim for medical expenses or recommended medical care.

(d) "Unconditional denial" means a carrier's denial of a medical claim:

(i) after the carrier completes an investigation; or

(ii) 90 days after the day on which the claim was submitted to the carrier.

(2) (a) The commission may award an add-on fee to a claimant to be paid by the carrier if:

(i) a medical claim is at issue;

(ii) the carrier issues an unconditional denial of the medical claim;

(iii) the claimant hires an attorney to represent the claimant during the formal adjudicative process before the commission;

(iv) after the carrier issues the unconditional denial, the commission orders the carrier or the carrier agrees to pay the medical claim; and

(v) any award of indemnity compensation in the case is less than \$5,000.

(b) An award of an add-on fee under this section is in addition to:

(i) the amount awarded for the medical claim or indemnity compensation; and

(ii) any amount for attorney fees agreed upon between the claimant and the claimant's attorney.

(c) An award under this section is governed by the law in effect at the time the claimant files an application for hearing with the Division of Adjudication.

(3) If the commission awards an add-on fee under this section, the commission shall award the add-on fee in the following amount:

(a) the lesser of 25% of the medical expenses the commission awards to the claimant or \$25,000, for a case that is resolved at the commission level;

(b) the lesser of 30% of the medical expenses the Utah Court of Appeals awards to the claimant or \$30,000, for a case that is resolved on appeal before the Utah Court of Appeals; or

(c) the lesser of 35% of the medical expenses that the Utah Supreme Court awards to the claimant or \$35,000, for a case that is resolved on appeal before the Utah Supreme Court.

(4) If a court invalidates any portion of this section, the entire section is invalid.

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending March 15, 2019.

Illinois

SB 1596 was:

- Passed by the first chamber on March 6, 2019

- Included in NCCI's March 15, 2019 **Legislative Activity Report** (RLA-2019-09)
- Passed by the second chamber on March 14, 2019

SB 1596 adds and amends various sections of the Illinois Workers' Compensation Act and Workers' Occupational Diseases Act to read as follows:

(820 ILCS 305/1.2)

Sec. 1.2. Permitted civil actions.

Subsection (a) of Section 5 and Section 11 do not apply to any injury or death sustained by an employee as to which the recovery of compensation benefits under this Act would be precluded due to the operation of any period of repose or repose provision. As to any such injury or death, the employee, the employee's heirs, and any person having standing under the law to bring a civil action at law, including an action for wrongful death and an action pursuant to Section 27-6 of the Probate Act of 1975, has the nonwaivable right to bring such an action against any employer or employers.

(820 ILCS 305/5)

Sec. 5. Damages; minors; third-party liability.

(a) Except as provided in Section 1.2, no ~~No~~ common law or statutory right to recover damages from the employer, his insurer, his broker, any service organization that is wholly owned by the employer, his insurer or his broker and that provides safety service, advice or recommendations for the employer or the agents or employees of any of them for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury.

...

(820 ILCS 305/11)

Sec. 11. Measure of responsibility.

Except as provided in Section 1.2, the ~~The~~ compensation herein provided, together with the provisions of this Act, shall be the measure of the responsibility of any employer engaged in any of the enterprises or businesses enumerated in Section 3 of this Act, or of any employer who is not engaged in any such enterprises or businesses, but who has elected to provide and pay compensation for accidental injuries sustained by any employee arising out of and in the course of the employment according to the provisions of this Act, and whose election to continue under this Act, has not been nullified by any action of his employees as provided for in this Act.

...

(820 ILCS 310/1.1)

Sec. 1.1. Permitted civil actions.

Subsection (a) of Section 5 and Section 11 do not apply to any injury or death resulting from an occupational disease as to which the recovery of compensation benefits under this Act would be precluded due to the operation of any period of repose or repose provision. As to any such occupational disease, the employee, the employee's heirs, and any person having standing under the law to bring a civil action at law, including an action for wrongful death and an action pursuant to Section 27-6 of the Probate Act of 1975, has the nonwaivable right to bring such an action against any employer or employers.

(820 ILCS 310/5)

Sec. 5. Liability inclusive; third-party liability.

(a) Except as provided in Section 1.1, there ~~There~~ is no common law or statutory right to recover compensation or damages from the employer, his insurer, his broker, any service organization retained by the employer, his insurer or his broker to provide safety service, advice or recommendations for the employer or the agents or employees of any of them for or on account of any injury to health, disease, or death therefrom, other than for the compensation herein provided or for damages as provided in Section 3 of this Act. This Section shall not affect any right to compensation under the "Workers' Compensation Act".

...

(820 ILCS 310/11)

Sec. 11. Measure of liability.

Except as provided in Section 1.1, the ~~The~~ compensation herein provided for shall be the full, complete and only measure of the liability of the employer bound by election under this Act and such employer's liability for compensation and medical benefits under this Act shall be exclusive and in place of any and all other civil liability whatsoever, at common law or otherwise, to any employee or his legal representative on account of damage, disability or death caused or contributed to by any disease contracted or sustained in the course of the employment.

Kentucky

HB 151 was:

- Passed by the first chamber on February 20, 2019
- Included in NCCI's March 1, 2019 **Legislative Activity Report** (RLA-2019-07)
- Amended and passed by the second chamber on March 13, 2019

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.

Mississippi

SB 2835 was:

- Passed by the first chamber on February 7, 2019
- Included in NCCI's February 15, 2019 *Legislative Activity Report* (RLA-2019-05)
- Amended and passed by the second chamber on March 13, 2019

SB 2835 creates the Mississippi First Responders Health and Safety Act and brings forward and amends **section 71-3-9** of the Mississippi Workers' Compensation Law to be included in the Act, to read:

SECTION 1.

This act shall be known and may be cited as the "Mississippi First Responders Health and Safety Act" and may also be referred to as the "Arson Investigator Danny Benton and Police Chief Henry Manuel, Sr., Act."

SECTION 2.

For purposes of this act, the following words shall have the following meanings unless the context clearly indicates otherwise:

- (a) "Cancer" means a disease caused by an uncontrolled division of abnormal cells in a part of the body or a malignant growth or tumor resulting from the division of abnormal cells. "Cancer" is limited to cancer affecting the bladder, brain, colon, liver, pancreas, skin, kidney, gastrointestinal tract, reproductive tract, leukemia, lymphoma, multiple myeloma, prostate, testicles and breast.
- (b) "Firefighter" means any firefighter, having ten (10) or more years of service, and employed by any political subdivision of the State of Mississippi on a full-time duty status, and any firefighter, having ten (10) or more years of service, registered with the State of Mississippi, or a political subdivision thereof, on a volunteer firefighting status.
- (c) "Police officer" means every officer, having ten (10) or more years of service, and authorized to direct or regulate traffic or to make arrests for violations of traffic regulations in the State of Mississippi.
- (d) "First responder" means every firefighter and police officer as defined in paragraphs (b) and (c) of this section.

SECTION 3.

(1) As an alternative to pursuing workers' compensation benefits, upon a diagnosis of cancer, a first responder is entitled to the following benefits:

(a) Provided the diagnosis occurs on or after the first responder's effective date of coverage, a lump-sum benefit of Twenty-five Thousand Dollars (\$25,000.00) of coverage for each diagnosis payable to the first responder upon acceptable proof to the insurance carrier or other payor of a diagnosis by a board certified physician in the medical specialty appropriate for the type of cancer diagnosed that there are one or more malignant tumors characterized by the uncontrollable and abnormal growth and spread of malignant cells with invasion of normal tissue and that either:

(i) There is metastasis, and surgery, radiotherapy or chemotherapy is medically necessary;

(iii) There is a tumor of the prostate, provided that it is treated with radical prostatectomy or external beam therapy; or

(iv) The first responder has terminal cancer, his or her life expectancy is twenty-four (24) months or less from the date of diagnosis, and will not benefit from, or has exhausted, curative therapy.

(b) Provided the diagnosis occurs on or after the first responder's effective date of coverage, a lump-sum benefit of Six Thousand Two Hundred Fifty Dollars (\$6,250.00) for each diagnosis payable to the first responder upon acceptable proof to the insurance carrier or other payor of a diagnosis by a board-certified physician in the medical specialty appropriate for the type of cancer involved that:

(i) There is carcinoma in situ such that surgery, radiotherapy, or chemotherapy has been determined to be medically necessary;

(ii) There are malignant tumors which are treated by endoscopic procedures alone; or

(iii) There are malignant melanomas.

(c) The combined total of benefits received by any first responder under paragraphs (a) and (b) of this subsection (1) during his or her lifetime shall not exceed Fifty Thousand Dollars (\$50,000.00).

(d) Provided the date of disability occurs on or after the first responder's effective date of coverage, a disability benefit payable as a result of a specific cancer to begin six (6) months after the date of disability and submission to the insurance carrier or other payor of acceptable proof of disability caused by the specified disease or events such that the illness precludes the first responder from serving as a first responder:

(i) For nonvolunteer first responders, a monthly benefit equal to sixty percent (60%) of the first responder's monthly salary as an employed first responder with a fire or police department or a monthly benefit of Five Thousand Dollars (\$5,000.00), whichever is less, of which the first payment shall be made six (6) months after the total disability and shall continue for thirty-six (36) consecutive monthly payments unless the first responder regains the ability to perform his or her duties as determined by reevaluation under subparagraph (iv) of this paragraph, at which time the payments shall cease the last day of the month of reevaluation;

(ii) For volunteer firefighters, a monthly benefit of One Thousand Five Hundred Dollars (\$1,500.00) of which the first payment shall be made six (6) months after the total disability and shall continue for thirty-six (36) consecutive monthly payments unless the first responder regains the ability to perform his or her duties as determined by reevaluation under subparagraph (iv) of this paragraph, at which time the payments shall cease the last day of the month of reevaluation;

(iii) Such monthly benefit shall be subordinate to any other benefit actually paid to the first responder solely for such disability from any other source, not including private insurance purchased solely by the first responder;

(iv) Any first responder receiving the monthly benefits may be required to have his or her condition reevaluated. In the event any such reevaluation reveals that such person has regained the ability to perform duties as a first responder, then his or her monthly benefits shall cease the last day of the month of reevaluation; and

(v) In the event that there is a subsequent recurrence of a disability caused by a specified cancer, which precludes the first responder from serving as a first responder, he or she shall be entitled to receive any remaining monthly payments.

(e) If a first responder who qualifies for benefits under this section dies, and he or she shall be considered to have been killed in the line of duty under Section 45-2-1, his or her beneficiary or beneficiaries shall be eligible for the line of duty death benefits as set forth in Section 45-2-1.

(f) An eligible first responder who dies as a result of a compensable type of cancer, or circumstances arising out of the treatment of a compensable type of cancer, but does not submit sufficient proof of claim prior to the first responder's death, is entitled to receive benefits specified in paragraphs (a) and (b) of this subsection (1) and made available to the deceased first responder's beneficiary or beneficiaries.

g) Any first responder who was simultaneously a member of more than one (1) fire or police department at the time of diagnosis shall not be entitled to receive benefits from or on behalf of more than one (1) fire or police department. The first responder's primary place of employment shall maintain coverage for the eligible first responder; and

(h) An otherwise eligible first responder shall be precluded from the benefits listed under this section if he or she has filed for workers' compensation for the same diagnosis of cancer.

SECTION 4.

The costs of purchasing an insurance policy that provides for cancer coverage in compliance with this act, or the costs of providing such benefits through a self-funded system in compliance with this act, must be borne solely by the employer that employs the

eligible first responder and may not be funded partially or wholly by individual first responders. In addition to any other purpose authorized, county governing authorities and municipal governing authorities may use proceeds from county and municipal taxes for the purposes of providing insurance in compliance with this act. The computation of premium amounts by an insurer for the coverage under this act shall be subject to generally accepted adjustments from insurance underwriting.

SECTION 5.

(1) The state, municipality, county or fire protection district shall, no later than January 1, 2020, show proof of insurance coverage to the Commissioner of Insurance that meets the requirements of this act, or shall show satisfactory proof of the ability to pay such compensation to ensure adequate coverage for all eligible first responders. Such coverage shall remain in effect until a fire or police department no longer has any first responders who could qualify for these benefits.

(2) The Commissioner of Insurance shall adopt such rules and regulations as are reasonable and necessary to implement the provisions of this act. Such regulations shall include the process by which a first responder files a claim for cancer and the process by which claimants can appeal a denial of benefits.

(3) The Commissioner of Insurance shall adopt rules to establish firefighter cancer prevention best practices as it relates to personal protective equipment, decontamination, fire suppression, apparatus and fire stations.

SECTION 6.

§ 71-3-9. Exclusiveness of liability.

(1) Except as provided under subsection (2) of this section, the liability of an employer to pay compensation shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next-of-kin, and anyone otherwise entitled to recover damages at common law or otherwise from such employer on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this chapter, or to maintain an action at law for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

(2) An employer shall not be liable under this chapter to a first responder, as defined in Section 2 of this act, if such first responder elects to receive benefits under the "Mississippi First Responders Health and Safety Act."

SECTION 7.

This act shall take effect and be in force from and after January 1, 2020, and shall stand repealed from and after December 31, 2019.

Nebraska

LB 139 was passed by the legislature on March 15, 2019.*

LB 139 amends **section 48-2117** of the Contractor Registration Act to read:

48-2117. Data base of contractors; removal.

(1) The Department of Labor, in conjunction with the Department of Revenue, shall create a data base of contractors who are registered under the Contractor Registration Act and the Nebraska Revenue Act of 1967.

(2) The data base shall be accessible on the web site of the Department of Labor.

(3) The data base shall include, but not be limited to, the following information with respect to each registered contractor:

(a) Whether the contractor carries workers' compensation insurance in accordance with the Nebraska Workers' Compensation Act;

(b) Whether the contractor is self-insured in accordance with the Nebraska Workers' Compensation Act; or

(c) Whether the contractor is a sole proprietor with no employees and does not carry workers' compensation insurance pursuant to the Nebraska Workers' Compensation Act.

(4) The information described in subdivision (3)(c) of this section, as it is listed in the data base, creates a presumption of no coverage that may be rebutted by an insurer acknowledging coverage for a claimed covered event.

(5) The information required under subsection (3) of this section and the presumption provided in subsection (4) of this section are solely for the purpose of establishing premiums for workers' compensation insurance and shall not affect liability under the Nebraska Workers' Compensation Act or compliance efforts pursuant to section 48-145.01.

(6) ~~(2)~~ Any contractor that fails to comply with the requirements of the Contractor Registration Act or Nebraska Revenue Act of 1967 shall be removed from the data base.

***Note:** Nebraska has only one chamber in its legislature. After the legislature passes a bill, it goes to the governor for consideration.

New Mexico

HB 324 was:

- Passed by the first chamber on February 28, 2019

- Included in NCCI's March 8, 2019 **Legislative Activity Report** (RLA-2019-08)
- Passed by the second chamber on March 15, 2019

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.

Utah

SB 161 Sixth Substitute was:

- Passed by the first chamber on February 27, 2019
- Included in NCCI's March 8, 2019 **Legislative Activity Report** (RLA-2019-08)
- Amended and passed by the second chamber on March 12, 2019

SB 161 Sixth Substitute, in part, amends **section 31A-15-103** and establishes **section 31A-22-1016** in 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.

...

SB 161 Sixth Substitute, in part, also creates new **section 31A-22-1016** in the Utah Insurance Code to read as follows:

31A-22-1016. Workers' compensation coverage for medical cannabis operations.

A licensed and admitted workers' compensation insurer may issue coverage to:

- (1) a cannabis production establishment as defined in Section 4-41a-102; or
- (2) a medical cannabis pharmacy as defined in Section 26-61a-102.

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending March 15, 2019.

Iowa

HF 327, in part, establishes a new section in **Chapter 85. Workers' Compensation** of the Code of Iowa to read:

85.55 Franchisor-franchisee relationship.

1. For purposes of this section, franchisee and franchisor mean the same as defined in section 523H.1.

2. For purposes of this chapter and chapters 86 and 87, a franchisor shall not be considered to be an employer of a franchisee or of an employee of a franchisee unless any of the following conditions apply:

a. The franchisor has agreed in writing to be considered to be the employer of the franchisee or of the employees of the franchisee.

b. The franchisor has been found by the workers' compensation commissioner to have exercised a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Kansas

SB 99 amends the Kansas Workers Compensation Act, in part, to read as follows:

44-508. Definitions. As used in the workers compensation act:

...

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include, but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, ~~attendants~~ emergency medical service providers, as defined in ~~subsection (f) of K.S.A. 65-6112, and amendments thereto, drivers of ambulances as defined in subsection (d) of K.S.A. 65-6112, and amendments thereto,~~ firefighters, but only to the extent and during such periods as they are so serving in such capacities; persons employed by educational, religious and charitable organizations, but only to the extent and during the periods that they are paid wages by such organizations; persons in the service of the state, or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; persons in the service of the state as volunteer members of the Kansas department of civil air patrol, but only to the extent and during such periods as they are officially engaged in the performance of functions specified in K.S.A. 48-3302, and amendments thereto; volunteers in any employment, if the employer has filed an election to extend coverage to such volunteers; minors, whether such minors are legally or illegally employed; and persons performing community service work, but only to the extent and during such periods as they are performing community service work and if an election has been filed an election to extend coverage to such persons. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to the employee's dependents, to the employee's legal representatives, or, if the employee is a minor or an incapacitated person, to the employee's guardian or conservator. Unless there is a valid election in effect ~~which that~~ has been filed as provided in K.S.A. 44-542a, and amendments thereto, such terms shall not include individual employers, limited liability company members, partners or self-employed persons.

...

44-510h. Medical compensation; change of health care provider; examination by alternate health care provider; faith healing; preventative hepatitis treatment; presumption of employer's obligations; termination of. (a) It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with ~~subsection (a) of K.S.A. 44-515 (a),~~ and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

...

(c) An injured employee whose injury or disability has been established under the workers compensation act may rely, if done in good faith, solely or partially on treatment by prayer or spiritual means in accordance with the tenets of practice of a church or religious denomination without suffering a loss of benefits subject to the following conditions:

...

(5) the employer or insurance carrier that made an agreement under paragraph (1) or (3) ~~of this subsection~~ may withdraw from the agreement on 10 days' written notice.

(d) In any employment to which the workers compensation act applies, the employer shall be liable to each employee who is employed as a duly authorized law enforcement officer, firefighter, ~~driver of an ambulance as defined in subsection (b) of K.S.A. 65-6112, and amendments thereto,~~ an ambulance attendant as defined in subsection (d) of an emergency medical service provider as defined in K.S.A. 65-6112, and amendments thereto, or a member of a regional emergency medical response team as provided in K.S.A. 48-928, and amendments thereto, including any person who is serving on a volunteer basis in such capacity, for all

reasonable and necessary preventive medical care and treatment for hepatitis to which such employee is exposed under circumstances arising out of and in the course of employment.

(e) It is presumed that the employer's obligation to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with ~~subsection (a) of K.S.A. 44-515 (a)~~, and amendments thereto, shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. ~~The term As used in this subsection, "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed health care provider and shall not include home exercise programs or over-the-counter medications.~~

44-511. Definitions; average weekly wage; volunteers; state's average weekly wage.

...

(b) (1) Unless otherwise provided, the employee's average weekly wage for the purpose of computing any compensation benefits provided by the workers compensation act shall be the wages the employee earned during the calendar weeks employed by the employer, up to 26 calendar weeks immediately preceding the date of the injury, divided by the number of calendar weeks the employee actually worked, or by 26 as the case may be.

...

(5) (A) The average weekly wage of a person serving on a volunteer basis as a duly authorized law enforcement officer, ~~ambulance attendants and drivers~~ emergency medical service provider as provided in ~~subsection (b) of K.S.A. 44-508~~, and amendments thereto, firefighter or ~~members~~ member of a regional emergency medical response ~~teams~~ team as provided in K.S.A. 48-928, and amendments thereto, who receives no wages for such services, or who receives wages which ~~that~~ are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of the dollar amount closest to, but not exceeding, 112½% of the state average weekly wage.

...

Maryland

HB 595 amends **section 9-503** of the Annotated Code of Maryland to read:

§ 9-503. Occupational disease—Presumption—Firefighters, fire fighting instructors, rescue squad members, advanced life support unit members, and police officers

...

(c) Cancer.—A paid firefighter, paid firefighting instructor, paid rescue squad member, paid advanced life support unit member, or a sworn member of the Office of the State Fire Marshal employed by an airport authority, a county, a fire control district, a municipality, or the State or a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member who is a covered employee under § 9-234 of this title is presumed to be suffering from an occupational disease that was suffered in the line of duty and is compensable under this title if the individual:

(1) has leukemia or prostate, rectal, throat, multiple myeloma, non-Hodgkin's lymphoma, brain, testicular, bladder, kidney or renal cell, or breast cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty;

...

Oklahoma

HB 1063 amends **section 85A-98** of the Oklahoma Administrative Workers' Compensation Act to read:

§85A-98. Funds to be transferred to Self-insurance Guaranty Fund.

The Self-insurance Guaranty Fund shall be derived from the following sources:

...

2. ~~Until the Self-insurance Guaranty Fund contains Two Million Dollars (\$2,000,000.00) or in~~ In the event the amount in the net fund balance falls below ~~One Million Dollars (\$1,000,000.00) Seven Hundred Fifty Thousand Dollars (\$750,000.00)~~, the Workers' Compensation Commission shall make an assessment against each private self-insurer and group self-insurance association based on an assessment rate to be determined by the commissioners, not exceeding ~~one percent (1%)~~ two percent (2%) per annum of actual paid losses of the self-insurer during the preceding calendar year, payable to the Tax Commission for deposit to the fund. The assessment against private self-insurers shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to private self-insurers bears to the actual paid losses of all private self-insurers for the year period of January 1 through December 31 preceding the assessment. The assessment against group self-insurance associations shall be determined using a rate equal to the proportion that the deficiency in excess of the surplus of the Group Self-Insurance Association Guaranty Fund at the date of the transfer attributable to group self-insurance associations bears to the actual paid losses of all group self-insurance associations cumulatively for any calendar year preceding the assessment. Each self-insurer shall provide the Workers' Compensation Commission with such information as the Commission may determine is necessary to effectuate the purposes of this paragraph. For purposes of this paragraph, "actual paid losses" means all medical and indemnity

payments, including temporary disability, permanent disability, and death benefits, and excluding loss adjustment expenses and reserves.

...

HB 2367 is a comprehensive reform bill that amends numerous components of the Oklahoma Administrative Workers' Compensation Act.

HB 2631 amends *section 85A-50* of the Oklahoma Administrative Workers' Compensation Act to read:

§85A-50. Failure to provide medical treatment—Medical examination—Fee schedule—Formulary.

...

C. Diagnostic tests shall not be repeated sooner than six (6) months from the date of the test unless agreed to by the parties or ordered by the Workers' Compensation Commission for good cause shown.

...

H. Fee Schedule.

1. The Commission shall conduct a review of the Fee Schedule every two (2) years; provided, the Fee Schedule shall be revised in 2019 to provide a three percent (3%) increase in maximum rate of reimbursement to physicians and hospitals for a period of three (3) years. The Fee Schedule shall establish the maximum rates that medical providers shall be reimbursed for medical care provided to injured employees, including, but not limited to, charges by physicians, dentists, counselors, hospitals, ambulatory and outpatient facilities, clinical laboratory services, diagnostic testing services, and ambulance services, and charges for durable medical equipment, prosthetics, orthotics, and supplies. The most current Fee Schedule established by the Administrator of the Workers' Compensation Court prior to the effective date of this section shall remain in effect, unless or until the Legislature approves the Commission's proposed Fee Schedule.

...

3. In making adjustments to the Fee Schedule, the Commission shall use, as a benchmark, the reimbursement rate for each Current Procedural Terminology (CPT) code provided for in the fee schedule published by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services for use in Oklahoma (Medicare Fee Schedule) on the effective date of this section, workers' compensation fee schedules employed by neighboring states, the latest edition of "Relative Values for Physicians" (RVP), usual, customary and reasonable medical payments to workers' compensation health care providers in the same trade area for comparable treatment of a person with similar injuries, and all other data the Commission deems relevant. For services not valued by CMS, the Commission shall establish values based on the usual, customary and reasonable medical payments to health care providers in the same trade area for comparable treatment of a person with similar injuries.

...

HB 2632 creates new *sections 6958* through *6968* in the Oklahoma Insurance Code to be cited as the "Patient's Right to Pharmacy Choice Act," in part, to:

- Impose access standards on retail pharmacy networks based on the location of individuals in the benefit plan
- Direct the Oklahoma Insurance Department to review and approve retail pharmacy network access for all benefit plans
- Prohibit certain actions by pharmacy benefit managers
- Require health benefit plans and pharmacy benefit plans to retain any compensation remitted by a pharmaceutical manufacturer, developer, or labeler for the purpose of lowering costs or expanding benefit coverage
- Require benefit plans to file a report with the insurance commissioner describing any compensation received and demonstrate how it was used to lower costs or expand coverage
- Authorize the insurance commissioner to monitor pharmacy benefit managers to ensure compliance with the provisions of the act
- Direct the commissioner to establish a process for receiving and reviewing complaints alleging violations of the act
- Direct health insurer's pharmacy and therapeutics committee to establish a formulary
- Require pharmacy benefits managers to establish and maintain an electronic claim inquiry processing system using the National Council for Prescription Drug Programs' current standards to communicate eligibility, benefit, and claim payment information to pharmacies submitting claim inquiries
- Provide that a benefit plan shall:
 - Not restrict, directly or indirectly, any pharmacy that dispenses a prescription drug to an enrollee in the plan or coverage from informing, or penalize such pharmacy for informing, an enrollee of any differential between the enrollee's out-of-pocket cost under the plan or coverage with respect to acquisition of the drug and the amount an individual would pay for the drug without using any health plan or health insurance coverage, and
 - Ensure that any entity that provides pharmacy benefits management services under a contract with any such health plan or health insurance coverage does not, with respect to such plan or coverage, restrict, directly or indirectly, a pharmacy that dispenses a prescription drug from informing, or penalizing such pharmacy for informing, an enrollee of any differential between the enrollee's out-of-pocket cost under the plan or coverage with respect to acquisition of the drug and the amount an individual would pay for acquisition of the drug without using any health plan or health insurance coverage

SB 274 amends **section 85A-98** of the Oklahoma Administrative Workers' Compensation Act to read:

§85A-98. Funds to be transferred to Self-insurance Guaranty Fund.

The Self-insurance Guaranty Fund shall be derived from the following sources:

...

2. ~~Until the Self-insurance Guaranty Fund contains Two Million Dollars (\$2,000,000.00) or in~~ In the event the amount in the net fund balance falls below One Million Dollars (\$1,000,000.00), Seven Hundred Fifty Thousand Dollars (\$750,000.00), the Workers' Compensation Commission shall make an assessment against each private self-insurer and group self-insurance association based on an assessment rate to be determined by the commissioners, not exceeding ~~one percent (1%)~~ two percent (2%) per annum of actual paid losses of the self-insurer during the preceding calendar year, payable to the Tax Commission for deposit to the fund. The assessment against private self-insurers shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to private self-insurers bears to the actual paid losses of all private self-insurers for the year period of January 1 through December 31 preceding the assessment. The assessment against group self-insurance associations shall be determined using a rate equal to the proportion that the deficiency in excess of the surplus of the Group Self-Insurance Association Guaranty Fund at the date of the transfer attributable to group self-insurance associations bears to the actual paid losses of all group self-insurance associations cumulatively for any calendar year preceding the assessment. Each self-insurer shall provide the Workers' Compensation Commission with such information as the Commission may determine is necessary to effectuate the purposes of this paragraph. For purposes of this paragraph, "actual paid losses" means all medical and indemnity payments, including temporary disability, permanent disability, and death benefits, and excluding loss adjustment expenses and reserves.

...

SB 305 amends **section 425** of the Oklahoma Public Health Code, in part, to clarify that employers will not be required to permit or accommodate the use of medical marijuana on their premises or reimburse a person for costs associated with the use of medical marijuana.

SB 701 makes changes to the Administrative Workers' Compensation Act as follows:

- Modifies exclusions of "employee" to include persons related within the second degree by blood or marriage
- Strikes language excluding employers with an employee benefit plan from the definition of "employer"
- Specifies that employers shall pay or provide benefits according to the provisions of [the] act for the accidental injury or death of an employee arising out of his or her employment if the employee's contract of employment was made in this state or if the injury occurred within this state
- Extends the jurisdiction of the Administrative Workers' Compensation Act to include all lands and premises within the exterior boundaries of the state
- Deems notices sent by facsimile, electronic mail, or other electronic means as acceptable to provide notice for billing purposes
- Excludes communications between the commissioners of the Workers' Compensation Commission from the provisions of the Oklahoma Open Meeting Act or Oklahoma Open Records Act if the communications reflect the pre-decisional deliberations of the commissioners among each other or with commission staff
- Requires the commission to comply with the Administrative Procedures Act and strikes current language governing the commission's rule-making process
- Authorizes the commission to establish a petty cash fund that shall not exceed \$500
- Removes the commission's responsibility to oversee the Multiple Injury Trust Fund and the requirement for the state treasurer to transfer sufficient funding to administrate the fund
- Authorizes the commission to institute collection proceedings independently or in district court upon a penalty becoming a final rule and places a cap of \$50,000 for employers that fail to secure payment of compensation for the first violation
- Authorizes the commission to disclose certain information to an employee if the employee is named in the report
- Caps compensable injuries for temporary partial disabilities at the temporary total disability rate
- Bars the Oklahoma Supreme Court from reversing or vacating a decision or award made by the commission unless certain conditions are met as outlined by the measure
- Repeals sections related to the Workers' Compensation Fraud Investigation Unit Funding Report, Workers' Compensation Commission Annual Published Report, and exceptions to the limit on benefits for employees' absence from scheduled treatment appointment
- Repeals the Oklahoma Employee Injury Benefit Act

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