



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 29, 2019.

#### 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
- Included in NCCI's March 22, 2019 **Legislative Activity Report** (RLA-2019-10)
- Enacted on March 26, 2019, with an effective date of June 26, 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

## Oregon

### HB 2087 was:

- Passed by the first chamber on February 26, 2019
- Included in NCCI's March 8, 2019 **Legislative Activity Report** (RLA-2019-08)
- Passed by the second chamber on March 19, 2019
- Included in NCCI's March 29, 2019 **Legislative Activity Report** (RLA-2019-11)
- Enacted on March 27, 2019, with an effective date of January 1, 2020

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 was:

- Passed by the first chamber on February 26, 2019
- Included in NCCI's March 8, 2019 **Legislative Activity Report** (RLA-2019-08)
- Passed by the second chamber on March 19, 2019
- Included in NCCI's March 29, 2019 **Legislative Activity Report** (RLA-2019-11)
- Enacted on March 27, 2019, with an effective date of January 1, 2020

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.

## Rhode Island

**HB 5305** was:

- Passed by the first chamber on March 19, 2019
- Included in NCCI's March 29, 2019 **Legislative Activity Report** (RLA-2019-11)
- Passed by the second chamber on March 27, 2019
- Enacted on March 28, 2019, with an effective date of March 27, 2019

**HB 5305** amends **section 28-53-7. Payments to Employees of Uninsured Employers** of the Rhode Island General Laws to provide that payments from the uninsured protection fund to employees of uninsured employers would apply to injuries that occur on or after September 1, 2019.

**Note:** **HB 5305** is identical to **SB 242**.

**SB 242** was:

- Passed by the first chamber on February 13, 2019
- Included in NCCI's February 22, 2019 **Legislative Activity Report** (RLA-2019-06)
- Amended and passed by the second chamber on March 19, 2019
- Included in NCCI's March 29, 2019 **Legislative Activity Report** (RLA-2019-11)
- Enacted on March 28, 2019, with an effective date of March 19, 2019

**SB 242** amends **section 28-53-7. Payments to Employees of Uninsured Employers** of the Rhode Island General Laws to provide that payments from the uninsured protection fund to employees of uninsured employers would apply to injuries that occur on or after September 1, 2019.

**Note:** **SB 242** is identical to **HB 5305**.

## Utah

**HB 55 Second Substitute** was:

- Passed by the first chamber on February 21, 2019
- Included in NCCI's March 1, 2019 **Legislative Activity Report** (RLA-2019-07)
- Amended and passed by the second chamber on March 7, 2019
- Included in NCCI's March 15, 2019 **Legislative Activity Report** (RLA-2019-09)
- Enacted on March 25, 2019, with an effective date of May 14, 2019, for **section 34A-2-110**

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

**HB 56** was:

- Passed by the first chamber on January 30, 2019
- Included in NCCI's February 8, 2019 **Legislative Activity Report** (RLA-2019-04)
- Passed by the second chamber on February 7, 2019
- Included in NCCI's February 15, 2019 **Legislative Activity Report** (RLA-2019-05)
- Enacted on March 25, 2019, with an effective date of May 13, 2019

**HB 56** amends **sections 34A-2-206, 34A-2-701, 34A-2-702, and 34A-2-704** of the Utah Workers' Compensation Act as follows:  
**34A-2-206. Furnishing information to division—Employers' annual report—Rights of division—Examination of employers under oath—Penalties.**

...

(4) (a) The division may seek a penalty of not to exceed \$500 for each offense to be recovered in a civil action brought by the commission or the division on behalf of the commission against an employer who:

(i) within a reasonable time to be fixed by the division and after the receipt of written notice signed by the director or the director's designee specifying the information demanded and served by certified mail or personal service, refuses to furnish to the division:

(A) the annual statement required by this section; or

(B) other information as may be required by the division under this section; or

(ii) willfully furnishes a false or untrue statement.

(b) All penalties collected under Subsection (4)(a) shall be paid into:

(i) the Employers' Reinsurance Fund created in Section 34A-2-702; ; or

(ii) if the commissioner has made the notification described in Subsection 34A-2-702(7), the Uninsured Employers' Fund created in Section 34A-2-704.

**34A-2-701. Premium assessment restricted account for safety.**

(1) There is created in the General Fund a restricted account known as the "Workplace Safety Account."

(2) (a) An amount equal to 0.25% of the premium income remitted to the state treasurer pursuant to Subsection 59-9-101(2)(c)(ii) shall be deposited in the Workplace Safety Account in the General Fund for use as provided in this section.

(b) Beginning with fiscal year 2008-09, if the balance in the Workplace Safety Account exceeds \$500,000 at the close of a fiscal year, the excess shall be transferred to:

(i) the Employers' Reinsurance Fund, created under Subsection 34A-2-702(1); ; or

(ii) if the commissioner has made the notification described in Subsection 34A-2-702(7), the Uninsured Employers' Fund created in Section 34A-2-702.

...

**34A-2-702. Employers' Reinsurance Fund—Injury causing death—Burial expenses—Payments to dependents.**

...

(7) (a) After the commissioner determines that all liabilities to be paid from the Employers' Reinsurance Fund have been paid, the commissioner shall notify the Division of Finance.

(b) Upon notification from the commissioner in accordance with Subsection (7)(a), the Division of Finance shall transfer any residual assets in the Employers' Reinsurance Fund into the Uninsured Employers' Fund.

**34A-2-704. Uninsured Employers' Fund.**

...

2) (a) Money for the Uninsured Employers' Fund shall be deposited into the Uninsured Employers' Fund in accordance with this chapter; and Subsection 59-9-101(2); and Subsection 34A-2-213(3).

...

**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
- Included in NCCI's March 8, 2019 **Legislative Activity Report** (RLA-2019-08)
- Enacted on March 26, 2019, with an effective date of May 13, 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.

**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
- Included in NCCI's March 22, 2019 **Legislative Activity Report** (RLA-2019-10)
- Enacted and effective on March 26, 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.

## West Virginia

**SB 531** was:

- Passed by the first chamber on February 23, 2019
- Included in NCCI's March 8, 2019 **Legislative Activity Report** (RLA-2019-08)
- Amended and passed by the second chamber on March 5, 2019
- Included in NCCI's March 15, 2019 **Legislative Activity Report** (RLA-2019-09)
- Enacted on March 25, 2019, with an effective date of June 4, 2019

**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.

## BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending March 29, 2019.

### Georgia

**SB 135** was:

- Passed by the first chamber on March 5, 2019
- Included in NCCI's March 15, 2019 *Legislative Activity Report* (RLA-2019-09)
- Passed by the second chamber on March 28, 2019

**SB 135** amends various sections of **Title 34. Labor and Industrial Relations, Chapter 9. Workers' Compensation** of the Official Code of Georgia Annotated to read as follows:

#### **§ 34-9-53. Directors emeritus of board—Eligibility for appointment; procedure for appointment**

(a) There is created the office of director emeritus of the board.

(b) Any director of the board ~~now or hereafter~~ in office on June 30, 2019, shall be eligible for appointment as director emeritus, ~~provided that~~ once such member of the board has reached the age of 60 years and has also attained 20 consecutive years of service in the capacity of ~~chairman~~ chairperson, director, deputy director or administrative law judge, member of the General Assembly, or a combination of consecutive service in these offices; ~~and provided, further,~~ provided that not more than five years' service in the General Assembly shall be allowed as service credit under this Code section. The Governor shall appoint to the position of director emeritus anyone eligible under this Code section who shall advise the Governor in writing that he or she desires to resign from the office of director of the board and accept appointment as director emeritus of the board, stating in such notice the date upon which the resignation as director and appointment as director emeritus shall become effective; and upon such notice the Governor shall make such appointment effective upon the date requested, and the resignation as director of the board shall be automatically effective as of the same date as the appointment as director emeritus.

(c) Notwithstanding the provisions of subsection (b) of this Code section, all persons appointed to the office of director emeritus of the board prior to June 30, 2019, shall continue to hold such office for the term and salary provided for in Code Section 34-9-54.

#### **§ 34-9-57. Creation of administrative law judge emeritus of board; eligibility for appointment; manner of appointment; compensation**

(a) There is created the office of administrative law judge emeritus of the board.

(b) Any administrative law judge, formerly known as deputy director, of the board ~~now or hereafter~~ in office on June 30, 2019, shall be eligible for appointment as administrative law judge emeritus, ~~provided he~~ once he or she has reached the age of 70 years and has either:

- (1) Attained ~~attained~~ 20 years of service in the capacity of administrative law judge or deputy director; or
- (2) Attained ~~attained~~ 20 years of total service, aggregating his or her service as administrative law judge or deputy director with any years of prior service as director, member of the General Assembly of Georgia or the Georgia National Guard, or as special assistant attorney general, or any combination of services in these offices.

(c) ~~An~~ Such administrative law judge emeritus shall be eligible for appointment by the Governor in the same manner as provided for appointment of a director emeritus under Code Section 34-9-53 and shall exercise the same duties as provided in Code Section 34-9-55 for a director emeritus.

(d) Notwithstanding the provisions of subsection (b) of this Code section, all persons appointed to the office of administrative law judge emeritus of the board prior to June 30, 2019, shall continue to hold such office and shall receive the annual salary provided for in subsection (e) of this Code section.

(e) All persons appointed to the office of administrative law judge emeritus as provided in this Code section shall receive an annual salary equal to one-third of the annual salary provided by law for an administrative law judge of the board at the time of appointment of the administrative law judge emeritus under this Code section, such salary to be paid by the board in semimonthly installments from funds provided by law for the operation of the board.

#### **§ 34-9-200. Compensation for medical care, artificial members, and other treatment and supplies; effect of employee's refusal of treatment; employer's liability for temporary care**

(a)

...

(3)(A) For injuries arising on or after July 1, 2013, that are not designated as catastrophic injuries pursuant to subsection (g) of Code Section 34-9-200.1, the maximum period of 400 weeks referenced in paragraph (2) of this subsection shall not be applicable to the following care, treatment, services, and items when prescribed by an authorized physician:

(i) Maintenance, repair, revision, replacement, or removal of any prosthetic device, provided that the prosthetic device was originally furnished within 400 weeks of the date of injury or occupational disease arising out of and in the course of employment;

(ii) Maintenance, repair, revision, replacement, or removal of a spinal cord stimulator or intrathecal pump device, provided that such items were originally furnished within 400 weeks of the date of injury or occupational disease arising out of and in the course of employment; and

(iii) Maintenance, repair, revision, replacement, or removal of durable medical equipment, orthotics, corrective eyeglasses, or hearing aids, provided that such items were originally furnished within 400 weeks of the date of injury or occupational disease arising out of and in the course of employment.

(B) For the purposes of this subsection, the term:

(i) 'Durable medical equipment' means an apparatus that provides therapeutic benefits, is primarily and customarily used to serve a medical purpose, and is reusable and appropriate for use in the home. Such term includes, but shall not be limited to, manual and electric wheelchairs, beds and mattresses, traction equipment, canes, crutches, walkers, oxygen, and nebulizers.

(ii) 'Prosthetic device' means an artificial device that has, in whole or in part, replaced a joint lost or damaged or other body part lost or damaged as a result of an injury or occupational disease arising out of and in the course of employment.

...

#### **§ 34-9-261. Compensation for total disability**

While the disability to work resulting from an injury is temporarily total, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the employee's average weekly wage but not more than ~~\$575.00~~ \$675.00 per week nor less than \$50.00 per week, except that when the weekly wage is below \$50.00, the employer shall pay a weekly benefit equal to the average weekly wage. The weekly benefit under this Code section shall be payable for a maximum period of 400 weeks from the date of injury; provided, however, that in the event of a catastrophic injury as defined in subsection (g) of Code Section 34-9-200.1, the weekly benefit under this Code section shall be paid until such time as the employee undergoes a change in condition for the better as provided in paragraph (1) of subsection (a) of Code Section 34-9-104.

#### **§ 34-9-262. Compensation for temporary partial disability**

Except as otherwise provided in Code Section 34-9-263, where the disability to work resulting from the injury is partial in character but temporary in quality, the employer shall pay or cause to be paid to the employee a weekly benefit equal to two-thirds of the difference between the average weekly wage before the injury and the average weekly wage the employee is able to earn thereafter but not more than ~~\$383.00~~ \$450.00 per week for a period not exceeding 350 weeks from the date of injury.

#### **§ 34-9-265. Compensation for death resulting from injury and other causes; penalty for death from injury proximately caused by intentional act of employer; payment of death benefits where no dependents found**

...

(d) The total compensation payable under this Code section to a surviving spouse as a sole dependent at the time of death and where there is no other dependent for one year or less after the death of the employee shall in no case exceed ~~\$230,000.00~~ \$270,000.00.

...

**SB 135** also includes the following language:

All laws and parts of laws in conflict with this Act are repealed.

## **Iowa**

**HF 327** was:

- Passed by the first chamber on March 12, 2019
- Included in NCCI's March 22, 2019 **Legislative Activity Report** (RLA-2019-10)
- Passed by the second chamber on March 25, 2019

**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.

## BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending March 29, 2019.

### Arkansas

**HB 1850**, in part, adds a new subchapter and amends sections **11-9-102** and **11-9-103** of the Arkansas Workers' Compensation Law as follows:

#### Chapter 1. General Provisions

...

#### **Subchapter 1—Empower Independent Contractors Act of 2019**

##### **11-1-101. Title.**

This subchapter shall be known and may be cited as the "Empower Independent Contractors Act of 2019".

##### **11-1-102. Purpose.**

The purpose of this subchapter is to help employers create jobs, help individuals return to work and no longer need public assistance, and grow the economy.

##### **11-1-103. Definition.**

As used in this title, "employment status" means the status of an individual as an employee or independent contractor for employment purposes, including without limitation wages, taxation, and workers' compensation issues.

##### **11-1-104. Determination of employment status.**

For purposes of this title, an employer or agency charged with determining the employment status of an individual shall use the twenty-factor test enumerated by the Internal Revenue Service in Rev. Rul. 87-41, 1987-1 C.B. 296, in making its determination and shall consider whether:

- (1) A person for whom a service is performed has the right to require compliance with instructions, including without limitation when, where, and how a worker is to work;
- (2) A worker is required to receive training, including without limitation through:
  - (A) Working with an experienced employee;
  - (B) Corresponding with the person for whom a service is performed;
  - (C) Attending meetings; or
  - (D) Other training methods;
- (3) A worker's services are integrated into the business operation of the person for whom a service is performed and are provided in a way that shows the worker's services are subject to the direction and control of the person for whom a service is performed;
- (4) A worker's services are required to be performed personally, indicating an interest in the methods used and the results;
- (5) A person for whom a service is performed hires, supervises, or pays assistants;
- (6) A continuing relationship exists between a worker performing services and a person for whom a service is performed;
- (7) A worker performing a service has hours set by the person for whom a service is performed;
- (8) A worker is required to devote substantially full time to the business of the person for whom a service is performed, indicating the person for whom a service is performed has control over the amount of time the worker spends working and by implication restricts the worker from obtaining other gainful work;
- (9)(A) The work is performed on the premises of the person for whom a service is performed, or the person for whom a service is performed has control over where the work takes place.
  - (B) A person for whom a service is performed has control over where the work takes place if the person has the right to:
    - (i) Compel the worker to travel a designated route;
    - (ii) Compel the worker to canvass a territory within a certain time; or
    - (iii) Require that the work be done at a specific place, especially if the work could be performed elsewhere;
- (10) A worker is required to perform services in the order or sequence set by the person for whom a service is performed or the person for whom a service is performed retains the right to set the order or sequence;
- (11) A worker is required to submit regular oral or written reports to the person for whom a service is performed;
- (12) A worker is paid by the hour, week, or month except when he or she is paid by the hour, week, or month only as a convenient way of paying a lump sum agreed upon as the cost of a job;
- (13) A person for whom a service is performed pays the worker's business or traveling expenses;
- (14) A person for whom a service is performed provides significant tools and materials to the worker performing services;
- (15) A worker invests in the facilities used in performing the services;

- (16) A worker realizes a profit or suffers a loss as a result of the services performed that is in addition to the profit or loss ordinarily realized by an employee;
- (17) A worker performs more than de minimis services for more than one (1) person or firm at the same time, unless the persons or firms are part of the same service arrangement;
- (18) A worker makes his or her services available to the general public on a regular and consistent basis;
- (19) A person for whom a service is performed retains the right to discharge the worker; and
- (20) A worker has the right to terminate the relationship with the person for whom a service is performed at any time he or she wishes without incurring liability.

**11-9-102. Definitions.**

As used in this chapter:

...

(9)(A) "Employee" means ~~any person~~ an individual, including a minor, whether lawfully or unlawfully employed in the service of an employer under ~~any~~ a contract of hire or apprenticeship, written or oral, expressed or implied, and the individual's employment status has been determined by consideration of the twenty-factor test required by the Empower Independent Contractors Act of 2019, § 11-1-101 et seq, but excluding one whose employment is casual and not in the course of the trade, business, profession, or occupation of his or her employer and excluding one who is required to perform work for a municipality or county or the state or federal government upon having been convicted of a criminal offense or while incarcerated .

(B) The term "employee" shall not include:

(i) ~~any~~ An individual who is both a licensee as defined in § 17-42-103(7) and a qualified real estate agent as that term is defined in section 3508(b)(1) of the Internal Revenue Code of 1986, including all regulations thereunder; ;

(ii) An individual whose employment is casual and not in the course of the trade, business, profession, or occupation of his or her employer; or

(iii) An individual who is required to perform work for a municipality, county, state, or the United States Government upon having been convicted of a criminal offense or while incarcerated;

...

**11-9-103. Applicability.**

...

(d) For purposes of this chapter, employment status as an employee or independent contractor is determined by consideration of the twenty-factor test required by the Empower Independent Contractors Act of 2019, § 11-1-101 et seq.

**Maryland**

**HB 795** amends **section 9-628** of the Annotated Code of Maryland to read:

**§ 9-628. Compensation for less than 75 weeks.**

**(a) "Public safety employee" defined.**—In this section, "public safety employee" means:

...

(9) a Baltimore County deputy sheriff, but only when the deputy sheriff sustains an accidental personal injury that arises out of and in the course and scope of performing duties directly related to:

...

(v) other administrative duties; ~~or~~

(10) a State correctional officer; ~~or~~

(11) a Baltimore City Deputy Sheriff.

...

**HB 795** also includes the following language:

And be it further enacted, that this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any claims arising from events occurring before the effective date of this Act.

**SB 646** 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 fire fighting 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) the individual has leukemia or prostate, rectal, throat, multiple myeloma, non-Hodgkin's lymphoma, brain, testicular, or breast cancer that is caused by contact with a toxic substance that the individual has encountered in the line of duty;
- (2) the individual has completed at least 10 years of cumulative service within the state as a firefighter, a fire fighting instructor, a rescue squad member, or an advanced life support unit member or in a combination of those jobs ~~in the department where the individual currently is employed or serves~~;
- (3) ~~is unable to perform the normal duties of a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member in the department where the individual currently is employed or serves because of the cancer or leukemia disability; and the cancer or leukemia results in partial or total disability or death; and~~
- ~~(4)~~ in the case of a volunteer firefighter, volunteer fire fighting instructor, volunteer rescue squad member, or volunteer advanced life support unit member, the individual has met a suitable standard of physical examination before becoming a firefighter, fire fighting instructor, rescue squad member, or advanced life support unit member.

...

**SB 646** also includes the following clause:

And be it further enacted, that this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any claim filed before the effective date of this Act.

**Note: SB 646** is identical to **HB 604**.

## Montana

**HB 732**, in part, amends **section 39-71-201** and adds a new section to the Montana Workers' Compensation Act to read:

### **Section 1.**

#### **State to reimburse certain premium costs for learning programs—rulemaking.**

- (1) (a) Subject to subsection (1)(b), the department of labor and industry shall reimburse a private employer who has hired a student enrolled in a high-quality work-based learning opportunity for the added costs of the employer's workers' compensation premium because of employing that student.
- (b) The reimbursement is subject to available funds and an affirmation by the employer or another indication that the employer adheres to safe working conditions. The department may use funds in the workers' compensation administration fund provided for in 39-71-201 to reimburse the premiums under subsection (1)(a).
- (2) The rules must provide the parameters of the program, the application process, and other components necessary to determine premium payments. The rules must describe the attributes of qualified high-quality work-based learning opportunities and provide for a declaration made under penalty of perjury by the employer of the student that the requested reimbursement is only for the increased premium costs due to the student employment.
- (3) This section does not apply to a private secondary or postsecondary institution that employs students in work-study programs.
- (4) For the purposes of this section, a "high-quality work-based learning opportunity":
- (a) is a term-limited educational program registered with the department; and
- (b) uses on-the-job training to develop marketable skills.
- (5) The department may adopt rules to implement this section.

### **Section 3.**

#### **39-71-201. Workers' compensation administration fund.**

(1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department may use the workers' compensation administration fund to reimburse premiums for high-quality work-based learning programs, as provided in [section 1]. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

...

(5)(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund and may be used to pay the reimbursement of premiums required under [section 1].

...

(7) (d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and

interest must be deposited in the workers' compensation administration fund and may be used to pay the reimbursement of premiums required under [section 1].

...

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state. Reimbursement of premiums required under [section 1] by the workers' compensation administration fund also is a debit on the fund.

...

**HB 732** also includes the following language:

**Section 4.**

**Appropriation.** There is appropriated \$15,000 from the employment security account provided for in 39-51-409 to the department of labor and industry for use in administering the program in [section 1].

**Section 5.**

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

## Texas

**SB 934** amends **section 410.252** of the Texas Workers' Compensation Act to read:

**Sec. 410.252. Time for Filing Petition; Venue.**

(a) A party may seek judicial review by filing suit not later than the 60th ~~45th~~ day after the date on which the division mailed the party the decision of the appeals panel. For purposes of this section, the mailing date is considered to be the fifth day after the date the decision of the appeals panel was filed with the division.

...

(d) If a suit is initially filed within the 60-day ~~45-day~~ period in Subsection (a), and is transferred under Subsection (c), the suit is considered to be timely filed in the court to which it is transferred.

**SB 934** also includes the following language:

The change in law made by this Act applies only to a suit for judicial review filed on or after the effective date of this Act. A suit for judicial review filed before the effective date of this Act is covered by the law as it existed on the date the suit was filed, and the former law is continued in effect for that purpose.

**SB 935** adds new **section 413.0112** to the Texas Workers' Compensation Act to read:

**Subchapter B. Medical Services and Fees**

...

**Sec. 413.0112. Reimbursement of Federal Military Treatment Facility.**

(a) In this section, "federal military treatment facility" means a medical facility that operates as part of the Military Health System of the United States Department of Defense.

(b) The reimbursement rates for medical services provided to an injured employee by a federal military treatment facility must be the amount charged by the facility as determined under 32 C.F.R. Part 220.

(c) Chapter 1305, Insurance Code, and the following sections of this code do not apply to the reimbursement of a federal military treatment facility's charges for medical services provided to an injured employee:

(1) Sections 408.027(a) and (f);

(2) Section 408.0271;

(3) Section 408.0272;

(4) Section 408.028;

(5) Section 408.0281;

(6) Section 413.011;

(7) Section 413.014;

(8) Section 413.031, as that section relates to medical fee disputes;

(9) Section 413.041; and

(10) Section 504.053.

(d) The commissioner shall adopt rules necessary to implement this section, including rules establishing:

(1) requirements for processing medical bills for services provided to an injured employee by a federal military treatment facility; and

(2) a separate medical dispute resolution process to resolve disputes over charges billed directly to an injured employee by a federal military treatment facility.

**SB 935** also includes the following language:

The commissioner of workers' compensation shall adopt rules as required by Section 413.0112, Labor Code, as added by this Act, not later than December 1, 2019.

The change in law made by this Act applies only to health care services provided on or after January 1, 2020, in conjunction with a claim for workers' compensation benefits, regardless of the date on which the compensable injury that is the basis of the claim occurred.

## FEDERAL ISSUES

Issue	Update
<b>Marijuana and Banking</b>	The House of Representatives Financial Services Committee passed the Safe and Fair Enforcement Banking Act. <b>H.R. 1595</b> (Rep. Ed Perlmutter, D-CO) that would provide a safe harbor to federally chartered banks from doing business with cannabis-related legitimate businesses. The legislation awaits possible action by the full House.
<b>TRIPRA of 2015</b>	<b>State Regulator Data Call</b> In response to the state regulators' 2019 data call for terrorism coverage, the National Council on Compensation Insurance (NCCI) and the independent bureaus transmitted 2016 aggregate and carrier-level Unit Statistical data to the National Association of Insurance Commissioners (NAIC) on February 26, 2019. In addition to submitting its own data, NCCI coordinated with most state independent rating bureaus to collect and submit the data from those bureaus as well. State regulators, through the NAIC, leverage the data for its ongoing carrier solvency monitoring and market regulation activities.

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

## STATE LEGISLATIVE ACTIVITY

State	Update
<b>Alabama</b>	<p><b>HB 2</b>, in part, revises the definition of occupational disease to include "cancer of a firefighter" and provides for a definition of the term "cancer of a firefighter." Also, it establishes a rebuttable presumption that a paid firefighter who is not a smoker or user of any tobacco products and who is diagnosed with cancer contracted the cancer as a direct result of their firefighting duties if:</p> <ol style="list-style-type: none"> <li>The firefighter, upon entering the service, passed a physical examination that did not show evidence of cancer</li> <li>The firefighter demonstrated exposure to a known carcinogen that causes cancer</li> </ol> <p>This presumption can be overcome by an employer proving by a preponderance of the evidence that the cancer was caused by some means other than the occupation.</p> <p><b>HB 51</b> defines occupational disease for purposes of workers compensation for a paid law enforcement officer, paid firefighter, or paid emergency worker, to include a mental disease or disorder, including post-traumatic stress disorder, that arises out of and in the course of employment without regard to whether there was an accompanying physical injury.</p> <p>Under existing law, after July 1, 2018, the surviving spouse of a law enforcement officer or firefighter killed in the line of duty is entitled to continue to receive workers compensation benefits after remarriage, and any dependent children of that officer or firefighter are entitled to continue to receive workers compensation benefits until the age of majority. <b>HB 187</b> provides that the existing law applies retroactively to the surviving spouse and dependents of a law enforcement officer or firefighter who dies on or after January 1, 2018, as a result of injuries received while engaged in the performance of their duties.</p>
<b>Arizona</b>	<p><b>HB 2460</b>, in part,</p> <ul style="list-style-type: none"> <li>• Establishes a rebuttable presumption that a first responder's post-traumatic stress disorder arises out of and in the course of employment under certain enumerated conditions</li> <li>• Extends the time frame to file a compensation claim to one year after the date of the last licensed counseling visit for an employee who is receiving active treatment</li> <li>• Provides traumatic event counseling for public safety employees, firefighters, and peace officers</li> <li>• Provides that an employer may not: <ul style="list-style-type: none"> <li>○ Subject a public safety employee who is receiving treatment pursuant to this section and who has not filed a claim for workers compensation to an independent medical examination</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Require a public safety employee who is receiving treatment pursuant to this section to use the public safety employee's accrued paid vacation leave, personal leave, or sick leave if the public safety employee leaves work to receive treatment</li> </ul> <p><b>HB 2461</b> provides that a medical examination requested by the commission, the employee's employer, or the insurance carrier may be performed by a master's level clinician.</p> <p><b>HB 2462</b> provides that any physician who performs a medical examination under <i>section 23-1026</i> must be located within the state.</p>
<b>Connecticut</b>	<b>HB 6916</b> expands remedies and potential liability for unreasonably contested or delayed claims.
<b>Florida</b>	<p><b>HB 429/SB 496</b>, in part:</p> <ul style="list-style-type: none"> <li>• Revises the method by which the Florida Workers' Compensation Insurance Guaranty Association assessments are calculated against workers compensation insurers by the Office of Insurance Regulation</li> <li>• Authorizes the Florida Workers' Compensation Insurance Guaranty Association to audit reconciliation reports from insurers regarding amounts collected from policyholders</li> </ul> <p><b>HB 951/SB 1240</b>:</p> <ul style="list-style-type: none"> <li>• Provides that, under certain circumstances, post-traumatic stress disorder suffered by a correctional officer is an occupational disease compensable by workers compensation benefits</li> <li>• Specifies that certain benefits do not require a physical injury and are not subject to certain apportionment or limitations</li> </ul> <p><b>HB 1399</b>, in part:</p> <ul style="list-style-type: none"> <li>• Requires the three-member panel to annually adopt statewide workers compensation schedules of maximum reimbursement allowances</li> <li>• Extends time frames in which employees may receive certain workers compensation benefits and in which carriers must notify the treating doctor of certain requirements</li> <li>• Provides conditions under which employees may receive permanent impairment benefits</li> <li>• Requires a good-faith effort to resolve disputes</li> <li>• Provides for collecting additional information on attorney fees</li> <li>• Authorizes the Department of Financial Services to develop insurer performance measures and a rating system</li> <li>• Allows insurers to uniformly reduce premiums by no more than 5% if they file an informational-only notice within 30 days, subject to regulatory oversight</li> </ul> <p><b>SB 1636</b>:</p> <ul style="list-style-type: none"> <li>• Increases temporary total disability benefits and temporary partial disability benefits from 104 weeks to 260 weeks to address a potential benefit gap if the injured worker has not reached maximum medical improvement</li> <li>• Removes the criminal penalty for claimant attorneys receiving fees that the Office of Judges of Compensation Claims (OJCC) has not approved, thereby allowing a claimant to enter into retainer agreements with an attorney and directly pay the attorney</li> <li>• Eliminates the unrelated works exception to employer immunity provided by the workers' compensation law</li> <li>• Requires the filing of attorney retainer agreements and associated attorney fees with the OJCC</li> <li>• Retains the statutory fee schedule for attorney fee awards paid by an employer or carrier to a claimant's attorney</li> <li>• Revises current law to allow an alternative minimum attorney fee cap on medical-only claims of \$150 per hour, not to exceed \$1,500, in all medical-only claims rather than only once per accident</li> <li>• Limits appellate fees to \$150 per hour if certain conditions are met</li> <li>• Extends the attachment of attorney fees following the filing of the petition of benefits from 30 days to 45 business days</li> <li>• Requires evidence of a good-faith effort by the claimant and the claimant's attorney to resolve disputes prior to filing a petition for benefits</li> <li>• Requires greater specificity in the information provided in the petitions for benefits filed with the OJCC</li> </ul>
<b>Georgia</b>	<b>SR 325</b> creates the Senate Study Committee on Portable Benefits for Independent Workers to study the usefulness and implementation of portable benefits that can be carried from job-to-job or project-to-project for

	residents that engage in temporary, contract, on-demand, or other alternative work arrangements. This is so that those independent workers can access benefits and protections commonly provided to traditional full-time employees.
<b>Hawaii</b>	<b>HCR 49/HR 50</b> requires the state auditor to conduct a study to assess the impact of medical bill review costs on the state’s workers compensation system.
<b>Illinois</b>	<p><b>HB 269</b> amends the Workers’ Compensation Act to:</p> <ul style="list-style-type: none"> <li>• Permit a single commissioner to approve of enforcement actions under provisions of the Act concerning insuring an employer’s ability to pay compensation, thereby replacing the current requirement of a panel of three commissioners</li> <li>• Permit the Illinois Workers’ Compensation Commission to, if an employer’s business is declared to be extra hazardous, issue a work-stop order while awaiting a ruling from the Commission or while awaiting proof of insurance by the employer</li> <li>• Provide that investigative actions must be acted upon within 90 days of the issuance of a complaint.</li> <li>• Raise the maximum allowable penalty for noncompliance with certain insurance requirements from \$2,000 to \$10,000</li> <li>• Double the maximum allowable penalties to \$1,000 per day, with a minimum penalty of \$20,000, for employers found to be in noncompliance more than once</li> <li>• Provide that an employer with two or more violations may no longer self-insure or purchase an insurance policy from a private broker for one year or until all penalties are paid, during which time the employer must purchase insurance from the Assigned Risk Pool through the National Council on Compensation Insurance</li> </ul> <p><b>SB 1943</b>, in part, provides that with respect to employers correctly classified within the construction industry, the amount charged to the insured for workers compensation and employers’ liability insurance shall be based upon hours worked by employees in specific job categories or classifications, not the wages or salaries paid to the employees.</p>
<b>Kansas</b>	<p><b>HB 2260</b>, in part, updates the per diem for injured employees when away from their residence for medical treatment.</p> <p><b>HB 2313</b> is similar, but not identical, to <b>SB 172</b>. The bill, in part, increases the limit of healthcare expenses allowed as a workers compensation benefit for injured employees, prior to formal authorization of a claim, from \$500 to \$2,000.</p> <p><b>SB 146</b> allows injured workers who receive Social Security to keep the full amount of their workers compensation benefits.</p>
<b>Maine</b>	<p><b>LD 901</b> clarifies the statute of limitations for workers compensation claims to be two years after the date of injury or two years after the date the employer files the first report of injury, whichever is later.</p> <p><b>LD 1203</b> lowers the evidentiary burden on retired individuals collecting workers compensation benefits by providing that evidence that the individual’s retirement was due at least in part to a work-related disability is sufficient to continue eligibility for workers compensation benefits related to loss of earnings or earning capacity.</p> <p><b>LD 1204</b> eliminates the cap on weekly indemnity benefits.</p> <p><b>LD 1205</b>, in part, removes the provisions of law that require an employer to offset an individual’s workers compensation benefits based on retirement or pension benefits being received. It would also prohibit an employer from taking credit for past overpayments.</p> <p><b>LD 1253</b> removes the 500-week limit for duration of death benefits under the laws governing workers compensation.</p>
<b>Missouri</b>	<p><b>HB 1137</b> provides the criteria for a worker to be considered an independent contractor including, but not limited to, the criteria that the person must:</p> <ul style="list-style-type: none"> <li>• Have a written contract that states the person is an independent contractor, not an employee, and is responsible for all costs, fees, and taxes as an independent contractor</li> <li>• Have the right to control the manner and means by which the work is accomplished</li> <li>• Satisfy at least three out of nine listed requirements of an independent contractor</li> </ul>

	<p><b>SB 71</b> provides that liability insurance policies, shall not be approved by the director of the Department of Insurance, Financial Institutions and Professional Registration if, when determining the premium to be paid by an employer, a workers compensation insurer includes as part of an employer's payroll any of the following:</p> <ul style="list-style-type: none"> <li>• Monetary bonuses, paid by an employer to an employee, of up to 3% of the employee's yearly compensation from such employer</li> <li>• Contributions made by an employer to an employee's individual retirement account, if such account is authorized under state or federal law</li> </ul>
<b>Montana</b>	<p><b>HB 757:</b></p> <ul style="list-style-type: none"> <li>• Changes the voluntary certification program for claims examiners from a voluntary to a mandatory program</li> <li>• Provides a 12-month grace period for noncertified individuals who were working as claims examiners as of January 1, 2019</li> <li>• Provides a process by which claims examiners who are newly hired or are in training may perform specified claims functions prior to becoming certified</li> </ul>
<b>Nebraska</b>	<p><b>LB 418</b>, in part, provides that collection agencies shall not attempt to collect a debt if a case is pending in the Nebraska Workers' Compensation Court and the debt is alleged to be subject to section 48-120 of the Nebraska Workers' Compensation Act.</p>
<b>Nevada</b>	<p><b>AB 370</b> is similar but not identical to <b>SB 377</b> and <b>SB 422</b>. The bill, in part:</p> <ul style="list-style-type: none"> <li>• Provides a 2.3% annual increase in compensation for permanent total disability to claimants and dependents who are entitled to such compensation due to an industrial injury or disablement that occurred before January 1, 2004, with compensation to be increased on January 1, 2020, and on January 1 each year thereafter</li> <li>• Eliminates the authority of the administrator of the Division of Industrial Relations of the Department of Business and Industry to make the annual payments from the Uninsured Employers' Claim Account in the Fund for Workers' Compensation and Safety</li> <li>• Repeals provisions that authorize a single annual payment to claimants and their dependents who are entitled to receive compensation for permanent total disability but are not entitled to the 2.3% annual increase in that compensation</li> </ul> <p><b>AB 392</b>, in part:</p> <ul style="list-style-type: none"> <li>• Requires a school district or charter school to maintain liability insurance coverage and cover the costs of providing workers compensation for a pupil who is participating in an unpaid work-based learning program</li> <li>• Requires work-based learning organizations to provide such coverage if a pupil is participating in a paid work-based learning program as such an organization would for any other employee</li> <li>• Requires that a pupil who is participating in a paid work-based learning program be deemed an employee of the person or entity that pays the pupil, for purposes of providing workers compensation</li> <li>• Authorizes an insurer that provides workers compensation to grant a reduction in the premium for such a policy if the insured is certified as a work-based learning organization</li> </ul> <p><b>SB 381</b>, in part:</p> <ul style="list-style-type: none"> <li>• Establishes, except for limited enumerated exceptions, the substantive right of an injured employee to choose a treating healthcare provider, defined as a physician, osteopathic physician, chiropractor, physical therapist, or psychologist under the Nevada Industrial Insurance Act or the Nevada Occupational Diseases Act</li> <li>• Revises provisions governing the panel of treating physicians and chiropractors established by the administrator of the Division of Industrial Relations of the Department of Business and Industry to require the inclusion of certain healthcare providers</li> <li>• Authorizes the administrator to select a rating physician or chiropractor for an injured employee upon request</li> </ul>
<b>Oklahoma</b>	<p><b>SB 836</b> creates an exception to existing Oklahoma law, which provides that a mental injury or illness is not a compensable injury unless caused by a physical injury to the employee, for volunteer firefighters.</p> <p><i>NCCI estimates that SB 836, if enacted in its current form, may result in an indeterminate increase in costs for first responder classification codes (firefighters, emergency medical services personnel, and law enforcement officers) in Oklahoma. The impact on overall workers compensation costs for SB 836 is expected to be negligible, since data reported to NCCI shows that experience for the volunteer firefighter classification represents less than 0.1% of losses in Oklahoma.</i></p>

<b>Rhode Island</b>	<p><b>HB 5657/SB 505:</b></p> <ul style="list-style-type: none"> <li>• Allows employers to shift the legal burden to employees to prove that they were not intoxicated at the time of injury or death after a showing by the employer that the employee had a positive test for intoxicating substance at or immediately following the injury or death</li> <li>• Allows employers or insurers to recover overpayments made for indemnity benefits by set-off payments for loss of use or disfigurement</li> <li>• Requires that employers bear sole responsibility for treble damages if the injured employee is a minor employed in violation of any law</li> </ul>
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## OTHER ITEMS OF INTEREST

State	Update
<b>Alaska</b>	The Alaska Workers' Compensation Division issued Bulletin 19-01 regarding the allowance for transportation, meals, and lodging while traveling for medical appointments. Regulation AAC 45.084 describes medical travel expenses payable under the Alaska Workers' Compensation Act.
<b>New Hampshire</b>	<p>On March 7, the New Hampshire Supreme Court (Court) held, in the <i>Appeal of Andrew Panaggio</i>, that the state Compensation Appeals Board (Board) erred when it determined that a workers compensation insurance carrier is prohibited by state and federal law from reimbursing an injured worker for the cost of medical marijuana treatment. In its decision, the Court found that the state's medical marijuana law does not prohibit reimbursement under workers compensation.</p> <p>However, the Court did not rule that a workers compensation insurance carrier is affirmatively required to reimburse. The Court remanded the case to the Board to provide further legal support regarding its determination that federal law would be violated if the insurance carrier is ordered to reimburse for the payment of medical marijuana.</p>
<b>Oregon</b>	The Oregon Workers Compensation Division published several final rules that are effective April 1, 2019. These new rules include revisions to OAR 436-010 Medical Services which, in part, pertain to independent medical examinations and update definitions and treatment protocols. OAR 436-015 changes the managed care organization rules. OAR 436-001 pertains to procedural rules, attorney fees, and general provisions.
<b>Montana</b>	The Montana Department of Labor and Industry implemented a new drug formulary for all new workers compensation claims occurring on or after April 1, 2019. The Montana Drug Formulary resulted from <b>SB 312</b> passed in May 2017.

### Contact Information

If you have any questions about the legislation or proposals mentioned, please contact the appropriate NCCI state relations executive (listed below) or a representative of your local insurance trade association.

State	State Relations Executive	Phone Number
SC, TN	Amy Quinn	561-893-3812
HI, NM, NV, UT	Brett Barratt	801-401-6464
IL, MO, OK	Carla Townsend	561-893-3819
AZ, KS, KY	Clarissa Preston	561-945-4517
DC, MD, VA, WV	David Benedict	804-380-3005
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.