



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 April 5, 2019.

Colorado

HB 1105 was:

- Passed by the first chamber on February 11, 2019
- Included in NCCI's February 22, 2019 **Legislative Activity Report** (RLA-2019-06)
- 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 April 4, 2019, with a projected effective date of August 2, 2019

HB 1105 amends **section 8-42-101** of the Workers' Compensation Act of Colorado, in part, as follows:

8-42-101. Employer must furnish medical aid—approval of plan—fee schedule—contracting for treatment—no recovery from employee—medical treatment guidelines—accreditation of physicians and other medical providers—rules—repeal.

...

(3.5) (a) (I) (D) an advanced practice nurse with prescriptive authority pursuant to section 12-38-111.6 may receive level I accreditation for purposes of receiving one hundred percent reimbursement under the medical fee schedule created in accordance with subsection (3) of this section.

(E) nothing in this subsection (3.5)(a) grants any person other than a physician licensed under the "Colorado Medical Practice Act" the authority to determine that no permanent medical impairment has resulted from the injury pursuant to subsection (3.6)(b) of this section or that a claimant has attained maximum medical improvement pursuant to section 8-42-107 (8)(b)(I).

...

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
- Included in NCCI's March 22, 2019 **Legislative Activity Report** (RLA-2019-10)
- Enacted on April 2, 2019, with an effective date of June 14, 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.

NCCI estimates that the proposed changes may result in an indeterminate increase for the nonvolunteer firefighter job classification code in New Mexico. Much of the cost impact would be borne by governmental entities that are the typical employers of firefighters. The impact on overall workers compensation system costs is expected to be negligible since data reported to NCCI shows that the firefighter classification represents less than 0.1% of losses in New Mexico.

South Carolina

SB 358 was:

- Passed by the first chamber on February 6, 2019
- Passed by the second chamber on February 22, 2019
- Enacted on March 20, 2019, with an effective date of July 1, 2019

SB 358, in part, amends the South Carolina Workers' Compensation Law to read:

Section 42-5-20. Insurance or proof of financial ability to pay required.

(A)(1) Every employer who accepts the provisions of this title relative to the payment of compensation shall insure and keep insured his liability thereunder in any authorized corporation, association, organization, or mutual insurance association formed by a group of employers so authorized or shall furnish to the commission satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due as provided for in this title. The commission may, under such rules and regulations as it may prescribe, permit two or more employers in businesses of a similar nature to enter into agreements to pool their liabilities under the Workers' Compensation Law for the purpose of qualifying as self-insurers. In the case of self-insurers the commission shall require the deposit of an acceptable security, indemnity, or bond to secure the payment of the compensation liabilities as they are incurred. The Workers' Compensation Commission shall have exclusive jurisdiction of group self-insurers under this section, and such group self-insurers shall not be deemed to be insurance companies and shall not be regulated by the Department of Insurance. Provided, further, that if any provision is made for the recognition of reinsurance of the self-insured fund, such provision shall expressly provide that the reinsurance agreement or treaty must recognize the right of the claimant to recover directly from the reinsurer and that such agreement shall provide for privity between the reinsurer and the workers' compensation claimant.

(2) In lieu of submitting audited financial statements when an employer makes an application to self-insure with the commission, the commission shall accept the sworn statement or affidavit of an independent auditor verifying the financial condition of the employer according to the required financial ratios and guidelines established by regulation of the commission. The independent auditor must be a certified public accountant using generally acceptable accounting principles in the preparation of the financial statements of the employer.

(B) A corporation, association, organization, or mutual insurance association formed pursuant to Section 42-5-50 may not be considered a licensed insurer pursuant to Chapter 31, Title 38 and may not participate in or receive benefits or protection from the South Carolina Property and Casualty Insurance Guaranty Association.

(C) An assumption, transfer, merger, or other acquisition of a block of business by a licensed insurer from a self-insurer may not be approved until the commission has obtained an opinion from a qualified actuary as to the adequacy of assets and other funding to

adjudicate and pay any known claims as of the effective date of the assumption, transfer, merger, or other acquisition of the self-insured block.

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending April 5, 2019.

Arizona

HB 2137 was:

- Passed by the first chamber on February 11, 2019
- Included in NCCI's February 22, 2019 *Legislative Activity Report* (RLA-2019-06)
- Passed by the second chamber on April 4, 2019

HB 2137 amends *section 23-966* of the Arizona Revised Statutes to read:

23-966. Failure of employer to pay claim or comply with commission order; reimbursement of funds

...

C. The special fund is the successor in interest to all excess insurance policies in effect at the time of an assignment under subsection a of this section that insure any part of the self-insured employer's financial obligations under the workers' compensation laws. The special fund's recovery rights under this subsection are subject to applicable coverage terms and policy limits in the excess policy. The excess insurer shall make payment directly to the special fund for all covered amounts spent under this section, including administrative costs, necessary expenses and attorney fees to the extent covered by the excess policy. Unless recovered from an excess insurer, the special fund shall have a claim against the employer for all monies that are spent or anticipated to be spent under this section, including administrative costs, necessary expenses and attorney fees. Any claim by the special fund shall be made on the cash, securities or bond filed under section 23-961 or applicable rules or on any other asset of the employer.

Maryland

SB 646 was:

- Passed by the first chamber on March 25, 2019
- Included in NCCI's April 5, 2019 *Legislative Activity Report* (RLA-2019-12)
- Passed by the second chamber on April 4, 2019

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**.

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending April 5, 2019.

Missouri

SB 71 adds a new subsection to **section 287.310** of the Missouri Workers' Compensation Law to read:

287.310. Policies to be approved by department—deductible plans authorized, requirements.—

...

11. No policy of insurance against liability under this chapter shall 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:

(1) Monetary bonuses, paid by an employer to an employee, of up to three percent of the employee's yearly compensation from such employer; or

(2) Contributions made by an employer to an employee's individual retirement account, if such account is authorized under state or federal law.

Montana

HB 757 amends **section 39-71-320** the Montana Workers' Compensation Act to read:

39-71-320. ~~Voluntary certification~~ Certification program for claims examiners—purpose—rulemaking—advisory committee—continuing education—fee. (1) Pursuant to the public policy stated in 39-71-105, accurate and prompt claims handling practices are necessary to provide appropriate service to injured workers, employers, and health care providers. ~~In order to~~ To further that public policy, the purpose of this section is to authorize the department to establish a ~~voluntary~~ certification program for claims examiners. The department shall administer the ~~voluntary~~ certification program.

(2) The ~~voluntary~~ certification program is intended to improve the handling of workers' compensation claims by:

...

(3) The department shall adopt rules for the certification of workers' compensation claims examiners, providing for:

...

(e) a waiver of the examination requirement for an individual requesting certification as a claims examiner within the first 12 months after the department has adopted the initial rules under this subsection (3). The waiver is available only to an individual who has been actively engaged in the work of a claims examiner in this state, working on workers' compensation claims for 5 of the 7 years immediately preceding the individual's application for certification under this section.

(e) a process by which a claims examiner who is newly hired or is in training may perform specified claims functions prior to becoming certified under this section; and

(f) a grace period of 12 months in which to take the examination for all noncertified individuals who were working as a claims examiner as of January 1, 2019.

...

(8) The department shall by rule adopt fees commensurate with the costs of administering the ~~voluntary~~ certification program. All fees collected by the department as provided in this section must be deposited in the workers' compensation administration fund provided for in 39-71-201. The department may charge a fee for the certification program, including but not limited to fees for:

...

HB 757 also includes the following language:

Repealer. Section 5, Chapter 315, Laws of 2015, is repealed.

Oregon

HB 3003 A amends **section 656.443** of the Oregon Workers' Compensation Law to read:

656.443 Procedure upon default by employer or self-insured employer group.

...

(3) If for any reason the certification of a self-insured employer or self-insured employer group is canceled or terminated, the surety bond or other security deposited with the director must remain on deposit or in effect, as the case may be, for a period of at least 62 months after the employer ceases to be a self-insured employer. The surety bond or other security must be maintained in an amount necessary to secure the outstanding and contingent liability arising from the accidental injuries secured by the surety bond or other security and to ensure the payment of claims for aggravation and claims arising under ORS 656.278 based on those accidental injuries. At the expiration of the 62-month period, or of another period the director may consider proper, the director may accept in lieu of the surety bond or other security deposited with the director a policy of paid-up insurance in a form approved by the director.

(3)(a) If for any reason the certification of a self-insured employer or self-insured employer group is canceled or terminated, the surety bond or other security deposited with the director must remain on deposit or in effect, as the case may be, for a period of at least 62 months after the employer ceases to be a self-insured employer, unless the director accepts in lieu of the surety bond or other security a policy of paid-up insurance approved by the director. A surety bond or other security that remains on deposit or in

effect must be maintained in an amount necessary to secure the outstanding and contingent liability arising from the accidental injuries secured by the surety bond or other security and to ensure the payment of claims for aggravation and claims arising under ORS 656.278 based on those accidental injuries. If the surety bond or other security remains on deposit or in effect at the expiration of the 62-month period, or of another period the director may consider proper, the director may accept in lieu of the surety bond or other security deposited with the director a policy of paid-up insurance in a form approved by the director.
(b) The director may adopt rules necessary to implement the provisions of this subsection.

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Contact Information

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

State	State Relations Executive	Phone Number
SC, TN	Amy Quinn	561-893-3812
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IL, MO, OK	Carla Townsend	561-893-3819
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DC, MD, VA, WV	David Benedict	804-380-3005
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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
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This report is informational and is not intended to provide an interpretation of state and federal legislation.