



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 12, 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
- Included in NCCI's April 12, 2019 **Legislative Activity Report** (RLA-2019-13)
- Enacted on April 11, 2019, with a projected effective date of July 27, 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.

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
- Included in NCCI's April 5, 2019 **Legislative Activity Report** (RLA-2019-12)
- Enacted on April 9, 2019, with an effective date of July 1, 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 SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending April 12, 2019.

Arkansas

HB 1850 was:

- Passed by the first chamber on March 28, 2019
- Included in NCCI's April 5, 2019 *Legislative Activity Report* (RLA-2019-12)
- Passed by the second chamber on April 9, 2019

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.

Hawaii

HB 390 HD1 SD2 was:

- Passed by the first chamber on March 1, 2019
- Included in NCCI's March 8, 2019 **Legislative Activity Report** (RLA-2019-08)
- Amended and passed by the second chamber on April 9, 2019

HB 390 HD1 SD2 amends **section 4** of Act 172, Session Laws of Hawaii 2017 to make permanent Act 172, Session Laws of Hawaii 2017, which:

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

HB 390 HD1 SD2 also amends **section 4** of Act 172, Session Laws of Hawaii 2017 as follows:

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 This Act shall take effect upon its approval ~~provided that on June 30, 2019, this Act shall be repealed and section 386-79, Hawaii Revised Statute, shall be reenacted in the form in which it read on the day before the effective date of this Act.~~

HB 912 HD1 SD1 was:

- Passed by the first chamber on March 1, 2019

- Included in NCCI's March 8, 2019 **Legislative Activity Report** (RLA-2019-08)
- Amended and passed by the second chamber on April 9, 2019

HB 912 HD1 SD1 adds a new section to the Hawaii Workers' Compensation Law to read:

§386- Payment by employer for compensable injuries.

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

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

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

(1) There is a reasonable disagreement; and

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

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

Iowa

SF 507 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 April 9, 2019

SF 507 adds a new subchapter to **section 85.61** of the Code of Iowa to read:

85.61 Definitions.

In this chapter and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

...

7. The words "personal injury arising out of and in the course of the employment" shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

...

c. Personal injuries due to idiopathic or unexplained falls from a level surface onto the same level surface do not arise out of and in the course of employment and are not compensable under this chapter.

...

Maryland

HB 795 was:

- Passed by the first chamber on March 29, 2019
- Included in NCCI's April 5, 2019 **Legislative Activity Report** (RLA-2019-12)
- Passed by the second chamber on April 8, 2019

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 62 was:

- Passed by the first chamber on March 18, 2019
- Included in NCCI's March 29, 2019 **Legislative Activity Report** (RLA-2019-11)
- Amended and passed by the second chamber on April 6, 2019

SB 62 adds a new uncodified section to the Annotated Code of Maryland as follows:

Uninsured Employers' Fund—Solvency—Study

(a) On or before October 1, 2019, the Director of the Uninsured Employers' Fund shall report to the Senate Finance Committee, the House Economic Matters Committee, and the Joint Committee on Workers' Compensation Benefit and Insurance Oversight, in accordance with § 2-1246 of the State Government Article, on:

(1) the solvency of the Uninsured Employers' Fund, including the Fund's solvency during the period from October 1, 2012, through August 31, 2019, both inclusive; and

(2) whether the General Assembly should adjust or provide authority to increase the assessment required under § 9-1007 of the Labor and Employment Article.

(b) The report required under subsection (a) of this section shall include:

(1) a discussion of payments for compensation to claimants made from the Uninsured Employers' Fund, from September 1, 2017, through August 31, 2019, both inclusive;

(2) a discussion of the Uninsured Employers' Fund's prospective liabilities, and

(3) a discussion of Bethlehem Steel Corporation hearing loss claims for compensation.

Montana

SB 160 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 April 8, 2019

SB 160 establishes the Firefighter Protection Act and amends **sections 39-71-105, 39-71-124, and 39-71-407** of the Montana Workers' Compensation Act as follows:

Section 1.

Presumptive occupational disease for firefighters—rebuttal—applicability—definitions.

(1)(a) A firefighter for whom coverage is required under the Workers' Compensation Act is presumed to have a claim for a presumptive occupational disease under the Workers' Compensation Act if the firefighter meets the requirements of [section 2] and is diagnosed with one or more of the diseases listed in subsection (2) within the period listed.

(b) Coverage under [section 2] and this section is optional for the employer of a firefighter for whom coverage under the Workers' Compensation Act is voluntary. An employer of a volunteer firefighter under 7-33-4109 or 7-33-4510 may elect as part of providing coverage under the Workers' Compensation Act to additionally obtain the presumptive occupational disease coverage, subject to the insurer agreeing to provide presumptive coverage.

(2) The following diseases are presumptive occupational diseases proximately caused by firefighting activities, provided that the evidence of the presumptive occupational disease becomes manifest after the number of years of the firefighter's employment as listed for each occupational disease and within 10 years of the last date on which the firefighter was engaged in firefighting activities for an employer:

(a) bladder cancer after 12 years;

(b) brain cancer of any type after 10 years;

(c) breast cancer after 5 years if the diagnosis occurs before the firefighter is 40 years old and is not known to be associated with a genetic predisposition to breast cancer;

(d) myocardial infarction after 10 years;

(e) colorectal cancer after 10 years;

(e) esophageal cancer after 10 years;

(f) kidney cancer after 15 years;

(g) leukemia after 5 years;

(h) mesothelioma or asbestosis after 10 years;

(i) multiple myeloma after 15 years;

(j) non-Hodgkin's lymphoma after 15 years; and

(k) lung cancer after 4 years

(3) for purposes of calculating the number of years of a firefighter's employment history under subsection (2), a firefighter's employment history after July 1, 2014, may be calculated.

(4) The beneficiaries of a firefighter who otherwise would be eligible for presumptive occupational disease benefits under this section but who dies prior to filing a claim, as provided in [section 2], are eligible for death benefits in the same manner as for a death from an injury, as provided in 39-71-407. The beneficiaries under this subsection (4) are similarly bound by the provisions of exclusive remedy as provided in 39-71-411 and subject to the filing requirements in 39-71-601.

(5) (a) Subject to the provisions of subsection (5)(c), an insurer is liable for the payment of compensation for presumptive occupational disease benefits under this chapter in the same manner as provided in 39-71-407, including objective medical findings of a disease listed in subsection (2) but excluding the requirement in 39-71-407(10) that the objective medical findings trace a relationship between the presumptive occupational disease and the claimant's job history. For myocardial infarction or lung cancer under subsection (2), the diseases must be the type that can reasonably be caused by firefighting activities.

(b) (i) An insurer under plan 1, 2, or 3 that disputes a presumptive occupational disease claim has the burden of proof in establishing by a preponderance of the evidence that the firefighter is not suffering from a compensable presumptive occupational disease. An insurer that disputes the claim may pay benefits under 39-71-608 or 39-71-615 and may pursue dispute mechanisms established in Title 39, chapter 71, part 24.

(ii) An insurer is not liable for the payment of workers' compensation benefits for presumptive occupational disease if the insurer establishes by a preponderance of the evidence that the firefighter was not exposed during the course and scope of the firefighter's duties to smoke or particles in a quantity sufficient to have reasonably caused the disease claimed.

(c) A total claim payment by an insurer under this section is limited to \$5 million for each claim.

(6) This section does not limit an insurer's ability to assert that the occupational disease was not caused by the firefighter's employment history as a firefighter.

(7) A firefighter or the firefighter's beneficiaries may pursue the dispute remedies as provided in Title 39, chapter 71, part 24, if an insurer disputes a claim.

(8) The use of the term "occupational disease" includes a presumptive occupational disease when used in the definitions in 39-71-116 for "claims examiner", "permanent partial disability", "primary medical services", and "treating physician" and when used in 39-71-107, 39-71-307, 39-71-412, 39-71-503, 39-71-601, 39-71-604, 39-71-606, 39-71-615, 39-71-703, 39-71-704, 39-71-713, 39-71-714, 39-71-717, 39-71-1011, 39-71-1036, 39-71-1041, 39-71-1042, 39-71-1101, 39-71-1110, 39-71-1504, 39-71-2311, 39-71-2312, 39-71-2313, 39-71-2316, and 39-71-4003.

(9) [Section 2] and this section:

(a) apply only to presumptive occupational diseases for firefighters; and

(b) do not apply to any other issue relating to workers' compensation and may not be used or cited as guidance in the administration of title 33 or 37.

(10) For the purposes of [section 2] and this section, the following definitions apply:

(a) "Firefighter" means an individual whose primary duties involve extinguishing or investigating fires, with at least 1 year of firefighting operations in Montana beginning on or after July 1, 2019, as:

(i) a firefighter defined in 19-13-104;

(ii) a volunteer firefighter defined in 7-33-4510, but only if the volunteer firefighter's employer has elected coverage under Title 39, chapter 71, with an insurer that allows an election and the employer has opted separately to include presumptive occupational disease coverage under [section 2] and this section; or

(iii) a volunteer described in 7-33-4109 for a firefighting entity that has elected coverage under Title 39, chapter 71, with an insurer that allows an election and that has opted separately to include presumptive occupational disease coverage.

(b) "Firefighting activities" means actions required of a firefighter that expose the firefighter to extreme heat or inhalation or physical exposure to chemical fumes, smoke, particles, or other toxic gases arising directly out of employment as a firefighter.

(c) "Presumptive occupational disease" means harm or damage from one or more of the diseases listed under subsection (2) that is established by objective medical findings and that is contracted in the course and scope of employment as a firefighter from either a single day or work shift or for more than a single day or work shift but that is not specific to an accident.

Section 2.

Conditions for claiming presumptive occupational disease.

(1) Except as provided in subsection (4), the following must be satisfied for the presumption in [section 1] to apply:

(a) the firefighter must timely file a claim for a presumptive occupational disease under Title 39, chapter 71, as soon as the firefighter knows or should have known that the firefighter's condition resulted from a presumptive occupational disease; and

(b) (i) the firefighter must have undergone, within 90 days of hiring, a medical examination that did not reveal objective medical evidence or a family history of the presumptive occupational disease for which the presumption under [section 1] is sought; and

(ii) the firefighter must have undergone subsequent periodic medical examinations at least once every 2 years.

(2) (a) Subsection (1)(b) does not require the employer of a firefighter to provide or pay for a medical examination, either at the time of hiring or during the subsequent term of employment.

(b) If the employer of a firefighter does not provide or pay for a medical examination under subsection (1)(b), the firefighter may satisfy the requirements of subsection (1)(b) by obtaining the medical examination at the firefighter's expense or at the expense of another party.

(3) To qualify for a presumptive occupational disease, a firefighter may not:

(a) be a regular user of tobacco products;

(b) have a history of regular tobacco use in the 10 years preceding the filing of the claim under subsection (1)(a); or

(c) have been exposed by a cohabitant who regularly and habitually used tobacco products within the home for a period of 10 or more years prior to the diagnosis.

(4) A firefighter who, prior to [the effective date of this act], did not receive a medical examination as frequently as the intervals set forth in subsection (1)(b) is not ineligible on that basis for a presumptive occupational disease claim under [section 1] and this section.

Section 3.

39-71-105. Declaration of public policy. For the purposes of interpreting and applying this chapter, the following is the public policy of this state:

...

(6) It is the intent of the legislature that:

(a) a stress ~~claims~~ claim, often referred to as a "mental-mental ~~claims~~ claim" and or a "mental-physical ~~claims~~ claim", are is not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system. However, it is also within the legislature's authority to recognize the public service provided by firefighters and to join with other states that have extended a presumptive occupational disease recognition to firefighters.

(b) for occupational disease or presumptive occupational disease claims, because of the nature of exposure, workers should not be required to provide notice to employers of the disease as required of injuries and that the requirements for filing of claims reflect consideration of when the worker knew or should have known that the worker's condition resulted from an occupational disease or a presumptive occupational disease. The legislature recognizes that occupational diseases in the workplace are caused by events occurring on more than a single day or work shift and that ~~it is within the legislature's~~ the legislature has the authority to define an occupational disease or a presumptive occupational disease and establish the causal connection to the workplace.

Section 4.

39-71-124. Applicability of Workers' Compensation Act—exceptions. Except as provided in 39-71-407, 39-71-601, and 39-71-603 and as specified in [section 1], this chapter applies to injuries and occupational diseases.

Section 5.

39-71-407. Liability of insurers—limitations.

...

(3) (a) ~~An~~ Subject to subsection (3)(c), an insurer is liable for an injury, as defined in 39-71-119, only if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury has occurred and aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(c) Objective medical findings are sufficient for a presumptive occupational disease as defined in [section 1] but may be overcome by a preponderance of the evidence.

...

(10) ~~An~~ Except for cases of presumptive occupational disease as provided in [sections 1 and 2], an employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

(11) (a) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 if the employee is diagnosed with a compensable occupational disease.

(b) The provisions of subsection (11)(a) apply to presumptive occupational disease if the employee is diagnosed and meets the conditions of [sections 1 and 2].

- (12) An insurer is liable for an occupational disease only if the occupational disease:
- (a) is established by objective medical findings; and
 - (b) arises out of or is contracted in the course and scope of employment. An occupational disease is considered to arise out of or be contracted in the course and scope of employment if the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease. For the purposes of this subsection (12), an occupational disease is not the same as a presumptive occupational disease.
- (13) When compensation is payable for an occupational disease or a presumptive occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.
- (14) When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:
- (a) the time that the occupational disease or presumptive occupational disease was first diagnosed by a health care provider; or
 - (b) the time that the employee knew or should have known that the condition was the result of an occupational disease or a presumptive occupational disease.

...

Section 6.

Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 and 2].

Section 7.

Contingent voidness. If a court finds any part of [this act] to be in violation of any clause of the U.S. or Montana Constitutions relating to workers' compensation claims or a court through any other action or doctrine in law or equity applies the presumption in [sections 1 and 2] to another class of occupation other than firefighters, then [this act] is void.

Section 8.

Effective date—applicability. [This act] is effective July 1, 2019, and applies to presumptive occupational diseases diagnosed on or after July 1, 2019.

New Hampshire

HB 342 was:

- Passed by the first chamber on January 31, 2019
- Included in NCCI's February 8, 2019 *Legislative Activity Report* (RLA-2019-04)
- Passed by the second chamber on April 11, 2019

HB 342 amends *section 400-A:37* of *Title XXXVII: Insurance* of the New Hampshire Statutes to read as follows:
400-A:37. Examinations.

...

IV-a. Privilege for and Confidentiality of Reports and Ancillary Information.

...

(e) In order to assist in the performance of the commissioner's duties, the commissioner:

...

(4) May disclose the content of an examination report, preliminary examination report or results, or any matter relating thereto relative to workers' compensation audits, to the department of labor, and all such information ~~disclosed and~~ or matter relating thereto in the possession or control of the department of labor shall be confidential by law and privileged, shall not be subject to disclosure under RSA 91-A, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. ~~The commissioner of the department of labor shall agree in writing to hold such information confidential and in a manner consistent with this subparagraph.~~

...

BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending April 12, 2019.

Florida

HB 301, in part, amends *section 440.381* of the Florida Workers' Compensation Law to read:
440.381 Application for coverage; reporting payroll; payroll audit procedures; penalties.—

...

(2) Submission of an application that contains false, misleading, or incomplete information provided with the purpose of avoiding or reducing the amount of premiums for workers' compensation coverage is a felony of the ~~third second~~ degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The application must contain a statement that the filing of an application

containing false, misleading, or incomplete information provided with the purpose of avoiding or reducing the amount of premiums for workers' compensation coverage is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The application must contain a sworn statement by the employer attesting to the accuracy of the information submitted and acknowledging the provisions of former s. 440.37(4). The application must contain a sworn statement by the agent attesting that the agent explained to the employer or officer the classification codes that are used for premium calculations. The sworn statements by the employer and the agent are not required to be notarized.

...

HB 429 amends the Florida Insurance Code related to insurance guaranty associations, in part, to:

- Clarify the method by which assessments are levied against insurers and collected by the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA), by providing that the Office of Insurance Regulation shall levy the uniform surcharge percentage on all policies of the same kind or line as the office considered in determining an insurer's assessment liability. This is along with an insurer using this method to fully recoup assessments from policyholders.
- Clarify that no insurer's direct written premium calculated for the purposes of determining its premium subject to surcharge will be reduced by any discount or credit for deductibles in any policy. The bill also clarifies that this does not reduce an insurer's direct written premium calculated for the purposes of determining the insurer's premium subject to surcharge for any premium adjustment on retrospectively rated policies.
- Provide the authority for FWCIGA to audit reports from insurers regarding payments made to FWCIGA and the amounts collected from policyholders. The bill provides that assessments paid by workers compensation insurers constitute advances of funds to FWCIGA, under certain circumstances, to allow for proper accounting treatment.
- Remove the word "net" from "net direct written premium" to use the more common workers compensation industry terminology of "direct written premium."
- Provide for other technical and structural changes and conform statutory cross-references as needed.

Illinois

HB 269 amends *sections 820 ILCS 305/4* and *820 ILCS 305/4a-5* of the Illinois Workers' Compensation Act to read:

820 ILCS 305/4

Sec. 4.

...

(a-1)

...

Any penalty under this subsection (a-1) must be imposed not later than one year after the expiration of the applicable limitation period specified in subsection (d) of Section 6 of this Act. Penalties imposed under this subsection (a-1) shall be deposited into the Illinois Workers' Compensation Commission Operations Fund, a special fund that is created in the State treasury. Subject to appropriation, moneys in the Fund shall be used solely for the operations of the Illinois Workers' Compensation Commission, the salaries and benefits of the Self-Insurers Advisory Board employees, the operating costs of the Self-Insurers Advisory Board, and by the Department of Insurance for the purposes authorized in subsection (c) of Section 25.5 of this Act.

...

(d) Whenever a Commissioner, with due process and after a hearing, determines an employer has knowingly failed to provide coverage as required by paragraph (a) of this Section, the failure shall be deemed an immediate serious danger to public health, safety, and welfare sufficient to justify service by the Commission of a work-stop order on such employer, requiring the cessation of all business operations of such employer at the place of employment or job site. If a business is declared to be extra hazardous, as defined in Section 3, a Commissioner may issue an emergency work-stop order on such an employer ex parte, prior to holding a hearing, requiring the cessation of all business operations of such employer at the place of employment or job site while awaiting the ruling of the Commission. Whenever a Commissioner issues an emergency work-stop order, the Commission shall issue a notice of emergency work-stop hearing to be posted at the employer's places of employment and job sites. ~~Whenever a panel of 3 Commissioners comprised of one member of the employing class, one member of the employee class, and one member not identified with either the employing or employee class, with due process and after a hearing, determines an employer has knowingly failed to provide coverage as required by paragraph (a) of this Section, the failure shall be deemed an immediate serious danger to public health, safety, and welfare sufficient to justify service by the Commission of a work-stop order on such employer, requiring the cessation of all business operations of such employer at the place of employment or job site.~~ Any law enforcement agency in the State shall, at the request of the Commission, render any assistance necessary to carry out the provisions of this Section, including, but not limited to, preventing any employee of such employer from remaining at a place of employment or job site after a work-stop order has taken effect. Any work-stop order shall be lifted upon proof of insurance as required by this Act. Any orders under this Section are appealable under Section 19(f) to the Circuit Court.

...

All investigative actions must be acted upon within 90 days of the issuance of the complaint. Employers who are subject to and who knowingly fail to comply with this Section shall not be entitled to the benefits of this Act during the period of noncompliance, but shall be liable in an action under any other applicable law of this State. In the action, such employer shall not avail himself or

herself of the defenses of assumption of risk or negligence or that the injury was due to a co-employee. In the action, proof of the injury shall constitute prima facie evidence of negligence on the part of such employer and the burden shall be on such employer to show freedom of negligence resulting in the injury. The employer shall not join any other defendant in any such civil action. Nothing in this amendatory Act of the 94th General Assembly shall affect the employee's rights under subdivision (a)3 of Section 1 of this Act. Any employer or carrier who makes payments under subdivision (a)3 of Section 1 of this Act shall have a right of reimbursement from the proceeds of any recovery under this Section.

...

An investigator with the Illinois Workers' Compensation Commission Insurance Compliance Division may issue a citation to any employer that is not in compliance with its obligation to have workers' compensation insurance under this Act. The amount of the fine shall be based on the period of time the employer was in non-compliance, but shall be no less than \$500, and shall not exceed ~~\$10,000~~ ~~\$2,500~~. An employer that has been issued a citation shall pay the fine to the Commission and provide to the Commission proof that it obtained the required workers' compensation insurance within 10 days after the citation was issued. This Section does not affect any other obligations this Act imposes on employers.

Upon a finding by the Commission, after reasonable notice and hearing, of the knowing and ~~willful~~ ~~willful~~ failure or refusal of an employer to comply with any of the provisions of paragraph (a) of this Section, the failure or refusal of an employer, service or adjustment company, or an insurance carrier to comply with any order of the Illinois Workers' Compensation Commission pursuant to paragraph (c) of this Section disqualifying him or her to operate as a self insurer and requiring him or her to insure his or her liability, or the knowing and willful failure of an employer to comply with a citation issued by an investigator with the Illinois Workers' Compensation Commission Insurance Compliance Division, the Commission may assess a civil penalty of up to \$500 per day for each day of such failure or refusal after the effective date of this amendatory Act of 1989. The minimum penalty under this Section shall be the sum of \$10,000. Each day of such failure or refusal shall constitute a separate offense. The Commission may assess the civil penalty personally and individually against the corporate officers and directors of a corporate employer, the partners of an employer partnership, and the members of an employer limited liability company, after a finding of a knowing and willful refusal or failure of each such named corporate officer, director, partner, or member to comply with this Section. The liability for the assessed penalty shall be against the named employer first, and if the named employer fails or refuses to pay the penalty to the Commission within 30 days after the final order of the Commission, then the named corporate officers, directors, partners, or members who have been found to have knowingly and willfully refused or failed to comply with this Section shall be liable for the unpaid penalty or any unpaid portion of the penalty. Upon investigation by the insurance non-compliance unit of the Commission, the Attorney General shall have the authority to prosecute all proceedings to enforce the civil and administrative provisions of this Section before the Commission. The Commission shall promulgate procedural rules for enforcing this Section. If an employer is found to be in non-compliance with any provisions of paragraph (a) of this Section more than once, all minimum penalties will double. Therefore, upon the failure or refusal of an employer, service or adjustment company, or insurance carrier to comply with any order of the Commission pursuant to paragraph (c) of this Section disqualifying him or her to operate as a self-insurer and requiring him or her to insure his or her liability, or the knowing and willful failure of an employer to comply with a citation issued by an investigator with the Illinois Workers' Compensation Commission Insurance Compliance Division, the Commission may assess a civil penalty of up to \$1,000 per day for each day of such failure or refusal after the effective date of this amendatory Act of the 101st General Assembly. The minimum penalty under this Section shall be the sum of \$20,000. In addition, employers with 2 or more violations of any provisions of paragraph (a) of this Section may not self-insure for one year or until all penalties are paid.

...

820 ILCS 305/4a-5

Sec. 4a-5. There is hereby created a Self-Insurers Security Fund. The State Treasurer shall be the ex-officio custodian of the Self-Insurers Security Fund. ~~Moneys~~ ~~Monies~~ in the Fund shall be deposited in a separate account in the same manner as are State Funds and any interest accruing thereon shall be added thereto every 6 months. It shall be subject to audit the same as State funds and accounts and shall be protected by the general bond given by the State Treasurer. The funds in the Self-Insurers Security Fund shall not be subject to appropriation and shall be made available for the purposes of compensating employees who are eligible to receive benefits from their employers pursuant to the provisions of the Workers' Compensation Act or Workers' Occupational Diseases Act, when, pursuant to this Section, the Board has determined that a private self-insurer has become an insolvent self-insurer and is unable to pay compensation benefits due to financial insolvency. ~~Moneys~~ ~~Monies~~ in the Fund may be used to compensate any type of injury or occupational disease which is compensable under either Act, and all claims for related administrative fees, operating costs of the Board, ~~attorney's~~ ~~attorneys~~ fees, and other costs reasonably incurred by the Board. At the discretion of the Chairman, moneys in the Self-Insurers Security Fund may also be used for paying the salaries and benefits of the Self-Insurers Advisory Board employees and the operating costs of the Board. Payment from the Self-Insurers Security Fund shall be made by the Comptroller only upon the authorization of the Chairman as evidenced by properly certified vouchers of the Commission, upon the direction of the Board.

HB 2173/SB 1377 add a new section and amend numerous sections of the Illinois Insurance Code related to the Illinois Insurance Guaranty Fund to:

- Provide that a “covered claim” does not include a claim for fines and penalties paid to government authorities
- Provide that the board of directors of the Illinois Insurance Guaranty Fund has the authority to assess to pay off a loan necessary to pay covered claims
- Provide that if the loan is projected to be outstanding for three years or more, the board of directors has the authority to increase the assessment to 3% of net direct written premiums for the previous year until the loan has been paid in full
- Make changes in provisions that specify conditions under which the Fund is bound by certain settlements, releases, compromises, waivers, and final judgments
- Provide that the Fund may also take legal action to recover from insurers and insureds in certain circumstances
- Provide that the Illinois Insurance Guaranty Fund has the absolute right through emergency equitable relief to obtain custody and control of certain claims information in possession of certain third party administrators, agents, attorneys, or other representatives of an insolvent insurer
- Provide that any person recovering under the Article and any insured whose liabilities are satisfied under the Article shall be deemed to have assigned the person’s or insured’s rights under the policy to the Fund, to the extent of their recovery or satisfaction obtained from the Fund’s payments
- Provide that the Illinois Insurance Guaranty Fund shall recover from the high net worth insured for all amounts paid on its behalf, all allocated claim adjusted expenses related to such claims, the Fund’s attorney fees, and all court costs in any action necessary to collect the full amount for the Fund’s reimbursement

Rhode Island

SB 90 establishes “The Healthy Workplace Act of 2019” which, in part, includes the following language:

28-52.1-9. Effect on other legal relationships.

(a) This chapter does not supersede any rights and obligations provided under collective bargaining laws and regulations.

(b) The remedies provided in this chapter shall be in addition to any remedies provided under any other law, and nothing in this chapter shall relieve any person from any liability, duty, penalty or punishment provided by any other law, except that if an employee receives workers’ compensation for medical costs for the same injury or illness pursuant to both this chapter and the workers’ compensation law, or compensation under both this chapter and that law in cash payments for the same period of time not working as a result of the compensable injury or illness or the unlawful employment practice, the payment of workers’ compensation shall be reimbursed from the compensation paid under this chapter.

Texas

SB 1063 amends numerous sections of the Texas Property and Casualty Insurance Guaranty Act to read:

Sec. 462.004. General Definitions. In this chapter:

...

(5) “Impaired insurer” means a member insurer that is subject to a final, nonappealable order of liquidation that includes a finding of insolvency issued by a court of competent jurisdiction in this state or in the insurer’s state of domicile ÷

~~(A) placed in:~~

~~(i) temporary or permanent receivership or liquidation under a court order, including a court order of another state, based on a finding of insolvency; or~~

~~(ii) conservatorship after the commissioner determines that the insurer is insolvent; and~~

~~(B) designated by the commissioner as an impaired insurer.~~

...

Sec. 462.055. Term; Vacancy.

...

(b) The remaining board members, by majority vote, shall fill a vacancy on the board for the unexpired term of a director who serves as an insurance industry board member, subject to the commissioner’s approval. The commissioner shall appoint a director to fill a vacancy on the board for the unexpired term of a director who serves as a public representative.

Sec. 462.059. Meeting by Conference Call.

(a) Notwithstanding Chapter 551, Government Code, the board may hold an open meeting by telephone conference call if immediate action is required and convening of a quorum of the board at a single location is not reasonable or practical. A meeting held by telephone conference call:

(1) must be audible to the public at the location specified in the notice described by Subsection (c); and

(2) must allow two-way audio communication during the entire meeting between the members of the board attending a meeting authorized by this section.

(a-1) If the two-way audio communication required under Subsection (a) is disrupted during a meeting so that a quorum of the board is no longer able to participate, the meeting may not continue until the two-way audio communication is reestablished.
(b) The meeting is subject to the notice requirements that apply to other meetings of the board of directors.
(c) The notice of the meeting must specify ~~as the location of the meeting~~ the location at which meetings of the board are usually held, and each part of the meeting that is required to be open to the public must be audible to the public at that location. The association must make an audio recording of the meeting. The recording of the open portion of the meeting must be posted publicly to the association's Internet website and must be tape recorded. The tape recording shall be made available to the public.

Sec. 462.207. Claims Not Covered: Amounts Due Certain Entities.

...
(b) An impaired insurer's insured is not liable, and the reinsurer, insurer, self-insurer, insurance pool, or underwriting association is not entitled to sue or continue a suit against the insured, for a subrogation recovery, reinsurance recovery, contribution, indemnification, or any other claim asserted directly or indirectly by a reinsurer, insurer, self-insurer, insurance pool, or underwriting association to the extent of the applicable liability limits of the insurance policy written and issued to the insured by the insolvent insurer.
(c) The association is entitled to recover the association's costs, expenses, and reasonable attorney's fees incurred in defending the association or an impaired insurer's insured against a claim brought in violation of this subsection by a reinsurer, insurer, self-insurer, insurance pool, or underwriting association, on that entity's own behalf or on behalf of the entity's insured, after the date on which the entity is provided notice by the association or otherwise of the provisions of this section applicable to the entity's suit.

Sec. 462.212. Net Worth Exclusion.

...
(d) In an instance described by Subsection (c), the association is entitled to assert a claim in the bankruptcy or receivership proceeding to recover the amount of any covered claim and costs of defense paid on behalf of the insured. A court shall award the association the association's costs, expenses, and reasonable attorney's fees incurred in seeking recovery under this section.
(e) The association may establish procedures for requesting financial information from an insured ~~or claimant~~ on a confidential basis for the purpose of applying sections concerning the net worth of insureds first-party and third-party claimants, subject to any information requested under this subsection being shared with any other association similar to the association and with the liquidator for the impaired insurer on the same confidential basis. If the insured ~~or claimant~~ refuses to provide the requested financial information, ~~the association requests an auditor's certification of that information, and the auditor's certification is available but not provided,~~ the association may deem the net worth of the insured ~~or claimant~~ to be in excess of \$50 million at the relevant time.
(f) In any lawsuit contesting the applicability of Section 462.308 or this section when the insured ~~or claimant~~ has declined to provide financial information requested by the association under the procedure provided in the plan of operation under Section 462.103, the insured ~~or claimant~~ bears the burden of proof concerning its net worth at the relevant time and shall pay. ~~If the insured or claimant fails to prove that its net worth at the relevant time was less than the applicable amount, the court shall award the association the association's its full costs, expenses, and reasonable attorney's fees incurred in attempting to obtain the insured's financial information in contesting the claim.~~

Sec. 462.303. Certain Determinations Not Binding.

...
(b) A judgment, settlement, or release described by Subsection (a) is not evidence of liability or of damages in connection with a claim brought against the association, an impaired insurer's insured, or another party under this chapter.
(c) The association is entitled to recover the association's costs, expenses, and reasonable attorney's fees incurred in contesting a claim based on a judgment, settlement, or release described by Subsection (a) on the association's behalf or on behalf of an impaired insurer's insured after the date on which the party asserting the claim is provided notice by the association or otherwise of the provisions of this section applicable to the judgment, settlement, or release.

Sec. 462.304. Servicing Facility.

(a) The association shall handle claims through:
(1) the association's employees or contract claims adjusters; or
(2) subject to the approval of the commissioner, ~~through one or more insurers or other persons designated, subject to the approval of the commissioner,~~ as a servicing facility under a servicing agreement or loss portfolio transfer agreement facilities.
...
(c) The association shall:
(1) reimburse a servicing facility for:
(A) obligations of the association paid by the facility; and

~~(B) expenses incurred by the facility in handling claims for the association. The association shall reimburse a servicing facility under this subsection in a manner that is consistent with the applicable servicing agreement or loss portfolio agreement ; and~~
~~(2) pay the other expenses of the association authorized by this chapter.~~

...

Sec. 462.307. Assignment of Rights.

...

(d) Except as provided by Section 462.308 or 462.212, the association does not have a cause of action against the impaired insurer's insured for money the association has paid, other than a cause of action that the impaired insurer would have had if the money had been paid by the impaired insurer.

...

(f) To the extent the association has a right to recover proceeds from the sale of salvage property related to a covered claim, the association's right to recover the proceeds may not be reduced in the amount of any pre-impairment costs, fees, or expenses related to the salvage property that are not part of a covered claim under Subchapter E. A person or entity in possession of salvage property subject to the association's right of recovery may not seek recovery from the association for any pre-impairment costs, fees, or expenses related to the salvage property that are not a covered claim under Subchapter E.

Sec. 462.308. Recovery from Certain Persons.

(a) The association is entitled to recover:

...

(2) the amount of a covered claim for workers' compensation insurance benefits and the costs of administration and defense of the claim paid under this chapter from an insured employer or any successor entity to the insured employer under state, federal, or international law whose net worth on December 31 of the year preceding the date the insurer becomes an impaired insurer exceeds \$50 million.

...

(d) A court shall award the association the association's costs, expenses, and reasonable attorney's fees incurred in seeking recovery under this section.

SB 1063 also includes the following language:

Except as provided by this section, the changes in law made by this Act apply only with respect to a property and casualty insurance company that is designated as an impaired insurer on or after the effective date of this Act. The law as it existed immediately before the effective date of this Act applies with respect to a property and casualty insurance company that is designated as an impaired insurer before the effective date of this Act, and that law is continued in effect for that purpose.

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.