



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 19, 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
- Included in NCCI's April 19, 2019 **Legislative Activity Report** (RLA-2019-14)
- Enacted on April 16, 2019, with a projected effective date of July 23, 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.

# Mississippi

**SB 2835** was:

- Passed by the first chamber on February 7, 2019
- Included in NCCI's February 15, 2019 **Legislative Activity Report** (RLA-2019-05)
- Amended and passed by the second chamber on March 13, 2019
- Included in NCCI's March 22, 2019 **Legislative Activity Report** (RLA-2019-10)
- Enacted on April 16, 2019, with an effective date of July 1, 2021

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

## **SECTION 1.**

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

## **SECTION 2.**

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

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

## **SECTION 3.**

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

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

- (i) There is metastasis, and surgery, radiotherapy or chemotherapy is medically necessary;
- (iii) There is a tumor of the prostate, provided that it is treated with radical prostatectomy or external beam therapy; or
- (iv) The first responder has terminal cancer, his or her life expectancy is twenty-four (24) months or less from the date of diagnosis, and will not benefit from, or has exhausted, curative therapy.

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

- (i) There is carcinoma in situ such that surgery, radiotherapy, or chemotherapy has been determined to be medically necessary;
- (ii) There are malignant tumors which are treated by endoscopic procedures alone; or
- (iii) There are malignant melanomas.

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

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

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

- (ii) For volunteer firefighters, a monthly benefit of One Thousand Five Hundred Dollars (\$1,500.00) of which the first payment shall be made six (6) months after the total disability and shall continue for thirty-six (36) consecutive monthly payments unless the first responder regains the ability to perform his or her duties as determined by reevaluation under subparagraph (iv) of this paragraph, at which time the payments shall cease the last day of the month of reevaluation;
- (iii) Such monthly benefit shall be subordinate to any other benefit actually paid to the first responder solely for such disability from any other source, not including private insurance purchased solely by the first responder;
- (iv) Any first responder receiving the monthly benefits may be required to have his or her condition reevaluated. In the event any such reevaluation reveals that such person has regained the ability to perform duties as a first responder, then his or her monthly benefits shall cease the last day of the month of reevaluation; and
- (v) In the event that there is a subsequent recurrence of a disability caused by a specified cancer, which precludes the first responder from serving as a first responder, he or she shall be entitled to receive any remaining monthly payments.
- (e) If a first responder who qualifies for benefits under this section dies, and he or she shall be considered to have been killed in the line of duty under Section 45-2-1, his or her beneficiary or beneficiaries shall be eligible for the line of duty death benefits as set forth in Section 45-2-1.
- (f) An eligible first responder who dies as a result of a compensable type of cancer, or circumstances arising out of the treatment of a compensable type of cancer, but does not submit sufficient proof of claim prior to the first responder's death, is entitled to receive benefits specified in paragraphs (a) and (b) of this subsection (1) and made available to the deceased first responder's beneficiary or beneficiaries.
- g) Any first responder who was simultaneously a member of more than one (1) fire or police department at the time of diagnosis shall not be entitled to receive benefits from or on behalf of more than one (1) fire or police department. The first responder's primary place of employment shall maintain coverage for the eligible first responder; and
- (h) An otherwise eligible first responder shall be precluded from the benefits listed under this section if he or she has filed for workers' compensation for the same diagnosis of cancer.

#### **SECTION 4.**

The costs of purchasing an insurance policy that provides for cancer coverage in compliance with this act, or the costs of providing such benefits through a self-funded system in compliance with this act, must be borne solely by the employer that employs the eligible first responder and may not be funded partially or wholly by individual first responders. In addition to any other purpose authorized, county governing authorities and municipal governing authorities may use proceeds from county and municipal taxes for the purposes of providing insurance in compliance with this act. The computation of premium amounts by an insurer for the coverage under this act shall be subject to generally accepted adjustments from insurance underwriting.

#### **SECTION 5.**

- (1) The state, municipality, county or fire protection district shall, no later than January 1, 2020, show proof of insurance coverage to the Commissioner of Insurance that meets the requirements of this act, or shall show satisfactory proof of the ability to pay such compensation to ensure adequate coverage for all eligible first responders. Such coverage shall remain in effect until a fire or police department no longer has any first responders who could qualify for these benefits.
- (2) The Commissioner of Insurance shall adopt such rules and regulations as are reasonable and necessary to implement the provisions of this act. Such regulations shall include the process by which a first responder files a claim for cancer and the process by which claimants can appeal a denial of benefits.
- (3) The Commissioner of Insurance shall adopt rules to establish firefighter cancer prevention best practices as it relates to personal protective equipment, decontamination, fire suppression, apparatus and fire stations.

#### **SECTION 6.**

##### **§ 71-3-9. Exclusiveness of liability.**

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

#### **SECTION 7.**

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

## 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
- Included in NCCI's April 19, 2019 *Legislative Activity Report* (RLA-2019-14)
- Enacted on April 18, 2019, with an effective date of July 1, 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;

(i) 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.

**BILLS PASSING SECOND CHAMBER**

The following workers compensation-related bills passed the second chamber within the one-week period ending April 19, 2019.

**Montana**

**HB 732** was:

- Passed by the first chamber on March 29, 2019
- Included in NCCI's April 5, 2019 **Legislative Activity Report** (RLA-2019-12)
- Amended and passed by the second chamber on April 16, 2019

**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 and that the first 2 hours, at a minimum, of the student's employment were devoted to safety instruction through a safety training program that is specific to the student's employment. 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].

**Section 7.**

**Termination.** [This Act] Terminates June 30, 2023.

**HB 757** was:

- Passed by the first chamber on April 1, 2019
- Included in NCCI's April 12, 2019 **Legislative Activity Report** (RLA-2019-13)
- Passed by the second chamber on April 16, 2019

**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.

## New Hampshire

**HB 285** was:

- Passed by the first chamber on February 14, 2019
- Included in NCCI's February 22, 2019 *Legislative Activity Report* (RLA-2019-06)
- Passed by the second chamber on April 18, 2019

**HB 285** amends *section 412:28. Filing and Approval of Rates and Rating Plans* of *Title XXXVII: Insurance* of the New Hampshire Statutes to read:

**412:28 Filing and Approval of Rates and Rating Plans.—**

...

V. A filing and any supporting information not considered proprietary pursuant to RSA 412:16, II shall be open to public inspection upon approval.

**HB 337** 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 18, 2019

**HB 337** amends *sections 400-A:15-e, 412:13, and 412:16* of *Title XXXVII: Insurance* of the New Hampshire Statutes, to read:

**400-A:15-e Consumer Services Program.—**

...

III...(c) Nothing in this section shall be construed to waive the confidential and privileged nature of all documents, materials, or other information in possession of the department pursuant to an investigation of a complaint or consumer inquiry, as provided in RSA 400-A:16.

...

**412:13. Competitive Market.—**

A competitive market is presumed to exist unless the commissioner, after hearing, determines that a reasonable degree of competition does not exist in the market and the commissioner issues a ruling to that effect. Such ruling shall expire no later than ~~one year~~ 2 years after issue unless the commissioner renews the ruling after hearings and a finding as to the continued lack of a reasonable degree of competition. In determining whether a reasonable degree of competition exists, the commissioner shall consider relevant tests of workable competition pertaining to market structure, market performance and market conduct and the practical opportunities available to consumers in the market to acquire pricing and other consumer information and to compare and obtain insurance from competing insurers as further described in RSA 412:14.

**412:16. Rate Filings.—**

...

II. Every insurer shall file with the commissioner every manual, predictive ~~models~~ model or telematics ~~models~~ model or other ~~models~~ model that ~~pertain~~ pertains to the formulation of rates and/or premiums, minimum premium, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use. Personal lines filings shall include underwriting rules used by insurers or a group of affiliated insurers to the extent necessary to determine the applicable rate and/or policy premium for an individual insured or applicant. An insurer may file its rates by either filing its final rates or by filing a multiplier and, if applicable, an expense constant adjustment to be applied to prospective loss costs that have been filed by an advisory organization on behalf of the insurer as permitted by RSA 412:23. Every such filing shall state the effective date, and shall indicate the character and extent of the coverage contemplated. Information contained in the underwriting rules that does not pertain to the formulation of rates and/or premiums shall be identified by the filer as proprietary and shall be kept confidential by the department and shall not be subject to the provisions of RSA 91-A.

...

## Oklahoma

**SB 274** 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 April 17, 2019

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

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

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

...

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

...

## BILLS PASSING FIRST CHAMBER

The following workers compensation-related bills passed the first chamber within the one-week period ending April 19, 2019.

### Connecticut

**SB 921** amends numerous sections of the Connecticut General Statutes related to advanced practice registered nurses (APRNs), in part, to allow:

- Certain APRNs to diagnose a firefighter with post-traumatic stress disorder after the firefighter witnesses the death of another firefighter in the line of duty, for purposes of workers compensation (current law already applies to licensed and board-certified mental health professionals). This provision applies only to an APRN certified as a psychiatric mental health provider by the American Nurses Credentialing Center.
- APRNs to treat injured employees involved in workers compensation cases by:
  - Specifically allowing the Workers' Compensation Commission chairman to add APRNs to the list of approved providers
  - Making related changes
- APRNs to conduct physical exams for municipal firefighters and police officers upon their entry to service, which may be used in future workers compensation claims involving cardiac emergencies.

### Florida

**HB 983** ratifies adopted rule 69L-3.009, F.A.C. that specifies the types of third-party injuries qualifying as grievous bodily harm of a nature that shocks the conscience, for the purposes of allowing wage replacement benefits for first responder post-traumatic stress disorder.

### Nevada

**AB 455** amends **section 616B.012** of the Nevada Revised Statutes to read:

**NRS 616B.012 Confidentiality and disclosure of information; penalty for disclosure or use of information; privileged communications.**

...

9. The provisions of this section do not prohibit the Administrator or the Division from ~~disclosing:~~

(a) Disclosing any nonproprietary information relating to an uninsured employer or proof of industrial insurance; or  
(b) Notifying an injured employee or the surviving spouse or dependent of an injured employee of benefits to which such persons may be entitled in addition to those provided pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS but only if:

- (1) The notification is solely for the purpose of informing the recipient of benefits that are available to the recipient; and
- (2) The content of the notification is limited to information concerning services which are offered by nonprofit entities.

### Texas

**HB 387** amends **section 408.025** of the Texas Workers' Compensation Act as follows:

**Sec. 408.025. Reports and Records Required from Health Care Providers.**

...

(a-1) A treating doctor may delegate to a physician assistant who is licensed to practice in this state under Chapter 204, Occupations Code, or an advanced practice registered nurse who is licensed to practice in this state under Chapter 301, Occupations Code, the authority to complete and sign a work status report regarding an injured employee's ability to return to work. The delegating treating doctor is responsible for the acts of the physician assistant or advanced practice registered nurse under this subsection.

...

**HB 1665** amends **section 406.145** of the Texas Workers' Compensation Act to read:

**Sec. 406.145. Joint Agreement.**

...

(f) If a subsequent hiring agreement is made to which the joint agreement does not apply, the hiring contractor and independent contractor shall notify in writing:

(1) the division and the hiring contractor's workers' compensation insurance carrier; and

(2) the division, on the division's request in writing.

...

**HB 1665** also includes the following language:

The change in law made by this Act applies only to a notification required to be provided on or after the effective date of this Act.

**Contact Information**

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

State	State Relations Executive	Phone Number
SC, TN	Amy Quinn	561-893-3812
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.