



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 May 10, 2019.

Georgia

SB 135 was:

- Passed by the first chamber on March 5, 2019
- Included in NCCI's March 15, 2019 **Legislative Activity Report** (RLA-2019-09)
- Passed by the second chamber on March 28, 2019
- Included in NCCI's April 5, 2019 **Legislative Activity Report** (RLA-2019-12)
- Enacted on May 7, 2019, with an effective date of July 1, 2019

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

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

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

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

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

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

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

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

- (1) ~~Attained~~ attained 20 years of service in the capacity of administrative law judge or deputy director; or

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

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

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

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

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

(a)

...

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

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

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

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

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

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

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

...

§ 34-9-261. Compensation for total disability

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

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

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

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

...

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

...

SB 135 also includes the following language:

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

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
- Included in NCCI's April 26, 2019 **Legislative Activity Report** (RLA-2019-15)
- Enacted on May 8, 2019, with an effective date of July 1, 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
- Included in NCCI's April 26, 2019 **Legislative Activity Report** (RLA-2019-15)
- Enacted on May 7, 2019, with an effective date of July 1, 2019, for **section 39-71-320**

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

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

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

...

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

...

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

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

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

...

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

...

HB 757 also includes the following language:

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

Oregon

HB 3003 A was:

- Passed by the first chamber on April 2, 2019
- Included in NCCI's April 12, 2019 **Legislative Activity Report** (RLA-2019-13)
- Passed by the second chamber on April 25, 2019
- Included in NCCI's May 3, 2019 **Legislative Activity Report** (RLA-2019-16)
- Enacted on May 6, 2019, with an effective date of January 1, 2020

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

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

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

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

(b) The director may adopt rules necessary to implement the provisions of this subsection.

...

BILLS PASSING SECOND CHAMBER

The following workers compensation-related bills passed the second chamber within the one-week period ending May 10, 2019.

Illinois

HB 2173 was:

- Passed by the first chamber on April 11, 2019
- Included in NCCI’s April 19, 2019 *Legislative Activity Report* (RLA-2019-14)
- Passed by the second chamber on May 9, 2019

HB 2173 adds a new section and amends 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

Note: **HB 2173** is identical to **SB 1377**.

Nevada

AB 455 was:

- Passed by the first chamber on April 19, 2019
- Included in NCCI’s April 26, 2019 *Legislative Activity Report* (RLA-2019-15)
- Passed by the second chamber on May 7, 2019

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.

New Hampshire

SB 59-FN was:

- Passed by the first chamber on February 14, 2019
- Included in NCCI's February 22, 2019 **Legislative Activity Report** (RLA-2019-06)
- Amended and passed by the second chamber on May 8, 2019

SB 59-FN amends **sections 281-A:2** and **281-A:17**, and adds new **sections 281-A:17-b** and **c** to the New Hampshire Workers' Compensation Law to read:

Sections 1 and 2.

281-A:2 Definitions.—

Any word or phrase defined in this section shall have the same meaning throughout RSA 281-A, unless the context clearly requires otherwise:

...

V-c. "Emergency response/public safety worker" means call, volunteer, or regular firefighters; law enforcement officers certified under RSA 106-L; certified county corrections officers; emergency communication dispatchers; and rescue or ambulance workers including ambulance service, emergency medical personnel, first responder service, and volunteer personnel.

...

XI. "Injury" or "personal injury" as used in and covered by this chapter means accidental injury or death arising out of and in the course of employment, or any occupational disease or resulting death arising out of and in the course of employment, including disability due to radioactive properties or substances or exposure to ionizing radiation. "Injury" or "personal injury" shall not include diseases or death resulting from stress without physical manifestation, except that, if an employee meets the definition of an "emergency response/public safety worker" under RSA 281-A:2, V-c, the terms "injury" or "personal injury" shall also include acute stress disorder and post-traumatic stress disorder. "Injury" or "personal injury" shall not include a mental injury if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or any similar action, taken in good faith by an employer. No compensation shall be allowed to an employee for injury proximately caused by the employee's willful intention to injure himself or injure another. Conditions of the aging process, including but not limited to heart and cardiovascular conditions, shall be compensable only if contributed to or aggravated or accelerated by the injury. Notwithstanding any law to the contrary, "injury" or "personal injury" shall not mean accidental injury, disease, or death resulting from participation in athletic/recreational activities, on or off premises, unless the employee reasonably expected, based on the employer's instruction or policy, that such participation was a condition of employment or was required for promotion, increased compensation, or continued employment.

...

Section 3.

281-A:17-b Commission to Study the Incidence of Post-traumatic Stress Disorder in First Responders Established.

I.(a) There is established the commission to study the incidence of post-traumatic stress disorder in first responders and whether such disorder should be covered under workers' compensation. The members of the commission shall be as follows:

(1) One member of the senate, appointed by the president of the senate.

(2) Three members of the house of representatives, one of whom shall be from the labor, industrial and rehabilitative services committee, one of whom shall be from the executive departments and administration committee, and one of whom shall be from the state-federal relations and veterans affairs committee, appointed by the speaker of the house of representatives.

(3) The labor commissioner, or designee.

(4) The commissioner of safety, or designee.

(5) The insurance commissioner, or designee.

(6) A representative of the New Hampshire Municipal Association, appointed by the association.

- (7) A representative of the New Hampshire Association of Counties, appointed by the association.
- (8) A representative of the National Alliance on Mental Illness New Hampshire, appointed by the alliance.
- (9) A fire chief, appointed by the New Hampshire Association of Fire Chiefs.
- (10) One member appointed by the New Hampshire Association of Chiefs of Police.
- (11) One member appointed by the New Hampshire Police Association.
- (12) A representative of the Professional Firefighters of New Hampshire, appointed by that organization.
- (13) A representative of the New Hampshire Association of Emergency Medical Technicians, appointed by the association.
- (14) A representative of the New Hampshire Public Risk Management Exchange, appointed by that organization.
- (15) An attorney, appointed by the New Hampshire Association for Justice.

(b) Legislative members of the commission shall receive mileage at the legislative rate when attending to the duties of the commission.

II.(a) The commission shall study:

- (1) The prevalence of post traumatic stress disorder (PTSD) among first responders.
- (2) The prevalence of PTSD, or factors contributing to PTSD, among first responders at the time of hiring.
- (3) The extent to which first responders' employment benefits provide health insurance coverage for treatment of PTSD.
- (4) The degree to which employers who hire first responders are capable of reassigning affected workers to less stressful positions that would allow employees to continue working while receiving mental health treatment.
- (5) The extent to which prior military service may contribute to the rate of PTSD among first responders.
- (6) The difficulty first responders currently have establishing that a PTSD diagnosis is causally related to employment.
- (7) The difficulty employers would have establishing that a pre-employment condition or experience caused PTSD, rather than a first responders' current employment.
- (8) The cost that creating a rebuttal presumption that PTSD was caused uncured during service in the line of duty would impose on public employers, private employers, and taxpayers, and funding solutions to mitigate such cost.
- (9) The causes of high suicide rates of emergency responders, including exposure to occupational stress and emotional trauma, medication, substance abuse, disciplinary action, interaction with criminal and civil court system, and any state policies that emergency responders believe increase stress or suicide risk.
- (10) Other issues the commission deems relevant to its study.

(b) The commission may solicit input from any person or entity the commission deems relevant to its study.

III. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the senate member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Nine members of the commission shall constitute a quorum.

IV. On or before November 1, 2019, the commission shall submit an interim report of its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library and shall submit a final report on or before November 1, 2020.

281-A:17-c Acute Stress Disorder and Post-Traumatic Stress Disorder; Presumption. Notwithstanding RSA 281-A:2, XI and XIII, RSA 218-A:16, and RSA 281-A:27, there shall be a prima facie presumption that acute stress disorder and post-traumatic stress disorder in an emergency responder, as defined in RSA 281-A:2, V-c are occupationally caused.

Section 6.

281-A:17 Firefighter and Heart, Lung, or Cancer Disease. –

...

II. Notwithstanding the provisions of RSA 281-A:2, XI and XIII, 16 and 27, there shall exist a prima facie presumption that cancer disease in a firefighter, whether a regular, call, volunteer, or retired member of a fire department, is occupationally ~~related~~ caused. In order to receive ~~this~~ occupational cancer ~~disability benefit~~ workers' compensation, the type of cancer involved must be a type which may be caused by exposure to heat, radiation, or a known carcinogen, as defined by the International Agency for Research on Cancer. However:

(a) A firefighter who has been a firefighter for 10 years shall have the benefit of this prima facie presumption as follows:

(1) If a fire department follows the medical examination as outlined by the National Fire Protection Association standard 1582, the firefighter shall provide this report as evidence that the firefighter was free of such disease at the beginning of his or her employment and shall guarantee that he or she has lived a tobacco free ~~life~~ lifestyle. The employer of a ~~call or volunteer~~ firefighter shall provide the required reasonable medical evidence to the workers' compensation carrier and to the firefighter to present as part of his or her claim.

(2) If the fire department does not follow the medical examination standard, the firefighter shall guarantee that he or she has lived a tobacco free ~~life~~ lifestyle and has been a firefighter for 10 years and shall be required to present after action reports filed after fire incidents which demonstrate exposure to the known carcinogens as part of the claim, but shall not have the benefit of the prima facie presumption.

(b) A retired firefighter who has been retired between 6 and 20 years who guarantees that he or she has lived a tobacco free life lifestyle and who is receiving a pension subject to RSA 100-A, shall be eligible for medical payments only under this section. If a new claim is being filed, the firefighter shall be responsible for filing applicable data and after action reports if no physical medical examination report can be provided. A retired firefighter who agrees to submit to any physical medical examination requested by the employing city, town, or precinct shall have the benefit of the prima facie presumption for a period of 20 years from the effective date of the firefighter's retirement, during which time the firefighter shall be eligible to have his or her medical expenses paid for this period.

(c) No active or retired firefighter shall receive the presumption benefit unless the employer voluntarily has in effect a policy that follows the fire standards and training commission curriculum requirement for best practices for use and cleaning of equipment.

(d) For active, regular firefighters whose employment began prior to January 1, 1997, a medical examination as outlined by the National Fire Protection Association standard 1582 may be reimbursed by the department of safety, division of fire standards and training and emergency medical services, and provided as evidence that the firefighter was free of such disease.

(e) For the purposes of this section, a person lives a "tobacco free lifestyle" if he or she has not, within the past 6 months, used any tobacco product, including cigarettes, cigars, chewing tobacco, snuff, or pipe tobacco 4 or more times in a week, except in the case of religious or ceremonial use of tobacco, such as by Alaska natives or Native Americans.

SB 59-FN also includes the following language:

Section 4.

Membership Continued. To the extent possible, the membership of the commission to study the incidence of post-traumatic stress disorder in first responders and whether such disorder shall be covered under workers' compensation established in section 3 of this act shall remain the same as the commission established in the former RSA 281-A:17-a.

Section 5.

Repeal. RSA 281-A:17-b, relative to the commission to study the incidence of post traumatic stress disorder in first responders and whether such disorder should be covered under workers' compensation, is repealed.

Texas

HB 1665 was:

- Passed by the first chamber on April 17, 2019
- Included in NCCI's April 26, 2019 **Legislative Activity Report** (RLA-2019-15)
- Passed by the second chamber on May 10, 2019

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.

Vermont

HB 527 was:

- Passed by the first chamber on March 22, 2019
- Included in NCCI's March 29, 2019 **Legislative Activity Report** (RLA-2019-11)
- Amended and passed by the second chamber on May 8, 2019

HB 527, in part, includes the following language:

Workers' Compensation Rate of Contribution

For fiscal year 2020, after consideration of the formula in 21 V.S.A. Section 711(b) and historical rate trends, the General Assembly determines that the rate of contribution for the direct calendar year premium for workers' compensation insurance shall remain at the rate of 1.4 percent. The contribution rate for self-insured workers' compensation losses and workers' compensation losses of corporations approved under 21 V.S.A. chapter 9 shall remain at one percent.

Louisiana

HB 285 adds new **section 23:1036.1** to the Louisiana Revised Statutes to read:

§ 1036.1. Reserve police officers and deputies; coverage

A. Any reserve police officer or reserve deputy who volunteers for a law enforcement agency, municipal or parish, and performs law enforcement activities and protective services and is injured in the line of duty may be entitled to medical benefits pursuant to R.S. 23:1203 if the municipality, parish, or public entity, in its own discretion and by using its own funds, elects to provide such coverage. Such benefits shall not be subject to a copayment, deductible, or any other method to shift the cost of compensable medical care to the injured volunteer reserve officer or deputy.

B. No law enforcement agency shall provide indemnity benefits for the volunteer reserve police officer or deputy.

C. No law enforcement agency shall be liable for benefits under this Section for injuries occurring within the course of, or arising out of, the volunteer reserve officer's or deputy's other employment.

D. For the purposes of this Section, the following terms have the meaning ascribed to them:

(1) "Volunteer reserve police officer" means an individual who is carried on the membership list of the municipal organization as an active participant in the normal functions of the law enforcement organization and who receives nominal or no remuneration for his services.

(2) "Volunteer reserve deputy" means an individual who is a part-time, non-salaried, fully-commissioned law enforcement officer who is a volunteer of the parish organization.

SB 88 amends **section 23:1203.1** of the Louisiana Revised Statutes to read:

§1203.1. Definitions; medical treatment schedule; medical advisory council

...

K. After the issuance of the decision by the medical director or associate medical director of the office, any party who disagrees with the decision, may then appeal by filing a "Disputed Claim for Compensation", which is LWC Form 1008, within thirty days of the date of the issuance of the decision. The decision may be overturned when it is shown, by clear and convincing evidence, the decision of the medical director or associate medical director was not in accordance with the provisions of this Section.

...

SB 107 adds new **sections 23:1036.1** and **33:2581.2** and amends **section 40:1374** of the Louisiana Revised Statutes to read:

§1036.1. Volunteer firefighters; coverage for post traumatic stress injury; presumption of compensability; rebuttal evidence

A. Any workers' compensation policy which provides coverage for a volunteer member of a fire company, pursuant to R.S. 23:1036, shall include coverage for post traumatic stress injury.

B. For purposes of this Section, the following definitions shall apply:

(1) "Post traumatic stress injury" means those injuries which are defined as "post traumatic stress disorder" by the most recently published edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association.

(2) "Psychiatrist" shall have the same meaning as it is defined pursuant to R.S. 23:1371.1.

(3) "Psychologist" shall have the same meaning as it is defined pursuant to R.S. 23:1371.1.

(4) "Volunteer member" shall have the same meaning as it is defined pursuant to R.S. 23:1036.

(5) "Volunteer service" means that service performed by a volunteer member, for one or more fire companies, who is entitled to workers' compensation benefits pursuant to R.S. 23:1036.

C.(1) Any volunteer member who is diagnosed by a psychiatrist or psychologist with post traumatic stress injury, either during his period of voluntary service or thereafter, shall be presumed, prima facie, to have a disease or infirmity connected with his volunteer service.

(2) Once diagnosed with post traumatic stress injury as provided for in Paragraph (1) of this Subsection, the volunteer member affected or his survivors shall be entitled to all rights and benefits as granted by state laws to one suffering an occupational disease and is entitled as service connected in the line of duty, regardless of whether he is engaged in volunteer service at the time of diagnosis. Such disease or infirmity shall be presumed, prima facie, to have developed during the period of volunteer service and shall be presumed, prima facie, to have been caused by or to have resulted from the nature of the work performed.

D.(1) The presumptions in Subsection C of this Section may be rebutted only by clear and convincing evidence.

(2) In determining whether the evidence presented has successfully rebutted the presumptions in Subsection C, the trier of facts may consider any of the following factors:

(a) The length of time between the beginning and the end of the period of volunteer service and the date of the diagnosis.

(b) Whether there has been any trauma or traumatic events between the beginning and the end of the period of volunteer service as a volunteer member and the date of the diagnosis.

(c) Whether the individual diagnosed had been previously diagnosed with post traumatic stress injury prior to his volunteer service.

§2581.2. Post Traumatic Stress Injury; presumption of compensability; rebuttal evidence

A. Except as provided in Subsection E of this Section, any benefit payable to any emergency medical services personnel, any employee of a police department, or any fire employee for temporary and permanent disability when the employee suffers an

injury or disease arising out of and in the course and scope of their employment, shall include coverage for post traumatic stress injury.

B. For purposes of this Section, the following definitions shall apply:

(1) "Emergency medical services personnel" shall have the same meaning as it is defined pursuant to R.S. 40:1075.3 so long as the emergency medical services personnel is employed pursuant to this Chapter.

(2) "Employee of a police department" shall have the same meaning as it is defined pursuant to R.S. 33:2211.

(3) "Fire employee" means any person employed in the fire department of any municipality, parish, or fire protection district that maintains full-time regularly paid fire department employment, regardless of the specific duties of such person within the fire department. "Fire employee" also includes employees of nonprofit corporations under contract with a fire protection district or other political subdivision to provide fire protection services, including operators of the fire-alarm system when such operators are members of the regularly constituted fire department.

(4) "Post traumatic stress injury" means those injuries which are defined as "post traumatic stress disorder" by the most recently published edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association.

(5) "Psychiatrist" shall have the same meaning as it is defined pursuant to R.S. 23:1371.1.

(6) "Psychologist" shall have the same meaning as it is defined pursuant to R.S. 23:1371.1.

C. Except as provided in Subsection E of this Section:

(1) Any emergency medical services personnel, any employee of a police department, any fire employee, or any volunteer fireman who is diagnosed by a psychiatrist or psychologist with post traumatic stress injury, either during employment in the classified service in the state of Louisiana pursuant to this Chapter or thereafter, shall be presumed, prima facie, to have a disease or infirmity connected with his employment.

(2) Once diagnosed with post traumatic stress injury as provided for in Paragraph (1) of this Subsection, the employee affected or his survivors shall be entitled to all rights and benefits as granted by state law to one suffering an occupational disease and who is entitled as service connected in the line of duty, regardless of whether the employee is employed at the time of diagnosis. Such disease or infirmity shall be presumed, prima facie, to have developed during employment and shall be presumed, prima facie, to have been caused by or to have resulted from the nature of the work performed.

D. Except as provided in Subsection E of this Section:

(1) The presumptions in Subsection C of this Section may be rebutted only by clear and convincing evidence.

(2) In determining whether the evidence presented has successfully rebutted the presumptions in Subsection C, the trier of facts may consider any of the following factors:

(a) The length of time between the beginning and the end of the period of employment and the date of the diagnosis.

(b) Whether there has been any trauma or traumatic events between the beginning and the end of the period of employment as an employee and the date of the diagnosis.

(c) Whether the individual diagnosed had been previously diagnosed with post traumatic stress injury prior to his employment in the classified service in the state of Louisiana.

E. (1) Nothing in this Section shall modify the qualifications necessary to establish eligibility to receive benefits or the calculation of benefits to be paid under any Louisiana public pension or retirement system, plan, or fund.

(2) In case of a conflict between any provision of Title 11, including any provision in Subpart E of Part II of Chapter 4 of Title 11, and any provision of this Section, the provision of Title 11 shall control.

§1374. ~~Worker's~~ Workers' compensation law; employees deemed within; coverage for post traumatic stress injury; presumption of compensability; rebuttal evidence

A. Every employee of the division of state police, except the head thereof, shall be considered an employee of the state within the meaning of the ~~worker's~~ workers' compensation law of this state and entitled to the benefits of all the provisions of that law applicable to state employees.

B. Any workers' compensation policy which provides coverage for an employee of the division of state police, pursuant to this section, shall include coverage for post traumatic stress injury.

C. For purposes of this Section, the following definitions shall apply:

(1) "Post traumatic stress injury" means those injuries which are defined as "post traumatic stress disorder" by the most recently published edition of the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association.

(2) "Psychiatrist" shall have the same meaning as it is defined pursuant to R.S. 23:1371.1.

(3) "Psychologist" shall have the same meaning as it is defined pursuant to R.S. 23:1371.1.

D.(1) Any employee of the division of state police who is diagnosed by a psychiatrist or psychologist with post traumatic stress injury, either during employment in the classified service in the state of Louisiana pursuant to this Chapter or thereafter, shall be presumed, prima facie, to have a disease or infirmity connected with his employment for purposes of workers' compensation benefits.

(2) Once diagnosed with post traumatic stress injury as provided for in Paragraph (1) of this Subsection, the employee affected or his survivors shall be entitled to all rights and benefits as granted by state workers' compensation law to one suffering an occupational disease and is entitled as service connected in the line of duty, regardless of whether the employee is employed at

the time of diagnosis. Such disease or infirmity shall be presumed, prima facie, to have developed during employment and shall be presumed, prima facie, to have been caused by or to have resulted from the nature of the work performed.

E.(1) The presumptions in Subsection D of this Section may be rebutted only by clear and convincing evidence.

(2) In determining whether the evidence presented has successfully rebutted the presumptions in Subsection D, the trier of facts may consider any of the following factors:

(a) The length of time between the beginning and the end of the period of employment and the date of the diagnosis.

(b) Whether there has been any trauma or traumatic events between the beginning and the end of the period of employment as an employee and the date of the diagnosis.

(c) Whether the individual diagnosed had been previously diagnosed with post traumatic stress injury prior to his employment in the classified service in the state of Louisiana.

F.(1) Nothing in this Section shall modify the qualifications necessary to establish eligibility to receive benefits or the calculation of benefits to be paid under any Louisiana public pension or retirement system, plan, or fund.

(2) In case of a conflict between any provision of Title 11, including any provision in Subpart E of Part II of Chapter 4 of Title 11, and any provision of this Section, the provision of Title 11 shall control.

Oregon

HB 3022 amends *sections 656.245, 656.266, and 656.704* of the Oregon Workers' Compensation Law to read:

Section 1.

656.245 Medical services to be provided; services by providers not members of managed care organizations; authorizing temporary disability compensation and making finding of impairment for disability rating purposes by certain providers; review of disputed claims for medical services; rules.

...

(c) In addition to other benefits allowed under this chapter, after an industrial accident or occupational disease has been determined to be compensable, diagnostic services are compensable if the diagnostic services are reasonable and necessary to identify the nature or extent of a medical condition that may be related to the industrial accident or occupational disease. Surgery and surgical procedures are compensable diagnostic services only if other diagnostic services are inadequate to identify the nature and extent of the effects of an industrial accident or occupational exposure in a manner sufficient to establish a treatment plan. For purposes of this paragraph, a diagnostic injection is not surgery or a surgical procedure.

~~(d)~~ (d) Notwithstanding any other provision of this chapter, medical services after the worker's condition is medically stationary are not compensable except for the following:

...

~~(e)~~ (e) When the medically stationary date in a disabling claim is established by the insurer or self-insured employer and is not based on the findings of the attending physician, the insurer or self-insured employer is responsible for reimbursement to affected medical service providers for otherwise compensable services rendered until the insurer or self-insured employer provides written notice to the attending physician of the worker's medically stationary status.

~~(f)~~ (f) Except for services provided under a managed care contract, out-of-pocket expense reimbursement to receive care from the attending physician or nurse practitioner authorized to provide compensable medical services under this section shall not exceed the amount required to seek care from an appropriate nurse practitioner or attending physician of the same specialty who is in a medical community geographically closer to the worker's home. For the purposes of this paragraph, all physicians and nurse practitioners within a metropolitan area are considered to be part of the same medical community.

...

Section 2.

656.266 Burden of proving compensability and nature and extent of disability.

...

(3) For denials issued under ORS 656.262 (6)(c) or (7)(b), the employer bears the burden of proof to establish that the otherwise compensable condition and any other objective medical findings materially caused by the industrial accident are no longer the major contributing cause of the need for treatment and disability of the combined condition.

Section 3.

656.704 Actions and orders regarding matters concerning claim and matters other than matters concerning claim; authority of director and board; administrative and judicial review; rules.

...

(3)...(b) The respective authority of the board and the director to resolve medical service disputes shall be determined according to the following principles:

...

(B) Any dispute that requires a determination of whether medical services are excessive, inappropriate, ineffectual or in violation of the rules regarding the performance of medical services, or a determination of whether medical services for an accepted condition qualify as compensable medical services among those listed in ORS 656.245 ~~(1)(c)~~ (1)(d), is not a matter concerning a claim.

...

HB 3022 also includes the following language:

Section 4.

(1) Except as provided in subsection (2) of this section, the amendments to ORS 656.245, 656.266 and 656.704 by sections 1 to 3 of this 2019 Act apply to all claims or causes of action that exist or that arise on or after the effective date of this 2019 Act, regardless of the date of injury or the date the claim is presented.

(2) The amendments to ORS 656.266 by section 2 of this 2019 Act apply to denials that are issued after the effective date of this 2019 Act.

(3) This 2019 Act is retroactive unless a specific provision of this 2019 Act indicates otherwise.

Section 5.

This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.

Texas

HB 2143 amends **section 504.019** of the Texas Labor Code to read:

Sec. 504.019. Coverage for Post-Traumatic Stress Disorder for Certain First Responders.

...

(b) Post-traumatic stress disorder suffered by a first responder is a compensable injury under this subtitle only if it is based on a diagnosis that:

(1) the disorder is caused by one or more events ~~an event~~ occurring in the course and scope of the first responder's employment; and

(2) the preponderance of the evidence indicates that the event or events were ~~was~~ a substantial contributing factor of the disorder.

(c) For purposes of this subtitle, the date of injury for post-traumatic stress disorder suffered by a first responder is the date on which the first responder first knew or should have known that the disorder may be related to the first responder's employment.

HB 2143 also includes the following language:

The change in law made by this Act applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date of this Act. A claim based on a compensable injury that occurs before that date is governed by the law as it existed on the date the compensable injury occurred, and the former law is continued in effect for that purpose.

HB 2503 amends **section 408.183** of the Texas Labor Code to read:

Sec. 408.183. Duration of Death Benefits.

...

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by commissioner rule.

(b-1) Notwithstanding Subsection (b), an eligible spouse who remarried is eligible for death benefits for life if the employee was a first responder, as defined by Section 504.055, or an individual described by Section 615.003(1), Government Code, or Section 501.001(5)(F), who suffered death in the course and scope of employment or while providing services as a volunteer. This subsection applies regardless of the date on which the death of the first responder or other individual occurred.

...

HB 2503 also includes the following language:

The change in law made by this Act to Section 408.183(b-1), Labor Code, applies only to an eligible spouse who remarries on or after the effective date of this Act. An eligible spouse who remarried before that date is governed by the law as it existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SB 2551 amends various sections and adds **section 504.074** to the Texas Statutes to read:

Section 1.

Sec. 607.055. Cancer.

(a) A firefighter or emergency medical technician who suffers from cancer resulting in death or total or partial disability is presumed to have developed the cancer during the course and scope of employment as a firefighter or emergency medical technician if:

(1) the firefighter or emergency medical technician:

(A) regularly responded on the scene to calls involving fires or fire fighting; or

(B) regularly responded to an event involving the documented release of radiation or a known or suspected carcinogen while the

person was employed as a firefighter or emergency medical technician; and
(2) the cancer is known to be associated with fire fighting or exposure to heat, smoke, radiation, or a known or suspected carcinogen, as described by Subsection (b).

(b) This section applies only to:

(1) cancer that originates at the stomach, colon, rectum, skin, prostate, testis, or brain;

(2) non-Hodgkin's lymphoma;

(3) multiple myeloma;

(4) malignant melanoma; and

(5) renal cell carcinoma a type of cancer that may be caused by exposure to heat, smoke, radiation, or a known or suspected carcinogen as determined by the International Agency for Research on Cancer.

Section 2.

Sec. 409.021. Initiation of Benefits; Insurance Carrier's Refusal; Administrative Violation.

...

(a-3) An insurance carrier is not required to comply with Subsection (a) if the claim seeks to recover benefits under Subchapter B, Chapter 607, Government Code, and, not later than the 15th day after the date on which the insurance carrier received written notice of the injury, the insurance carrier has provided the employee with a notice that describes the evidence the carrier reasonably believes is necessary to complete its investigation of the compensability of the injury. The commissioner shall adopt rules as necessary to implement this subsection.

...

Section 3.

Sec. 409.022. Refusal to Pay Benefits; Notice; Administrative Violation.

...

(d-1) An insurance carrier has not committed an administrative violation and has reasonable grounds for a refusal to pay benefits if the carrier has sent notice to the employee as required by Subsection (d) or Section 409.021(a-3).

Section 4.

Sec. 415.021. Assessment of Administrative Penalties.

(c-2) In determining whether to assess any sanctions, an administrative penalty, or another remedy authorized by this subtitle, the commissioner shall consider whether:

(1) the employee has cooperated with the insurance carrier's investigation of the claim; and

(2) the employee has timely authorized access to the applicable medical records before the insurance carrier's deadline:

(A) to begin payment of benefits; or

(B) to notify the division and the employee of its refusal to pay benefits.

...

Section 5.

Sec. 504.053. Election.

...

(e) Nothing in this chapter waives sovereign immunity or creates a new cause of action, except that a political subdivision that self-insures either individually or collectively is liable for:

(1) sanctions, administrative penalties, and other remedies authorized under Chapter 415;

(2) attorney's fees as provided by Section 408.221(c); and

(3) attorney's fees as provided by Section 417.003.

Section 6.

Sec. 504.074. Self-Insurance Account for Certain Death Benefits.

(a) A pool or a political subdivision that self-insures may establish an account for the payment of death benefits for a compensable injury to a firefighter or emergency medical technician described by Section 607.055, Government Code.

(b) An account established under this section may accumulate assets in an amount that the pool or political subdivision, in its sole discretion, determines is necessary in order to pay death benefits described by Subsection (a). The establishment of an account under this section or the amount of assets accumulated in the account does not affect the liability of a pool or political subdivision for the payment of death benefits.

(c) Chapter 2256, Government Code, does not apply to the investment of assets in an account established under this section. A pool or political subdivision investing or reinvesting the assets of an account shall exercise the judgment and care, under the circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, considering the probable income to be derived and the probable safety of capital. A determination of whether the pool or

political subdivision exercised prudence in making an investment decision shall be made by considering the investment of all assets of the account rather than by considering the prudence of a single investment.

SB 2551 also includes the following language:

Section 7.

Section 607.055, Government Code, as amended by this Act, applies only to a claim for workers' compensation benefits filed on or after the effective date of this Act. A claim filed before that date is governed by the law as it existed on the date the claim was filed, and the former law is continued in effect for that purpose.

Section 8.

The commissioner of workers' compensation shall adopt the rules required by Section 409.021(a-3), Labor Code, as added by this Act, as soon as practicable after the effective date of this Act.

Section 9.

(a) Section 504.053(e)(1), Labor Code, as added by this Act, applies only to an administrative violation that occurs on or after the effective date of this Act. An administrative violation that occurs before the effective date of this Act is governed by the law applicable to the violation immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 504.053(e)(2), Labor Code, as added by this Act, applies only to a claim for workers' compensation benefits filed on or after the effective date of this Act. A claim filed before the effective date of this Act is governed by the law in effect on the date the claim was filed, and the former 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
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IL, MO, OK	Carla Townsend	561-893-3819
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DC, MD, VA, WV	David Benedict	804-380-3005
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This report is informational and is not intended to provide an interpretation of state and federal legislation.