

## NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

### Model Act on Workers' Compensation Coverage for Volunteer Firefighters (with Drafting Note)

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*Adopted by the NCOIL Executive Committee on November 24, 2013, and by the Workers' Compensation Insurance Committee on November 21, 2013. Sponsored for discussion by Rep. Bill Botzow (VT)*

#### **Section 1. Purpose**

The purpose of this Act is to establish a state definition of "public employment" that affords eligibility for workers' compensation insurance benefits when a volunteer firefighter performs firefighter-related duties that are not directly emergency response; mandates reporting of rosters and hours; and requires use of updated minimums for annual payroll.

#### **Section 2. Short Title**

This Act shall be known as the "*Model Act on Workers' Compensation Coverage for Volunteer Firefighters*."

#### **Section 3. Definition of Public Employment\***

"Public employment" includes the following:

- A. municipal workers, including volunteer firefighters while acting in any capacity under the direction and control of the fire department
- B. members of any regularly organized private volunteer fire department while acting in any capacity under the direction and control of the fire department

*Drafting Note: The placement of the definition of "volunteer firefighter" will differ depending on the state law.*

#### **Section 4. Reporting of Rosters/Hours**

- A. The State Fire Marshal shall create a process to receive a roster of volunteer firefighter personnel on an annual basis. The roster must be submitted by the designated time, from each volunteer fire district in the state.
- B. The roster shall include individual names and corresponding individual "total hours worked" for each volunteer firefighter.
- C. "Total hours worked" means the total number of hours of each volunteer firefighter while acting in any capacity under the direction and control of the fire department.
- D. Rosters collected by the State Fire Marshal shall be certified upon receipt and shall be made available to insurance carriers licensed to write workers compensation programs in this state or their designees upon request.

#### **Section 5. Review of Minimum Payroll Basis**

Notwithstanding any other provision of law, after review of losses and premium for volunteer firefighters in the state, every five years the Commissioner of Insurance shall prepare a regulation

that will establish the minimum annual payroll per volunteer firefighter for the purpose of setting workers' compensation rates for the departments.

**Section 6. Enforcement**

The *[insert applicable state agency]* shall have enforcement authority as provided under *[insert applicable statute]*.

**Section 7. Effective Date**

This Act shall take effect *[insert months]* after enactment.

*\* Based on Vermont S. 106, signed by Governor Peter Shumlin on May 16, 2012.*

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**DRAFTING NOTE & APPENDICES**

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**DRAFTING NOTE:**

*A state may wish to identify a funding source for volunteer firefighter workers' compensation insurance. Approaches that states have employed or considered include:*

- A. *Private market mechanisms*
  - 1. *Private insurers participate in an assigned risk pool that provides volunteer firefighter workers' compensation coverage. (Vermont)*
  
- B. *State-based mechanisms*
  - 1. *Volunteer fire departments may obtain workers' compensation insurance for volunteer firefighters through a group insurance pool administered by a state's non-profit workers' compensation insurance provider, and the state contributes \$55 per firefighter per year to help defray premium costs, up to an annual state maximum for such expenditures. (Oklahoma: see Appendix 1, pages 1 to 2)*
  
- C. *Subsidies*
  - 1. *A \$5 million premium subsidy fund, housed within a state auditor's office, helps to defray expected increases in premium costs for volunteer fire departments. (West Virginia: see Appendix 2, pages 3 to 4)*
  
- D. *Surcharges*
  - 1. *Coverage is purchased with a fee that each political subdivision pays based on a fixed-dollar value per \_\_\_\_ number of people served in a district. (North Dakota)*
  
  - 2. *A state imposes a two percent tax on fire insurance premiums, which the state fire marshal uses to buy a single policy that covers all volunteer firefighters in the state, among other purposes. (Louisiana: see Appendix 3, pages 5 to 7)*
  
- E. *Tax levies*
  - 1. *Each county governing body would establish a special revenue fund, financed with a new county tax levy, to reimburse volunteer firefighter departments for their workers' compensation insurance premium costs. (Montana SB 54: see Appendix 4, pages 8 to 9)*

## APPENDIX 1 STATE-BASED MECHANISM

### **Oklahoma**

§85-132a. Workers' compensation insurance – Volunteer firefighters.

- A. 1. Volunteer fire departments organized pursuant to state law may obtain workers' compensation insurance for volunteer firefighters through the Volunteer Firefighter Group Insurance Pool pursuant to requirements established by CompSource Oklahoma which shall administer the Pool. For the premium set by CompSource Oklahoma, the state shall provide Fifty-five Dollars (\$55.00) per firefighter per year. Except as otherwise provided by subsection D of this section, the total amount paid by the state shall not exceed Three Hundred Twenty Thousand Three Hundred Thirty-eight Dollars (\$320,338.00) per year or so much thereof as may be necessary to fund the Volunteer Firefighter Group Insurance Pool.
2. CompSource Oklahoma shall collect the premium from state agencies, public trusts and other instrumentalities of the state. Any funds received by CompSource Oklahoma from any state agency, public trust, or other instrumentality for purposes of workers' compensation insurance pursuant to this section shall be deposited to the credit of the Volunteer Firefighter Group Insurance Pool. CompSource Oklahoma shall collect premiums, pay claims, and provide for excess insurance as needed.
- B. CompSource Oklahoma shall report, annually, to the Governor, the Speaker of the Oklahoma House of Representatives, and the President Pro Tempore of the State Senate the number of enrollees in the Volunteer Firefighter Group Insurance Pool, and the amount of any anticipated surplus or deficiency of the Pool; and shall also provide to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the State Senate sixty (60) days advance notice of any proposed change in rates for the Volunteer Firefighter Group Insurance Pool.
- C. The amount of claims paid, claim expenses, underwriting losses, loss ratio, or any other financial aspect of the Volunteer Firefighter Group Insurance Pool shall not be considered when determining or considering bids for the amount of any premiums, rates, or expenses owed by, or any discounts, rebates, dividends, or other financial benefits owed to any other policyholder of CompSource Oklahoma.
- D. Except as otherwise provided by law, any increase in the state payment rate for volunteer firefighters under the Volunteer Firefighter Group Insurance Pool shall not exceed five percent (5%) per annum. Any proposed change in rates for the Volunteer Firefighter Group Insurance Pool must be approved by the Board of Managers of CompSource Oklahoma with notice provided pursuant to subsection B of this section. CompSource Oklahoma shall not increase premiums for the Volunteer Firefighter Group Insurance Pool more than once per annum.
- E. For purposes of this section, the term volunteer fire departments includes those volunteer fire departments which have authorized voluntary or uncompensated workers rendering services as firefighters and are created by statute pursuant to Section 592 of Title 18 of the Oklahoma Statutes, Sections 29-201 through 29-205 of Title 11 of the Oklahoma Statutes, and those defined by Section 351 of Title 19 of the Oklahoma Statutes.

## APPENDIX 2 SUBSIDIES

### **West Virginia**

§12-4-14a. Workers' Compensation Subsidy for Volunteer Fire Departments; creation of program; Auditor to administer.

(a) For the purposes of this section:

- (1) "Fiscal year" means the fiscal year of the state.
- (2) "Individual base year premium" means the workers' compensation insurance premium that became due and payable by a volunteer fire department after June 30, 2010 but before July 1, 2011.
- (3) "Individual premium" means the workers' compensation premium due and payable by a volunteer fire department in each twelve month period beginning on or after July 1, 2011.
- (4) "Total base year premium" means the aggregate workers' compensation insurance premium due and payable by all volunteer fire departments as determined by the Insurance Commissioner after June 30, 2010 but before July 1, 2011.
- (5) "Total premium" means the aggregate workers' compensation insurance premium due and payable by all volunteer fire departments in each twelve month period beginning on or after July 1, 2011.

(b) In recognition of the burden of increasing workers' compensation insurance premiums on volunteer fire departments, the Legislature has determined that additional funding assistance should be made available to eligible departments to pay a portion of those premium increases beginning with invoices due and payable on or after July 1, 2011.

(c) There is hereby established a special program which shall be known as the "Volunteer Fire Department Workers' Compensation Subsidy Program." The program shall be administered by the State Auditor from moneys that may be appropriated and designated for the program by the Legislature.

(d) The State Auditor shall administer the distribution of moneys appropriated for Volunteer Fire Department Workers' Compensation Subsidy Program to volunteer fire departments to help defray workers' compensation insurance premium increases.

(1) Volunteer fire departments shall request supplemental funds by submitting to the Auditor the following information:

(A) The previous fiscal year's workers' compensation premium invoices with paid receipts;

(B) The current fiscal year's workers' compensation premium invoices showing the amount due and due date and any applicable paid receipts; and

(C) Any other information the Auditor deems necessary for administering the subsidy on forms and schedules as the Auditor directs. The Auditor is authorized to set up an electronic filing system at his or her discretion for filing of the aforementioned information.

(2) After determining that there is a premium increase and the amount of the premium increase for the volunteer fire department requesting the subsidy, the Auditor

shall make disbursements in the manner set forth in subsection (e) of this section subject to the following requirements:

(A) The volunteer fire department must be in good standing with the State Fire Marshal;

(B) The volunteer fire department must be registered with the Auditor's Office in a form and manner prescribed by the Auditor prior to being eligible for consideration of any subsidy, which registration must be completed no fewer than thirty days prior to the due date of the workers' compensation premium;

(C) The volunteer fire department must agree that the subsidy for its workers' compensation insurance premium increase will be paid directly to its insurance carrier by the Auditor and that it will timely pay the balance of the premium due; and

(D) Should a volunteer fire department fail to pay the balance of its workers' compensation insurance premium after a disbursement by the auditor and that insurance policy is subsequently cancelled, the premium paid by the Auditor shall be returned directly to him or her. If the Auditor does not receive a reimbursement for a cancelled policy, he or she shall seek reimbursement for the subsidy portion of the insurance premium from the State Treasurer when the treasurer makes the next quarterly payment to the volunteer fire department pursuant to sections thirty-three and fourteen-d, article three, chapter thirty-three of this code.

(e) Beginning with the fiscal year that starts July 1, 2011, and continuing in each fiscal year thereafter, after the Auditor has verified that a volunteer fire department is eligible for a subsidy pursuant to this section, he or she shall pay on behalf of a volunteer fire department its subsidy, which is calculated by:

(1) Dividing the total amount of premium subsidy allocated by the Legislature to the Volunteer Fire Department Workers' Compensation Subsidy Program by the total premium minus the total base year premium, which calculation produces the "total shortfall multiplier"; and

(2) Multiplying the total shortfall multiplier determined in subdivision (1) of this subsection by the individual premium less the individual base year premium.

(3) In no event shall a volunteer fire department receive a workers' compensation premium subsidy greater than one hundred percent of its premium increase.

(f) For fiscal years after July 1, 2011, the Auditor shall consult with the Insurance Commissioner to determine the total amount of workers' compensation premium due by volunteer fire departments for any subsequent fiscal year. The Auditor may determine payment dates based upon information reasonably available for such a determination.

(g) The Auditor may promulgate emergency rules and may propose for promulgation legislative rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, as are necessary to provide for implementation and enforcement of the provisions of this section.

(h) The volunteer fire departments' workers' compensation premium subsidy program shall undergo a review to assess its effectiveness after three years of operation. The Auditor shall submit a report to the Joint Committee on Government and Finance not later than February 1, 2015, and provide details of the program operation including funds distributed and departments taking advantage of the subsidy.

### APPENDIX 3 SURCHARGES

#### **Louisiana**

##### §347. Disposition of tax money

A. Monies collected under R.S. 22:342 through 349, after being first credited to the Bond Security and Redemption Fund in accordance with Article VII, Section 9(B) of the Constitution of Louisiana, shall be credited to a special fund hereby established in the state treasury and known as the "Two Percent Fire Insurance Fund" hereinafter the "fund". Monies in the fund shall be available in amounts appropriated annually by the legislature for the following purposes in the following order of priority:

- (1)(a) For the state fire marshal, an amount necessary to satisfy the requirements of R.S. 40:1593, relative to the purchase of group insurance for volunteer firefighters.
- (b) For the state fire marshal, an amount necessary to satisfy the requirements of R.S. 23:1036, relative to the purchase of workers' compensation insurance for volunteer firefighters.
- (2)(a) For the Fire and Emergency Training Institute at Louisiana State University at Baton Rouge for allocation to the Pine Country Education Center in the parish of Webster, the sum of seventy thousand dollars per year, which shall be transferred without imposition of administrative fee or cost, to be used to develop and operate a firefighter training center operated in accordance with the standards and requirements of the Fire and Emergency Training Institute at Louisiana State University at Baton Rouge.
- (b) For the Fire and Emergency Training Institute at Louisiana State University at Baton Rouge for allocation to Delgado Community College, the sum of seventy thousand dollars per year, which shall be transferred without imposition of administrative fee or cost, to be used to develop and operate a firefighter training center operated in accordance with the standards and requirements of the Fire and Emergency Training Institute at Louisiana State University at Baton Rouge.
- (3) For the Fire and Emergency Training Institute at Louisiana State University at Baton Rouge, the sum of seventy thousand dollars per year for support of the firefighter training program.
- (4) For distribution to each parish governing authority in accordance with rules and regulations established by the state treasurer based upon the formula provided for herein:
  - (a) Except in Orleans Parish, the state treasurer shall pay over to the treasurer of each governing authority of the parish described in R.S. 22:343 the full amount of money due as determined by the state treasurer. These funds shall be allocated, distributed, and paid to each parish on the basis of a determination of the established population category of each parish as shown by the latest federal census or as determined by the Louisiana State University and Agricultural and Mechanical College Agriculture Center, Department of Agricultural Economics and Agribusiness, under the latest federal-state cooperative program for local population estimates. Such determination shall be submitted by the Louisiana State University and Agricultural and Mechanical College Agriculture Center, Department of Agricultural Economics and Agribusiness, to the state treasurer annually not later than January fifteenth of each calendar year. Any parish

governing authority which is aggrieved by such determination may file a petition for administrative review with the state treasurer not later than March fifteenth of each calendar year. The determination so submitted shall have no effect on the distribution for the fiscal year in which it is made, but shall be utilized for purposes of this Subpart for distribution during the next ensuing fiscal year as follows:

- (i) Those regularly paid fire departments of an incorporated municipality or fire and waterworks district in any unincorporated municipality or active volunteer fire departments having a population within its geographical area of one to two thousand five hundred shall receive seven hundred fifty dollars per annum.
  - (ii) Those regularly paid fire departments of an incorporated municipality or fire and waterworks district in any unincorporated municipality or active volunteer fire departments having a population of two thousand five hundred one to five thousand shall receive one thousand dollars per annum.
  - (iii) Those regularly paid fire departments of an incorporated municipality or fire and waterworks district in any unincorporated municipality or active volunteer fire departments having a population of five thousand one or more shall receive one thousand two hundred fifty dollars per annum.
- (b) Additional funds shall be distributed to each parish based on the following population formula:
- (i) Where the population is twenty-four thousand or less, the parish shall receive thirty-four cents for each inhabitant.
  - (ii) Where the population is twenty-four thousand one to fifty-five thousand inclusive, the parish shall receive thirty-seven cents per inhabitant.
  - (iii) Where the population is fifty-five thousand one to one hundred thousand inclusive, the parish shall receive forty cents per inhabitant.
  - (iv) Where the population is one hundred thousand one to two hundred fifty thousand inclusive, the parish shall receive forty-four cents per inhabitant.
  - (v) Where the population is two hundred fifty thousand one to four hundred twenty-five thousand inclusive, the parish shall receive forty-seven cents per inhabitant.
  - (vi) Where the population is over four hundred twenty-five thousand, the parish shall receive fifty cents per inhabitant.
- (c) Any balance which remains after making the distributions required in Subparagraph (b) of this Paragraph shall be allocated on an equal per capita basis until all of the available funds are utilized.
- (d) If the total amount of monies available for distribution pursuant to Subparagraph (b) of this Paragraph is less than the one hundred percent required to fully implement such formula, the amount distributed shall be prorated equally among the formula categories by the state treasurer prior to distribution to each parish governing authority.

- B. These funds shall be allocated, distributed, and paid by each parish governing authority to each regularly constituted fire department of the municipality or district, or active volunteer fire department certified by the parish governing authority, based on the population within the area serviced by said regularly constituted fire department of the municipality or district, or active volunteer fire department. In order to determine the amount of the funds which shall be paid to each fire department, district, or municipality, from the parish governing authority, the following formula shall be applied:
- (1) Total population serviced by all certified fire units in the parish divided into the total monies received by the parish from this tax equals the per capita available for distribution to certified local fire units.
  - (2) Total population serviced by each certified local fire unit in the parish multiplied by the per capita available as determined by Paragraph (1) of this Subsection equals the funds due each certified local fire unit in the parish.
- C. The distribution of the proceeds from the premium tax shall in no way be considered as a basis for reduction of any additional parish funds currently remitted to local fire units for the purpose of fire protection.
- D. (1) All money received under the provisions of R.S. 22:342 through 349 by the treasurer of the governing authority of the parish shall, within thirty days from the time it is received, be paid over by the treasurer to the fiscal representative of the regularly constituted fire department of the municipality or district or active volunteer fire department, as the case may be. If any of these funds are not so distributed either by mutual consent or without consent of the regularly paid fire department of the municipality or district or active volunteer fire department certified by the parish governing authority, such funds shall be invested in an interest-bearing account and any accrued interest on the investment of funds shall be credited and distributed per capita to the regularly paid fire department of the municipality or district or active volunteer fire department, as provided by this Section.
- (2) Such money shall be used only for the purpose of rendering more efficient and efficacious the regularly paid fire department of the municipality or district or active volunteer fire department, as the case may be, in such manner as the governing body shall direct.
- E. In Orleans Parish the state treasurer shall pay over to the secretary-treasurer of the board of trustees of the Firefighter's Pension and Relief Fund of the city of New Orleans all monies due shall be used only for the purpose of rendering more efficient and efficacious the pension system of the fire department of the city of New Orleans in such manner as the governing body of said pension fund shall direct as provided by law.

## APPENDIX 4 TAX LEVIES

### **Montana**

SENATE BILL NO. 54 (as introduced 12-12-2012)

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

#### **NEW SECTION. Section 1. Workers' compensation for volunteer firefighters -- definitions.**

(1) As of July 1, 2014, an employer shall provide workers' compensation coverage as provided in Title 39, chapter 71, to any volunteer firefighter who is listed on a roster of service.

(2) An employer may purchase workers' compensation coverage from any entity authorized to provide workers' compensation coverage under plan No. 1, 2, or 3 as provided in Title 39, chapter 71.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), an employer shall by the first Tuesday in September of each year certify to the county governing body the dollar amount of workers' compensation premiums paid or expected to be paid for the employer's volunteer firefighters' annual policy period.

(b) (i) By September 3, 2013, an employer not exempted under [section 3(6)] shall provide the county governing body with an estimate of the dollar amount anticipated as necessary to provide annual workers' compensation coverage, starting no later than July 1, 2014, for volunteer firefighters as provided in this section.

(ii) An employer that has provided volunteer firefighters with workers' compensation coverage with funding subject to the limitations in 15-10-420 may choose to provide coverage through the permissive levy allowed in [section 3] and, if that choice is made, shall base the estimated dollar amount under subsection (3)(b)(i) on actual coverage costs.

(c) An employer exempted under [section 3(6)] is not subject to the reporting requirements in this subsection (3) unless the employer requests funding under the permissive levy provided for in [section 3].

(4) The county governing body shall reimburse employers the actual costs as certified in subsection (3) for the workers' compensation coverage for volunteer firefighters from the fund established in [section 2].

(5) An employer shall file a roster of service with the clerk and recorder in the county in which the employer is located and update the roster of service monthly if necessary to report changes in the number of volunteers on the roster of service. The clerk and recorder shall file the original and replace it with updates whenever necessary.

#### **NEW SECTION. Section 2. Fund for volunteer firefighters' workers' compensation.**

(1) Each county governing body shall establish a special revenue fund known as the volunteer firefighters' workers' compensation fund.

(2) Levies imposed pursuant to [section 3] must be placed in the fund.

(3) Expenditures from the fund may be made only to provide reimbursements to employers, as defined in [section 1], for workers' compensation premiums required by [section 1].

(4) Money in the fund must be invested as provided in 7-6-202. Interest and income from the investment of money in the fund must be credited to the fund.

**NEW SECTION. Section 3. County tax levy to pay volunteer firefighters' workers' compensation coverage.**

- (1) Subject to subsection (6), the county governing body shall levy an annual property tax in the amount necessary to:
- (a) fund premiums for workers' compensation for volunteer firefighters as provided in [section 1]; and
  - (b) establish a reserve in accordance with 7-6-4034(2)(a).

.....

- (6) Property located within the boundaries of any incorporated city or town that on or after July 1, 2014, provides workers' compensation coverage to employees as defined in 39-71-118 is not subject to the levy provided for in this section.

**NEW SECTION. Section 4. Public hearing requirement.** Each year prior to implementing a levy as provided in [section 3] and after giving notice of a hearing as provided in 7-1-2121, the county governing body shall hold a public hearing regarding implementation of the levy.