

Representative John E. Swallow proposes to substitute the following bill:

**WORKERS COMPENSATION STATUTE OF
LIMITATIONS AND BURDEN OF PROOF**

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: John E. Swallow

AN ACT RELATING TO LABOR; ADDRESSING TIME LIMITS ON WORKERS
COMPENSATION CLAIMS; ADDRESSING ORDER TO SHOW CAUSE; AND MAKING
TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

34A-2-417, as renumbered and amended by Chapter 375, Laws of Utah 1997

34A-3-109, as renumbered and amended by Chapter 375, Laws of Utah 1997

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-2-417** is amended to read:

34A-2-417. Claims and benefits -- Time limits for filing -- Burden of proof.

(1) Except with respect to prosthetic devices, in nonpermanent total disability cases an employee's medical benefit entitlement ceases if for a period of three consecutive years the employee does not:

(a) incur medical expenses reasonably related to the industrial accident; and

(b) submit the medical expenses incurred to the employee's employer or insurance carrier for payment.

(2) (a) A claim [~~for compensation for temporary total disability benefits, temporary partial disability benefits, permanent partial disability benefits, or permanent total disability benefits~~] described in Subsection (2)(b) is barred, unless the employee:

(i) files an application for hearing [~~is filed~~] with the Division of Adjudication [~~within~~] no

26 later than six years [after] from the date of the accident[-]; and

27 (ii) (A) by no later than eight years from the date of the accident, is able to meet the
28 employee's burden of proving that the employee is due the compensation claimed under this
29 chapter for:

30 (I) temporary total disability benefits; or

31 (II) temporary partial disability benefits; or

32 (B) by no later than 12 years from the date of the accident, is able to meet the employee's
33 burden of proving that the employee is due the compensation claimed under this chapter for:

34 (I) permanent total disability benefits; or

35 (II) permanent partial disability benefits.

36 (b) Subsection (2)(a) applies to a claim for compensation for:

37 (i) temporary total disability benefits;

38 (ii) temporary partial disability benefits;

39 (iii) permanent partial disability benefits; or

40 (iv) permanent total disability benefits.

41 (c) The commission may enter an order awarding or denying an employee's claim for
42 compensation under this chapter within a reasonable time period beyond the time period specified
43 in Subsection (2)(a)(ii)(A) or (B) from the date of the accident, if:

44 (i) the employee complies with Subsections (2)(a)(i) and (ii); and

45 (ii) at the end of the time period specified in Subsection (2)(a)(ii)(A) or (B):

46 (A) (I) the employee is fully cooperating in a commission approved reemployment plan;

47 and

48 (II) the results of that commission approved reemployment plan are not known; or

49 (B) the employee is actively adjudicating issues of compensability before the commission.

50 (3) A claim for death benefits is barred unless an application for hearing is filed within one
51 year of the date of death of the employee.

52 (4) After an employee files an application for hearing within six years after the date of the
53 accident, the Division of Adjudication, on its own motion or on the motion of the employee's
54 employer or insurance carrier, may enter an order to show cause why the employee's claim should
55 not be dismissed with prejudice because the employee has failed to meet the employee's burden
56 of proof to establish an entitlement to compensation claimed under this chapter.

57 Section 2. Section **34A-3-109** is amended to read:

58 **34A-3-109. Limitations -- Rights barred if not filed within limits -- Burden of proof.**

59 (1) The limitation of rights regarding medical benefits provided in Subsection
60 34A-2-417(1) does not apply to compensable occupational diseases under the terms of this chapter.

61 (2) (a) A claim [for compensation for temporary total disability benefits, temporary partial
62 disability benefits, permanent partial disability benefits, or permanent total disability benefits]
63 described in Subsection (2)(b) is barred, unless the employee:

64 (i) files an application for hearing [is filed] with the Division of Adjudication [within] no
65 later than six years [after] from the date the employee's cause of action arose[-]; and

66 (ii) (A) by no later than eight years from the date the employee's cause of action arose, is
67 able to meet the employee's burden of proving that the employee is due the compensation claimed
68 under this chapter for:

69 (I) temporary total disability benefits; or

70 (II) temporary partial disability benefits; or

71 (B) by no later than 12 years from the date of the accident, is able to meet the employee's
72 burden of proving that the employee is due the compensation claimed under this chapter for:

73 (I) permanent total disability benefits; or

74 (II) permanent partial disability benefits.

75 (b) Subsection (2)(a) applies to a claim for compensation for:

76 (i) temporary total disability benefits;

77 (ii) temporary partial disability benefits;

78 (iii) permanent partial disability benefits; or

79 (iv) permanent total disability benefits.

80 (c) The commission may enter an order awarding or denying an employee's claim for
81 compensation under this chapter within a reasonable time period beyond the time period specified
82 in Subsection (2)(a)(ii)(A) or (B) from the date the employee's cause of action arose, if:

83 (i) the employee complies with Subsections (2)(a)(i) and (ii); and

84 (ii) at the end of the time period specified in Subsection (2)(a)(ii)(A) or (B):

85 (A) (I) the employee is fully cooperating in a commission approved reemployment plan;

86 and

87 (II) the results of that commission approved reemployment plan are not known; or

88 (B) the employee is actively adjudicating issues of compensability before the commission.

89 (3) (a) ~~[A]~~ Subject to Subsection (3)(b), a claim for death benefits is barred unless an
90 application for hearing is filed within one year of the date the deceased employee's dependents
91 knew, or in the exercise of reasonable diligence should have known, that the employee's death was
92 caused by an occupational disease. [~~But in no case shall the~~]

93 (b) A dependents' claim for death benefits may not be actionable more than six years after
94 the employee's cause of action arises.

95 (4) After an employee files an application for hearing within six years after the date the
96 cause of action arose, the Division of Adjudication, on its own motion or on the motion of the
97 employee's employer or insurance carrier, may enter an order to show cause why the employee's
98 claim should not be dismissed with prejudice because the employee has failed to meet the
99 employee's burden of proof to establish an entitlement to compensation claimed under this chapter.