

Senator John L. Valentine 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 FILING WORKERS
COMPENSATION CLAIMS; ADDRESSING ORDERS TO SHOW CAUSE; AND MAKING
TECHNICAL CHANGES.

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

AMENDS:

34A-2-410, as renumbered and amended by Chapter 375, Laws of Utah 1997

34A-2-411, as renumbered and amended by Chapter 375, Laws of Utah 1997

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-2-410** is amended to read:

34A-2-410. Temporary disability -- Amount of payments -- State average weekly wage defined.

(1) (a) In case of temporary disability, so long as the disability is total, the employee shall receive 66-2/3% of that employee's average weekly wages at the time of the injury but:

(i) not more than a maximum of 100% of the state average weekly wage at the time of the injury per week; and

(ii) not less than a minimum of \$45 per week plus \$5 for a dependent spouse and \$5 for each dependent child under the age of 18 years, up to a maximum of four dependent children, not to exceed the average weekly wage of the employee at the time of the injury, but not to exceed

26 100% of the state average weekly wage at the time of the injury per week.

27 (b) In no case shall the compensation benefits exceed 312 weeks at the rate of 100% of the
28 state average weekly wage at the time of the injury over a period of [eight] 12 years from the date
29 of the injury.

30 (2) In the event a light duty medical release is obtained prior to the employee reaching a
31 fixed state of recovery, and when no light duty employment is available to the employee from the
32 employer, temporary disability benefits shall continue to be paid.

33 (3) The "state average weekly wage" as referred to in this chapter and Chapter 3, Utah
34 Occupational Disease Act, shall be determined by the commission as follows:

35 (a) On or before June 1 of each year, the total wages reported on contribution reports to
36 the Division of Workforce Information and Payment Services for the preceding calendar year shall
37 be divided by the average monthly number of insured workers determined by dividing the total
38 insured workers reported for the preceding year by 12.

39 (b) The average annual wage obtained under Subsection (3)(a) shall be divided by 52.

40 (c) The average weekly wage determined under Subsection (3)(b) is rounded to the nearest
41 dollar.

42 (4) The state average weekly wage determined under Subsection (3) shall be used as the
43 basis for computing the maximum compensation rate for:

44 (a) injuries or disabilities arising from occupational disease that occurred during the
45 twelve-month period commencing July 1 following the June 1 determination; and

46 (b) any death resulting from the injuries or disabilities arising from occupational disease.
47 Section 2. Section **34A-2-411** is amended to read:

48 **34A-2-411. Temporary partial disability -- Amount of payments.**

49 (1) If the injury causes temporary partial disability for work, the employee shall receive
50 weekly compensation equal to:

51 (a) 66-2/3% of the difference between the employee's average weekly wages before the
52 accident and the weekly wages the employee is able to earn after the accident, but not more than
53 100% of the state average weekly wage at the time of injury; plus

54 (b) \$5 for a dependent spouse and \$5 for each dependent child under the age of 18 years,
55 up to a maximum of four such dependent children, but only up to a total weekly compensation that
56 does not exceed 100% of the state average weekly wage at the time of injury.

57 (2) The commission may order an award for temporary partial disability for work at any
58 time prior to [eight] 12 years after the date of the injury to an employee:

59 (a) whose physical condition resulting from the injury is not finally healed and fixed
60 [eight] 12 years after the date of injury; and

61 (b) who files an application for hearing under Section 34A-2-417.

62 (3) The duration of weekly payments may not exceed 312 weeks nor continue more than
63 [eight] 12 years after the date of the injury. Payments shall terminate when the disability ends or
64 the injured employee dies.

65 Section 3. Section **34A-2-417** is amended to read:

66 **34A-2-417. Claims and benefits -- Time limits for filing -- Burden of proof.**

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

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

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

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

76 (i) files an application for hearing [is filed] with the Division of Adjudication [within] no
77 later than six years [after] from the date of the accident[-]; and

78 (ii) by no later than 12 years from the date of the accident, is able to meet the employee's
79 burden of proving that the employee is due the compensation claimed under this chapter.

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

81 (i) temporary total disability benefits;

82 (ii) temporary partial disability benefits;

83 (iii) permanent partial disability benefits; or

84 (iv) permanent total disability benefits.

85 (c) The commission may enter an order awarding or denying an employee's claim for
86 compensation under this chapter within a reasonable time period beyond 12 years from the date
87 of the accident, if:

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

89 (ii) 12 years from the date of the accident;

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

91 and

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

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

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

96 (4) (a) (i) Subject to Subsections (2)(c) and (4)(b), after an employee files an application
97 for hearing within six years from the date of the accident, the Division of Adjudication may enter
98 an order to show cause why the employee's claim should not be dismissed because the employee
99 has failed to meet the employee's burden of proof to establish an entitlement to compensation
100 claimed in the application for hearing.

101 (ii) The order described in Subsection (4)(a)(i) may be entered on the motion of the:

102 (A) Division of Adjudication;

103 (B) employee's employer; or

104 (C) employer's insurance carrier.

105 (b) Under Subsection (4)(a), the Division of Adjudication may dismiss a claim:

106 (i) without prejudice; or

107 (ii) with prejudice only if:

108 (A) the Division of Adjudication adjudicates the merits of the employee's entitlement to
109 the compensation claimed in the application for hearing; or

110 (B) the employee fails to comply with Subsection (2)(a)(ii).

111 (c) If a claim is dismissed without prejudice under Subsection (4)(b), the employee is
112 subject to the time limits under Subsection (2)(a) to claim compensation under this chapter.

113 Section 4. Section **34A-3-109** is amended to read:

114 **34A-3-109. Limitations -- Rights barred if not filed within limits -- Burden of proof.**

115 (1) The limitation of rights regarding medical benefits provided in Subsection
116 34A-2-417(1) does not apply to compensable occupational diseases under the terms of this chapter.

117 (2) (a) A claim [~~for compensation for temporary total disability benefits, temporary partial~~
118 ~~disability benefits, permanent partial disability benefits, or permanent total disability benefits]~~

119 described in Subsection (2)(b) is barred, unless the employee:

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

122 (ii) by no later than 12 years from the date on which the employee's cause of action arose,
123 is able to meet the employee's burden of proving that the employee is due the compensation
124 claimed under this chapter.

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

126 (i) temporary total disability benefits;

127 (ii) temporary partial disability benefits;

128 (iii) permanent partial disability benefits; or

129 (iv) permanent total disability benefits.

130 (c) The commission may enter an order awarding or denying an employee's claim for
131 compensation under this chapter within a reasonable time period beyond 12 years from the date
132 on which the employee's cause of action arose, if:

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

134 (ii) 12 years from the date on which the employee's cause of action arose:

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

136 and

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

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

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

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

145 (4) (a) (i) Subject to Subsections (2)(c) and (4)(b), after an employee files an application
146 for hearing within six years from the date on which the cause of action arose, the Division of
147 Adjudication may enter an order to show cause why the employee's claim should not be dismissed
148 because the employee has failed to meet the employee's burden of proof to establish an entitlement
149 to compensation claimed in the application for hearing.

150 (ii) The order described in Subsection (4)(a)(i) may be entered on the motion of the:
151 (A) Division of Adjudication;
152 (B) employee's employer; or
153 (C) employer's insurance carrier.
154 (b) Under Subsection (4)(a), the Division of Adjudication may dismiss a claim in an
155 application for hearing:
156 (i) without prejudice; or
157 (ii) with prejudice only if:
158 (A) the Division of Adjudication adjudicates the merits of the employee's entitlement to
159 the compensation claimed in the application for hearing; or
160 (B) the employee fails to comply with Subsection (2)(a)(ii).
161 (c) If a claim is dismissed without prejudice under Subsection (4)(b), the employee is
162 subject to the time limits under Subsection (2)(a) to claim compensation under this chapter.