

**Testimony of Kia D. Floyd
Assistant Counsel, Labor & Employment
Connecticut Business and Industry Association (CBIA)**

**Before the Committee on Labor and Public Employees
Hartford, CT
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- S.B. 151 AAC Workers' Compensation Appeals (Opposed)**
- S.B. 152 AAC Accidental Failure of Workers' Compensation Claims (Opposed)**
- S.B. 153 AAC Scarring Awards under the Workers' Compensation Act (Opposed)**
- S.B. 171 AAC Additional WC Awards for Delays or Contests of Liability (Opposed)**
- S.B. 172 AAC Requiring Respondent Hearings to Assure that Claimants Receive Benefits (Opposed)**
- S.B. 400 AAC Dependents of Deceased Workers' Comp Claimants (Opposed)**
- S.B. 401 Imposing a Late Payment Fee on Self-Insurers (Opposed)**
- S.B. 403 AAC Time Limits for Disposition of Workers' Comp Claims (Opposed)**
- S.B. 845 AAC Light Duty Work Under the Workers' Compensation Act (Opposed)**
- S.B. 846 Requiring Employers to Assist Injured Workers in Filing WC Claims (Opposed)**
- S.B. 847 AAC Additional Discretionary Benefits under §31-308(a) of the Workers' Compensation Act (Opposed)**
- S.B. 1036 AAC Notification to Claimants of Workers' Comp Benefit Reduction or Discontinuation (Opposed)**
- S.B. 1037 AAC Unreasonable Delays in Workers' Comp Hearings (Opposed)**
- H.B. 5697 AAC Medical Treatment Decisions of Workers' Comp Hearings (Opposed)**

Good Afternoon Senator Prague, Representative Ryan and other members of the Committee. My name is Kia Floyd and I am an Assistant Counsel for Labor & Employment matters for the Connecticut Business and Industry Association (CBIA). CBIA represents more than 10,000 companies throughout the state of Connecticut, ranging from large corporations to small businesses. The vast majority of our companies employ fifty (50) or fewer employees, many of whom make up Connecticut's workforce. I am here today to speak on behalf of all of our member companies.

CBIA generally opposes all measures subject to public hearing today, as we find that each measure will either increase the costs or administrative burdens to employers or the legislation is too vague to determine its true impact on the business community.

S.B. 151 AAC Workers' Compensation Appeals (Opposed)

This measure amends Section 31-301 of the Workers' Compensation Act ("WCA") and states that where a motion to correct a finding of fact has been filed, the twenty-day period for filing an appeal begins to run from the date of ruling on such motion. Section 31-301(a) of the WCA currently provides that an appeal may be filed "[A]t any time within twenty days after entry of an award by the commissioner, after a decision of the commissioner upon a motion or after an order by the commissioner." Insofar as the law already allows for the exact relief that S.B.151 purports to provide, S.B. 151 is duplicative of existing law and therefore unnecessary. For this reason, CBIA must oppose this legislation.

S.B. 152 AAC Accidental Failure of Workers' Compensation Claims (Opposed)

S.B.152 states an intended purpose to extend to workers' compensation claimants, rights similar to those of a plaintiff in a civil action by creating an "accidental failure of claim statute." The bill describes circumstances that may be considered "accidental," as insufficiency of notice, lack of jurisdiction, incorrect naming of parties to the action or "for any other reason." Upon establishing one of the factors above, a claimant is entitled to bring a new claim within one year of the failing of the original claim. In allowing factors such as these to be deemed "accidents" S.B. 152 actually extends to workers' comp claimants rights that are far and above any rights enjoyed by civil action plaintiffs, because failing to establish sufficient service of notice, subject matter and legal jurisdiction, or name the correct parties to an action are grounds for case dismissal in all civil legal proceedings. (See Connecticut Superior Court Rules §10-31, *Grounds of Motion to Dismiss*). S.B. 152 allows workers comp claimants to bring new claims after their original claim failed due to their own acts or omissions. Such rights are not extended to civil plaintiffs and would not be unacceptable grounds for maintain a suit in courts of law. Insofar as this legislation entitles claimants to sustain cases that the law finds to be unsustainable in all other legal forums, it is overly broad contrary to the public policy interest in maintaining a fair and balanced hearing process. Based upon that, CBIA cannot support this measure.

S.B. 153 AAC Scarring Awards under the Workers' Compensation Act (Opposed)

This measure repeals an important aspect of the Workers' Compensation Act ("WCA") by eliminating the two-year limitation period for scarring or disfigurement benefit claims. The WCA provides for up to two hundred eight weeks (208) of weekly wage replacement benefits for any significant disfigurement of, or permanent significant scar on the face, head or neck, or on any other area of the body which handicaps a claimant in obtaining or continuing to work. (WCA §31-308(c)) Connecticut's current standards for awarding scarring benefits are far more generous than those of most other states in that scars are compensable regardless of their location on the body so long as they significantly impact upon one's ability to earn a living. The requirement of showing a significant impact was instituted by the legislature in a series of reforms in the early 1990's when Connecticut's workers' compensation costs were skyrocketing and scarring benefits in particular were causing a fiscal crisis for both State and private sector employers.

In an effort to control the costs of scarring benefits, the legislature has limited the time for bringing claims for scarring to two years to ensure that claims are brought within a reasonable time of the injury or surgery which caused the scar. By expanding the time in which a claimant can bring a claim for scarring benefits to beyond two years, S.B. 153 would seriously undermine an important aspect of the workers' comp reforms by allowing scarring benefit cases to be brought at the whim of a claimant no matter how far in the past the injury occurred. Such a measure will place employers at a severe disadvantage in defending against such claims, and it will obstruct the ability of medical providers and workers comp commissioners to establish the necessary medical and legal causation between the injury and scar.

Since S.B. 153 does not propose an alternative time limit for bringing scarring benefit claims, it is presumed that there would be no time limitation at all, such that cases could conceivably be brought many years after the scar-causing injury or surgery, or even after a claimant's death. No other areas of law in this state allow claims to be brought at anytime at the whim of the claimant. If this is the intended result of S.B. 153, then CBIA must vehemently oppose this legislation.

S.B. 171 AAC Additional WC Awards for Delays or Contests of Liability (Opposed)

S.B. 171 amends the Workers' Compensation Act ("WCA") to allow claimants to receive an award, in addition to attorney's fees, for any consequences of an employer's or insurer's undue delay in making payments. Section 31-300 of the WCA currently provides for attorney's fees plus an amount of twelve percent (12%) interest of the injury award amount in cases where a workers comp award is unnecessarily delayed by a paying party. The law requires these penalties for undue delays by paying parties in order to discourage behavior that would obstruct or prevent a claimant from being fairly and promptly compensated for injuries. There is no language in S.B. 171 which indicates that the existing penalties under Section 31-300 of the WCA are ineffective in sanctioning employers where appropriate. Therefore, without specific evidence to suggest to the contrary, S.B. 171 is an unnecessary and redundant measure and CBIA cannot support it.

S.B. 172 AAC Requiring Respondent Hearings to Assure that Claimants Receive Benefits (Opposed)

This bill requires respondents in workers' compensation cases to request an informal hearing on the issue of disability shortly after a claimant has been determined to have a permanent disability. Under the Workers Compensation Act ("WCA") once a worker notifies his/her employer of an injury and intent file for benefits, the employer has twenty-eight (28) days in which to either pay or deny the claim. If they do neither within that period of time, they lose their right to later contest the claim, thereby accepting responsibility. However, if payments are begun within the 28 day period, the employer/insurer then has up to one year in which to contest the claim.

The time period for employers to contest claims is clearly prescribed by existing law. Insofar the WCA already allows employer to contest claim within a reasonable time after receiving a claimant's medical evaluation regarding disability, and at no later than one year thereafter, there is no reason to require the additional step of employers requesting an informal hearing to do the same. Although the stated purpose of this new requirement is to assure that claimants receive their benefits, there appears to be no link between the stated purpose and the requirement imposed by this legislation. Therefore, CBIA opposes this bill.

S.B. 400 AAC Dependents of Deceased Workers' Comp Claimants (Opposed)

S.B. 400 amends existing law to provide dependents of a workers' compensation claimant who dies before the claim is resolved to continue the claim on the decedent's behalf until final settlement or disposition. According to Section 31-306 of the Workers Compensation Act ("WCA"), when an employee's death is caused by a work-related injury or illness, a surviving spouse of other eligible dependent may be entitled to burial expenses of four thousand dollars (\$4,000) and weekly wage replacement benefits equal to seventy-five percent (75%) of the deceased employee's after-tax average weekly wage. Dependent survivors may also receive Cost-of-Living adjustments, in accordance with Section 31-309 of the WCA. If and when a claimant dies as a result of work-related injuries, his/her surviving spouse or dependent is entitled to receive their benefits. However, when a claimant dies from causes unrelated to the injury, their dependents should not be able to continue a case or receive benefits because the purpose of such benefits is *only* to compensate a survivor for the loss of the claimant's salary due to the workers' comp injury and not death generally. To allow survivors to continue receiving such benefits is contrary to the purpose and intent of the weekly wage replacement; therefore we must oppose this measure.

S.B. 401 Imposing a Late Payment Fee on Self-Insurers (Opposed)

S.B. 401 amends Section 31-288 of the Workers' Compensation Act ("WCA") to impose upon self-insured employers, a fee for the late or unduly delayed payment of compensation in an amount equal to five percent (5%) of the amount of the late payment. The WCA currently provides for a penalty of five hundred dollars (\$500) for each instance of delaying behavior. S.B. 1037 would increase the amount of the penalty to

five thousand dollars (\$5,000). The stated purpose of S.B. 401 does not indicate how or why the existing penalty amount is insufficient or otherwise ineffective in deterring delays. Based upon the large differential between the current and proposed amounts and the lack of information to justify the increase, CBIA opposes this legislation.

S.B. 403 AAC Time Limits for Disposition of Workers' Comp Claims (Opposed)

S.B. 403 states an intention to "create a more timely manner of determining eligibility for workers' compensation benefits," by requiring that workers' comp claims be settled or adjudicated within certain time limits. In forcing all cases to be resolved within a set amount of time, S.B. 403 disregards the myriad of facts and circumstances that affect the time in which cases are concluded. In many instances, putting arbitrary time limits on the adjudication and settlement of cases would require that unique facts and claims of a case be undervalued or even disregarded to move along a case. Each workers' comp case is unique and requires a comprehensive review and evaluation of all its details, as the details are often crucial in reaching a result that is fair and just for all parties. By forcing all cases to be resolved at the same time regardless of their unique attributes, S.B. 403 would frustrates the goal of the workers' comp system in seeking case resolutions that are fair and just for both parties. Therefore, CBIA cannot support this measure.

S.B. 845 AAC Light Duty Work Under the Workers' Compensation Act (Opposed)

This measure would require that light duty work under the Workers Compensation Act ("WCA") be performed during work days and hours comparable to those worked by the employee at the time of the employees' injury. Currently, most employers try to accommodate the needs and physical conditions of injured employees who return to work on light duty, so that workers remain productive and continue to earn a living. However, the demands of business may not always allow for an injured employee to return to the same type of position which they worked prior to being injured. In rare instances where a light duty position differs slightly from the original position held by the worker, employers should not be penalized as prescribed under S.B. 845, as employers are forced to balance the need for productivity with reasonable accommodation of injured workers. To require that all light duty positions be exactly the same as the position held by a worker prior to his/her injury, would place businesses in the position of having to choose between productivity and unduly burdensome accommodation of its workers. For the foregoing reasons, we cannot support S.B. 845.

S.B. 846 Requiring Employers to Assist Injured Workers in Filing WC Claims (Opposed)

S.B. 846 requires that employers assist injured workers with completing the Form 30C and other forms needed to file a claim for workers compensation. Both federal and state law require that employers post notice of workers' compensation and other employment rights in a conspicuous place or common area of the work site. (See U.S. Dept. of Labor Regulations, Connecticut Dept of Labor Regulations) Moreover, the Connecticut Workers' Compensation Commission provides personnel and other

resources to workers in the filing of their claims. One of the primary goals of the legislative reforms enacted in the 1990's was to make the workers' comp process transparent and accessible to claimants. As a result of the reforms and the comprehensive administrative changes made therein, many claimants are able to easily navigate Connecticut's workers comp system and represent themselves throughout the hearings process. Requiring that employers also personally assist workers with the completing the paperwork needed to file a claim is duplicative of existing administrative resources and is therefore unnecessary. For the reasons stated above, we oppose this legislation.

S.B. 847 AAC Additional Discretionary Benefits under §31-308(a) of the Workers Compensation Act (Opposed)

S.B. 847 amends Section 31-308a of the Workers Compensation Act ("WCA") to allow commissioners to award additional compensation to claimants for permanent partial disabilities ("PPD") without regard to the amount of compensation for the injury itself, or PPD. This type of compensation, generally known as "Discretionary Benefits," is granted in addition to weekly wage replacement, permanent impairment awards and other medical benefits. Connecticut is the only state that allows for such a benefit. This unique benefit, as well as high overall workers' comp benefits have made Connecticut's workers comp system the 9th most costly system in the nation. (*Actuarial and Technical Solutions, Inc. 2006 comparison of 45 states*). Although no other state in the nation offers a similar benefit, S.B. 847 seeks to increase this unique benefit by allowing commissioners greater discretion to award the same.

In an effort to curtail the costs of Connecticut's workers' comp system, in the early 1990's the legislature enacted sweeping legislative reforms to bring our costs more in line with those of other states. One of these reforms placed a limit on discretionary benefits. The reform prudently tied the additional award to that given for a claimant's permanent disability, or PPD award. Now, for example someone who is awarded \$10,000 for a permanent disability to their arm can receive an additional discretionary benefit for only up to \$10,000, the amount of the PPD award. Limits such as this were the only way to ensure to that people received generous but not excessive awards. Removing such limits would cause workers' comp costs for businesses to skyrocket and would negatively impact employers of all types – including state and local governments and private sector companies.

The enactment of S.B. 847 would place Connecticut in a the same position that we were in prior to the 1990's reforms when the state's economy was poor, taxes were high, and workplace costs were out of control. Due to those conditions, thousands of jobs were lost and many companies left the state. Insofar as no other state in the nation grants such awards, increasing them now would be excessive and would create a disincentive for injured workers to return to work quickly or seek other gainful employment. The stability of Connecticut's economy was once threatened by high workers' comp costs, and it has since benefited from the positive changes that have resulted from passing the 1990's workers' comp reforms. Therefore, it is critical that the reforms be maintained and that no new measures be enacted that would increase costs or place additional burdens on the system. Based on the foregoing, we oppose this legislation.

S.B. 1036 AAC Notification to Claimants of Workers' Comp Benefit Reduction or Discontinuation (Opposed)

S.B. 1036 requires that employers provide injured workers with notice of the discontinuation or reduction of benefits. The Workers' Compensation Act ("WCA") already requires that workers be notified of any negative action regarding their benefits, and benefits cannot be reduced or discontinued without written approval by a commissioner. Thereafter, the claimant may request a hearing to contest the changes in benefit level.

This legislation makes several changes to the existing law to increase the time period in which claimants have to request hearings on benefit reductions. In increasing the time for hearings from ten days under to twenty days after receipt of notice of discontinuation, the bill grants claimants more time without regard to the administrative backlogs that such time extensions will inevitably cause. Therefore although the legislative intent of such measures appears to be a laudable one, without specific information regarding the impact of such changes on the existing workers' comp system and case management process, we cannot support this measure.

S.B. 1037 AAC Unreasonable Delays in Workers' Comp Hearings (Opposed)

S.B. 1037 amends Section 31-288(b)(2) of the Workers' Compensation Act ("WCA") to increase the civil penalty assessed against parties who unreasonably, without good cause act to delay the completion of a workers' comp hearing. The WCA currently provides for a penalty of five hundred dollars (\$500) for each instance of delaying behavior. S.B. 1037 would increase the amount of the penalty to five thousand dollars (\$5,000). The stated purpose of S.B. 1037 does not indicate how or why the existing penalty amount is insufficient or otherwise ineffective in deterring delays, and the drastic increase in dollar amount may seriously hinder the ability of some parties (i.e, indigent claimants, small businesses) from satisfying the penalty. Based upon the large differential between the current and proposed amounts, CBIA would oppose this legislation. However, if at a later time the legislature seeks to increase the penalties to an amount that is fair to all parties and based upon facts sufficient to warrant a slight increase, then we would entertain discussions on the same. In the meantime, we cannot support S.B. 1037 in its current form.

H.B. 5697 AAC Medical Treatment Decisions of Workers' Comp Hearings (Opposed)

H.B. 5697 amends existing law to provide that a workers' compensation commissioner's decision concerning medical treatment is binding on all parties to a claim regardless of when its made, for the stated purpose of ensuring that claimants get prompt medical treatment. The stated purpose and language of this legislation does not provide sufficient information to discern how and in what circumstances a commissioner's decision would affect the ability of a claimant to seek prompt medical treatment. The Worker's Compensation Act ("WCA") already provides that claimants are entitled to

seek medical treatment immediately following the injury-causing event. Thereafter, issues of medical treatment can be debated between the parties and ultimately resolved by the commissioner. Insofar as this bill seeks to make the commissioner's decision on medical findings permanent at the informal hearing stage when sufficient evidence and records of the same may not yet be available, the legislation would be unfair to both parties, especially in cases where a medical condition changes, or has not fully developed or been diagnosed. For these reasons, we cannot support H.B. 5697.