

HOUSE BILL NO. 342

INTRODUCED BY WANZENRIED, DRISCOLL, CONNELLY,  
PIPINICH, BIANCHI

IN THE HOUSE

JANUARY 22, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.

JANUARY 23, 1991                   FIRST READING.

FEBRUARY 13, 1991                  COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 14, 1991                  PRINTING REPORT.

FEBRUARY 16, 1991                  SECOND READING, DO PASS.

FEBRUARY 18, 1991                  ENGROSSING REPORT.

FEBRUARY 19, 1991                  THIRD READING, PASSED.  
AYES, 68; NOES, 31.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1991                  INTRODUCED AND REFERRED TO COMMITTEE  
ON LABOR & EMPLOYMENT RELATIONS.

                                      FIRST READING.

MARCH 26, 1991                    COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 28, 1991                    SECOND READING, CONCURRED IN.

APRIL 1, 1991                    ON MOTION, TAKEN FROM THIRD READING  
AND PLACED ON SECOND READING.

APRIL 2, 1991                    ON MOTION, CONSIDERATION PASSED  
UNTIL THE 70TH LEGISLATIVE DAY.

APRIL 3, 1991                    SECOND READING, CONCURRED IN AS  
AMENDED.

APRIL 4, 1991                    THIRD READING, CONCURRED IN.  
AYES, 33; NOES, 17.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1991

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

APRIL 9, 1991

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 16, 1991

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

APRIL 24, 1991

FREE CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 23, 1991

FREE CONFERENCE COMMITTEE REPORTED.

APRIL 24, 1991

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

APRIL 24, 1991

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

APRIL 29, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

*House* BILL NO. *342*

INTRODUCED BY ~~WAYZENSIED~~

*Prinell Connelly*  
*Bob Cipinich* *Bramble*

1 A BILL FOR AN ACT ENTITLED: "AN ACT MANDATING WORKERS'  
2 COMPENSATION COVERAGE FOR INDEPENDENT CONTRACTORS, SOLE  
3 PROPRIETORS, WORKING MEMBERS OF A PARTNERSHIP, CORPORATE  
4 OFFICERS, AND DEPENDENT MEMBERS OF AN EMPLOYER'S FAMILY WHEN  
5 ANY OF THESE PERSONS ARE ENGAGED IN A CONSTRUCTION TRADE;  
6 CREATING REMEDIES FOR FAILURE TO PROVIDE COVERAGE; AND  
7 AMENDING SECTIONS 39-71-116, 39-71-401, 39-71-405,  
8 39-71-721, 39-71-723, 39-72-102, AND 39-73-108, MCA."

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

10 **Section 1.** Section 39-71-116, MCA, is amended to read:

11 **"39-71-116. Definitions.** Unless the context otherwise  
12 requires, words and phrases employed in this chapter have  
13 the following meanings:

14 (1) "Administer and pay" includes all actions by the  
15 state fund under the Workers' Compensation Act and the  
16 Occupational Disease Act of Montana necessary to the  
17 investigation, review, and settlement of claims; payment of  
18 benefits; setting of reserves; furnishing of services and  
19 facilities; and utilization of actuarial, audit, accounting,  
20 vocational rehabilitation, and legal services.

21 (2) "Average weekly wage" means the mean weekly

1 earnings of all employees under covered employment, as  
2 defined and established annually by the Montana department  
3 of labor and industry. It is established at the nearest  
4 whole dollar number and must be adopted by the department  
5 prior to July 1 of each year.

6 (3) "Beneficiary" means:

7 (a) a surviving spouse living with or legally entitled  
8 to be supported by the decedent at the time of injury;

9 (b) an unmarried child under the age of 18 years;

10 (c) an unmarried child under the age of 22 years who is  
11 a full-time student in an accredited school or is enrolled  
12 in an accredited apprenticeship program;

13 (d) an invalid child over the age of 18 years who is  
14 dependent upon the decedent for support at the time of  
15 injury;

16 (e) a parent who is dependent upon the decedent for  
17 support at the time of the injury (however, such a parent is  
18 a beneficiary only when no beneficiary, as defined in  
19 subsections (3)(a) through (3)(d) of this section, exists);  
20 and

21 (f) a brother or sister under the age of 18 years if  
22 dependent upon the decedent for support at the time of the  
23 injury (however, such a brother or sister is a beneficiary  
24 only until the age of 18 years and only when no beneficiary,  
25 as defined in subsections (3)(a) through (3)(e) of this

1 section, exists).

2 (4) "Casual employment" means employment not in the  
3 usual course of trade, business, profession, or occupation  
4 of the employer.

5 (5) "Child" includes a posthumous child, a dependent  
6 stepchild, and a child legally adopted prior to the injury.

7 (6) "Construction trade" means a trade in which a  
8 person, whether by general contracting, subcontracting, as a  
9 sole proprietorship or partnership, as an employee, or  
10 otherwise, is directly involved in providing skilled or  
11 unskilled physical labor in the renovation or construction  
12 of buildings or other structures. The term includes but is  
13 not limited to general labor, carpentry, electrical work,  
14 plumbing, sheet rocking, painting, and masonry. The term  
15 does not include office workers, design professionals,  
16 salesmen, estimators, or any other related employment that  
17 is not directly involved on a regular basis in the provision  
18 of physical labor at a construction or renovation site.

19 (7) "Days" means calendar days, unless otherwise  
20 specified.

21 (8) "Department" means the department of labor and  
22 industry.

23 (9) "Fiscal year" means the period of time between  
24 July 1 and the succeeding June 30.

25 (10) "Insurer" means an employer bound by

1 compensation plan No. 1, an insurance company transacting  
2 business under compensation plan No. 2, the state fund under  
3 compensation plan No. 3, or the uninsured employers' fund  
4 provided for in part 5 of this chapter.

5 (11) "Invalid" means one who is physically or  
6 mentally incapacitated.

7 (12) "Maximum healing" means the status reached when  
8 a worker is as far restored medically as the permanent  
9 character of the work-related injury will permit.

10 (13) "Order" means any decision, rule, direction,  
11 requirement, or standard of the department or any other  
12 determination arrived at or decision made by the department.

13 (14) "Payroll", "annual payroll", or "annual payroll  
14 for the preceding year" means the average annual payroll of  
15 the employer for the preceding calendar year or, if the  
16 employer shall not have operated a sufficient or any length  
17 of time during such calendar year, 12 times the average  
18 monthly payroll for the current year. However, an estimate  
19 may be made by the department for any employer starting in  
20 business if no average payrolls are available. This estimate  
21 is to be adjusted by additional payment by the employer or  
22 refund by the department, as the case may actually be, on  
23 December 31 of such current year. An employer's payroll must  
24 be computed by calculating all wages, as defined in  
25 39-71-123, that are paid by an employer.

1       †14†(15) "Permanent partial disability" means a  
2 condition, after a worker has reached maximum healing, in  
3 which a worker:

4       (a) has a medically determined physical restriction as  
5 a result of an injury as defined in 39-71-119; and

6       (b) is able to return to work in the worker's job pool  
7 pursuant to one of the options set forth in 39-71-1012 but  
8 suffers impairment or partial wage loss, or both.

9       †15†(16) "Permanent total disability" means a condition  
10 resulting from injury as defined in this chapter, after a  
11 worker reaches maximum healing, in which a worker is unable  
12 to return to work in the worker's job pool after exhausting  
13 all options set forth in 39-71-1012.

14       †16†(17) The term "physician" includes "surgeon" and in  
15 either case means one authorized by law to practice his  
16 profession in this state.

17       †17†(18) The "plant of the employer" includes the place  
18 of business of a third person while the employer has access  
19 to or control over such place of business for the purpose of  
20 carrying on his usual trade, business, or occupation.

21       †18†(19) "Public corporation" means the state or any  
22 county, municipal corporation, school district, city, city  
23 under commission form of government or special charter,  
24 town, or village.

25       †19†(20) "Reasonably safe place to work" means that the

1 place of employment has been made as free from danger to the  
2 life or safety of the employee as the nature of the  
3 employment will reasonably permit.

4       †20†(21) "Reasonably safe tools and appliances" are such  
5 tools and appliances as are adapted to and are reasonably  
6 safe for use for the particular purpose for which they are  
7 furnished.

8       †21†(22) "Temporary total disability" means a condition  
9 resulting from an injury as defined in this chapter that  
10 results in total loss of wages and exists until the injured  
11 worker reaches maximum healing.

12       †22†(23) "Year", unless otherwise specified, means  
13 calendar year."

14       **Section 2.** Section 39-71-401, MCA, is amended to read:

15       "39-71-401. **Employments covered and employments**  
16 **exempted.** (1) Except as provided in subsection (2) of this  
17 section, the Workers' Compensation Act applies to all  
18 employers as defined in 39-71-117 and to all employees as  
19 defined in 39-71-118. An employer who has any employee in  
20 service under any appointment or contract of hire, expressed  
21 or implied, oral or written, shall elect to be bound by the  
22 provisions of compensation plan No. 1, 2, or 3. Every  
23 employee whose employer is bound by the Workers'  
24 Compensation Act is subject to and bound by the compensation  
25 plan that has been elected by the employer.

1 (2) Unless the employer elects coverage for these  
2 employments under this chapter and an insurer allows such an  
3 election, the Workers' Compensation Act does not apply to  
4 any of the following employments:

5 (a) household and domestic employment;

6 (b) casual employment as defined in 39-71-116;

7 (c) employment, in a position other than a construction  
8 trade, of a dependent member of an employer's family for  
9 whom an exemption may be claimed by the employer under the  
10 federal Internal Revenue Code;

11 (d) employment, in a position other than a construction  
12 trade, of sole proprietors or working members of a  
13 partnership, except as provided in subsection (3);

14 (e) employment of a broker or salesman performing under  
15 a license issued by the board of realty regulation;

16 (f) employment of a direct seller engaged in the sale  
17 of consumer products, primarily in the customer's home;

18 (g) employment for which a rule of liability for  
19 injury, occupational disease, or death is provided under the  
20 laws of the United States;

21 (h) employment of any person performing services in  
22 return for aid or sustenance only, except employment of a  
23 volunteer under 67-2-105;

24 (i) employment with any railroad engaged in interstate  
25 commerce, except that railroad construction work is included

1 in and subject to the provisions of this chapter;

2 (j) employment as an official, including a timer,  
3 referee, or judge, at a school amateur athletic event,  
4 unless the person is otherwise employed by a school  
5 district;

6 (k) any person performing services as a newspaper  
7 carrier or free-lance correspondent if the person performing  
8 the services or a parent or guardian of the person  
9 performing the services in the case of a minor has  
10 acknowledged in writing that the person performing the  
11 services and the services are not covered. As used in this  
12 subsection "free-lance correspondent" is a person who  
13 submits articles or photographs for publication and is paid  
14 by the article or by the photograph. As used in this  
15 subsection "newspaper carrier":

16 (i) is a person who provides a newspaper with the  
17 service of delivering newspapers singly or in bundles; but

18 (ii) does not include an employee of the paper who,  
19 incidentally to his main duties, carries or delivers papers.

20 (3) (a) A sole proprietor or a working member of a  
21 partnership who holds himself out or considers himself an  
22 independent contractor ~~{and--who--is--not--contracting--for~~  
23 ~~cosmetologist's--services--or--barber's--services--as--defined--in~~  
24 39-51-204(1)(1)} must elect to be bound personally and  
25 individually by the provisions of compensation plan No. 1,

1 2, or 3, but, unless he is contracting for cosmetologist's,  
 2 barber's, or construction trade services, he may apply to  
 3 the department for an exemption from the Workers'  
 4 Compensation Act for himself.

5 (b) The application must be made in accordance with the  
 6 rules adopted by the department. The department may deny the  
 7 application only if it determines that the applicant is not  
 8 an independent contractor.

9 (c) When an application is approved by the department,  
 10 it is conclusive as to the status of an independent  
 11 contractor and precludes the applicant from obtaining  
 12 benefits under this chapter.

13 (d) When an election of an exemption is approved by the  
 14 department, the election remains effective and the  
 15 independent contractor retains his status as an independent  
 16 contractor until he notifies the department of any change in  
 17 his status and provides a description of his present work  
 18 status.

19 (e) If the department denies the application for  
 20 exemption, the applicant may contest the denial by  
 21 petitioning for review of the decision by an appeals referee  
 22 in the manner provided for in 39-51-1109. An applicant  
 23 dissatisfied with the decision of the appeals referee may  
 24 appeal the decision in accordance with the procedure  
 25 established in 39-51-2403 and 39-51-2404.

1 (4) (a) A private corporation shall provide coverage  
 2 for its officers and other employees under the provisions of  
 3 compensation plan No. 1, 2, or 3. However, pursuant to such  
 4 rules as the department promulgates and subject in all cases  
 5 to approval by the department, an officer of a private  
 6 corporation may elect not to be bound as an employee under  
 7 this chapter if he does not work in a construction trade by  
 8 giving a written notice, on a form provided by the  
 9 department, served in the following manner:

10 (i) if the employer has elected to be bound by the  
 11 provisions of compensation plan No. 1, by delivering the  
 12 notice to the board of directors of the employer and the  
 13 department; or

14 (ii) if the employer has elected to be bound by the  
 15 provisions of compensation plan No. 2 or 3, by delivering  
 16 the notice to the board of directors of the employer, the  
 17 department, and the insurer.

18 (b) If the employer changes plans or insurers, the  
 19 officer's previous election is not effective and the officer  
 20 shall again serve notice as provided if he elects not to be  
 21 bound.

22 (c) The appointment or election of an employee as an  
 23 officer of a corporation for the purpose of excluding the  
 24 employee from coverage under this chapter does not entitle  
 25 the officer to elect not to be bound as an employee under

1 this chapter. In any case, the officer must sign the notice  
 2 required by subsection (4)(a) under oath or affirmation, and  
 3 he is subject to the penalties for false swearing under  
 4 45-7-202 if he falsifies the notice.

5 (5) Each employer shall post a sign in the workplace at  
 6 the locations where notices to employees are normally  
 7 posted, informing employees about the employer's current  
 8 provision of compensation insurance. A workplace is any  
 9 location where an employee performs any work-related act in  
 10 the course of employment, regardless of whether the location  
 11 is temporary or permanent, and includes the place of  
 12 business or property of a third person while the employer  
 13 has access to or control over such place of business or  
 14 property for the purpose of carrying on his usual trade,  
 15 business, or occupation. The sign will be provided by the  
 16 department, distributed through insurers or directly by the  
 17 department, and posted by employers in accordance with rules  
 18 adopted by the department. An employer who purposely or  
 19 knowingly fails to post a sign as provided in this  
 20 subsection is subject to a \$50 fine for each citation."

21 **Section 3.** Section 39-71-405, MCA, is amended to read:

22 "39-71-405. Liability of employer who contracts work  
 23 out. (1) An employer who contracts with an independent  
 24 contractor, except an independent contractor working in a  
 25 construction trade, to have work performed of a kind which

1 is a regular or a recurrent part of the work of the trade,  
 2 business, occupation, or profession of such employer is  
 3 liable for the payment of benefits under this chapter to the  
 4 employees of the contractor if the contractor has not  
 5 properly complied with the coverage requirements of the  
 6 Worker's Compensation Act. Any insurer who becomes liable  
 7 for payment of benefits may recover the amount of benefits  
 8 paid and to be paid and necessary expenses from the  
 9 contractor primarily liable therein.

10 (2) Where an employer contracts to have any work to be  
 11 done by a contractor other than a contractor working in a  
 12 construction trade or an independent contractor, and the  
 13 work so contracted to be done is a part or process in the  
 14 trade or business of the employer, then the employer is  
 15 liable to pay all benefits under this chapter to the same  
 16 extent as if the work were done without the intervention of  
 17 the contractor, and the work so contracted to be done shall  
 18 not be construed to be casual employment. Where an employer  
 19 contracts work to be done as specified in this subsection,  
 20 the contractor and the contractor's employees shall come  
 21 under that plan of compensation adopted by the employer.

22 (3) Where an employer contracts any work to be done,  
 23 wholly or in part for the employer, by an independent  
 24 contractor, where the work so contracted to be done is  
 25 casual employment as to such employer, then the contractor



1 shall become the employer for the purposes of this chapter."

2 **Section 4.** Section 39-72-102, MCA, is amended to read:

3 "39-72-102. Definitions. As used in this chapter,  
4 unless the context requires otherwise, the following  
5 definitions apply:

6 (1) "Beneficiary" is as defined in 39-71-116.

7 (2) "Child" is as defined in 39-71-116.

8 (3) "Department" means the department of labor and  
9 industry.

10 (4) "Disablement" means the event of becoming  
11 physically incapacitated by reason of an occupational  
12 disease from performing work in the worker's job pool.  
13 Silicosis, when complicated by active pulmonary  
14 tuberculosis, is presumed to be total disablement.  
15 "Disability", "total disability", and "totally disabled" are  
16 synonymous with "disablement", but they have no reference to  
17 "permanent partial disability".

18 (5) "Employee" is as defined in 39-71-118.

19 (6) "Employer" is as defined in 39-71-117.

20 (7) "Independent contractor" is as defined in  
21 39-71-120.

22 (8) "Insurer" is as defined in 39-71-116.

23 (9) "Invalid" is as defined in 39-71-116.

24 (10) "Occupational disease" means harm, damage, or death  
25 as set forth in 39-71-119(1) arising out of or contracted in

1 the course and scope of employment and caused by events  
2 occurring on more than a single day or work shift. The term  
3 does not include a physical or mental condition arising from  
4 emotional or mental stress or from a nonphysical stimulus or  
5 activity.

6 (11) "Order" is as defined in 39-71-116.

7 (12) "Pneumoconiosis" means a chronic dust disease of  
8 the lungs arising out of employment in coal mines and  
9 includes anthracosis, coal workers' pneumoconiosis,  
10 silicosis, or anthraccosilicosis arising out of such  
11 employment.

12 (13) "Silicosis" means a chronic disease of the lungs  
13 caused by the prolonged inhalation of silicon dioxide (SiO)  
14 and characterized by small discrete nodules of fibrous  
15 tissue similarly disseminated throughout both lungs, causing  
16 the characteristic x-ray pattern, and by other variable  
17 clinical manifestations.

18 (14) "Wages" is as defined in 39-71-123.

19 (15) "Year" is as defined in 39-71-116~~(8)~~(9) and  
20 39-71-116~~(22)~~(23)."

21 **Section 5.** Section 39-71-721, MCA, is amended to read:

22 "39-71-721. Compensation for injury causing death --  
23 limitation. (1) (a) If an injured employee dies and the  
24 injury was the proximate cause of such death, then the  
25 beneficiary of the deceased is entitled to the same

1 compensation as though the death occurred immediately  
 2 following the injury. A beneficiary's eligibility for  
 3 benefits commences after the date of death, and the benefit  
 4 level is established as set forth in subsection (2).

5 (b) The insurer is entitled to recover any overpayments  
 6 or compensation paid in a lump sum to a worker prior to  
 7 death but not yet recouped. The insurer shall recover such  
 8 payments from the beneficiary's biweekly payments as  
 9 provided in 39-71-741(5).

10 (2) To beneficiaries as defined in  
 11 39-71-116~~(2)(a)~~(3)(a) through ~~(2)(d)~~(3)(d), weekly  
 12 compensation benefits for an injury causing death are  
 13  $66 \frac{2}{3}\%$  of the decedent's wages. The maximum weekly  
 14 compensation benefit may not exceed the state's average  
 15 weekly wage at the time of injury. The minimum weekly  
 16 compensation benefit is 50% of the state's average weekly  
 17 wage, but in no event may it exceed the decedent's actual  
 18 wages at the time of his death.

19 (3) To beneficiaries as defined in  
 20 39-71-116~~(2)(e)~~(3)(e) and ~~(2)(f)~~(3)(f), weekly benefits must  
 21 be paid to the extent of the dependency at the time of the  
 22 injury, subject to a maximum of  $66 \frac{2}{3}\%$  of the decedent's  
 23 wages. The maximum weekly compensation may not exceed the  
 24 state's average weekly wage at the time of injury.

25 (4) If the decedent leaves no beneficiary as defined in

1 39-71-116~~(2)~~, a lump-sum payment of \$3,000 must be paid to  
 2 the decedent's surviving parent or parents.

3 (5) If any beneficiary of a deceased employee dies, the  
 4 right of such beneficiary to compensation under this chapter  
 5 ceases. Death benefits must be paid to a surviving spouse  
 6 for 500 weeks subsequent to the date of the deceased  
 7 employee's death or until the spouse's remarriage, whichever  
 8 occurs first. After benefit payments cease to a surviving  
 9 spouse, death benefits must be paid to beneficiaries, if  
 10 any, as defined in 39-71-116~~(2)(b)~~(3)(b) through  
 11 ~~(2)(d)~~(3)(d).

12 (6) In all cases, benefits must be paid to  
 13 beneficiaries, as defined in 39-71-116~~(2)~~.

14 (7) Benefits paid under this section may not be  
 15 adjusted for cost of living as provided in 39-71-702.

16 (8) Notwithstanding subsections (2) and (3), beginning  
 17 July 1, 1987, through June 30, 1991, the maximum weekly  
 18 compensation benefits for injury causing death may not  
 19 exceed the state's average weekly wage of \$299 established  
 20 July 1, 1986. Beginning July 1, 1987, through June 30, 1991,  
 21 the minimum weekly compensation for injury causing death  
 22 shall be \$149.50, which is 50% of the state's average weekly  
 23 wage established July 1, 1986, but in no event may it exceed  
 24 the decedent's actual wages at the time of death."

25 **Section 6.** Section 39-71-723, MCA, is amended to read:

1       "39-71-723. How compensation to be divided among  
2 beneficiaries. Compensation due to beneficiaries ~~shall~~ must  
3 be paid to the surviving spouse, if any, or if none, then  
4 divided equally among or for the benefit of the children. ~~In~~  
5 ~~cases--where~~ if beneficiaries are a surviving spouse and  
6 stepchildren of such spouse, the compensation ~~shall~~ must be  
7 divided equally among all beneficiaries. Compensation due to  
8 beneficiaries as defined in ~~subsections-(2)(e)-and-(2)(f)-of~~  
9 39-71-116(3)(e) and (3)(f), ~~where~~ when there is more than  
10 one, ~~shall~~ must be divided equitably among them, and the  
11 question of dependency and amount thereof ~~shall-be~~ is a  
12 question of fact for determination by the department."

13       **Section 7.** Section 39-73-108, MCA, is amended to read:

14       "39-73-108. Payment of benefits ~~where~~ when person  
15 entitled is in institution. If any person who is entitled to  
16 benefits under this chapter ~~shall-be~~ is an inmate in any  
17 Montana state institution, benefits ~~shall~~ may not be paid to  
18 him but ~~shall~~ must be paid his beneficiary, if any, as  
19 defined in 39-71-116(2)."

20       NEW SECTION. **Section 8.** Remedies for failure to  
21 provide coverage. (1) (a) A person may file a complaint with  
22 the department asserting that:

23       (i) an employer has not provided workers' compensation  
24 coverage for an employee in a construction trade;

25       (ii) a sole proprietor or a working member of a

1 partnership who holds himself out or considers himself an  
2 independent contractor in a construction trade has not  
3 provided coverage for himself.

4       (b) The department must investigate the complaint  
5 within 5 working days of its filing and either issue a cease  
6 and desist order as provided in subsection (2) or dismiss  
7 the complaint as unsupported by fact.

8       (c) The department may assess the costs of  
9 investigating a frivolous complaint against the person who  
10 files the complaint and may assess against the employer the  
11 costs of investigating a complaint that is not frivolous.

12       (2) The department shall issue an order to:

13       (a) an employer who has an employee in service in a  
14 construction trade under an appointment or contract of hire,  
15 expressed, implied, oral, or written, who does not provide  
16 workers' compensation coverage for that employee, ordering  
17 the employer to cease and desist from continuing to employ  
18 the employee until the employer has obtained coverage for  
19 the employee;

20       (b) a sole proprietor or a working member of a  
21 partnership who holds himself out or considers himself an  
22 independent contractor in a construction trade who has not  
23 obtained workers' compensation coverage for himself,  
24 ordering him to cease and desist from continuing the  
25 construction project until he has provided coverage for

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1 himself.

2 (3) The department may bring an action in district  
3 court to enforce a cease and desist order by injunction or  
4 other means.

5 NEW SECTION. **Section 9.** Codification instruction.

6 [Section 8] is intended to be codified as an integral part  
7 of Title 39, chapter 71, and the provisions of Title 39,  
8 chapter 71, apply to [section 8].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0342, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act entitled: An act mandating workers' compensation coverage for independent contractors, sole proprietors, working members of a partnership, corporate officers, and dependent members of an employer's family when any of these persons are engaged in a construction trade; and creating remedies for failure to provide coverage.


ASSUMPTIONS:

1. The effective date will be 7/1/91.
2. The executive recommended budget represents current level for FY92 and FY93.

State Compensation Mutual Insurance Fund:

3. Affected class codes will be the 79 codes designated as "construction" by the National Council on Compensation Insurance (NCCI).
4. Approximately 12% of the 26,149 employers insured with the State Fund are designated within the 79 construction class codes.
5. Utilizing assumption 2, it is assumed that 12%, or 1,068 of the approximately 8,900 identified and unknown uninsured employers, non-subject employers, and independent contractor exemptions are designated as "construction".
6. The 1,068 employers affected by the proposed legislation will obtain coverage with the State Fund.
7. State Fund policies will increase by approximately 4% (from 26,149 to 27,217).
8. 20-25 of the Underwriting Department's forms and letters would have to be reprinted and notices sent to the State Fund policyholders designated as "construction" to inform them of the legislation mandating coverage.
9. Charges for printing, postage, phone usage, computer processing, and office supplies in the Underwriting Department would increase by approximately 4% because of the number of new policies.
10. There will be no significant increase in claims against the State Fund for the next two years. Claims and benefits paid will continue at current level. Increased revenues from premiums will cover costs of increased operating expenses.

continued on page 2

  
\_\_\_\_\_  
ROD SUNDSTED, BUDGET DIRECTOR      1-28-91  
Office of Budget and Program Planning      DATE

  
\_\_\_\_\_  
DAVID E. WANZENRIED, PRIMARY SPONSOR      1-28-91  
DATE

Fiscal Note for HB0342, as introduced

**HB 342**

Fiscal Note Request, HB0342, as introduced

Form BD-15

Page 2

Department of Labor and Industry:

11. The Department of Labor is charged with monitoring compliance with the Workers' Compensation Act and investigating complaints related to lack of coverage.
12. Only formal, written complaints are investigated by the Dept. of Labor. The Department does not investigate anonymous complaints or telephone complaints.
13. The initial investigation conducted by the Dept. of Labor is a telephone inquiry made by a DLI compliance specialist within five working days of receipt of the complaint.
14. A majority of independent contractors, which are currently exempt from coverage, are in the construction industry.
15. The level of workers' compensation investigations by the Dept. of Labor is high and will remain consistent with historical records in the future.
16. The Department cannot absorb the additional work required. A full-time grade 12, step 2 Compliance Specialist II will be required to meet the increased complaints with salary and benefits of \$24,047 in FY92 and \$23,992 in FY93.
17. The new FTE will require work materials, telephone, supplies and travel expenses. The historical operating expenses for a compliance specialist average \$15,453 per fiscal year.
18. Equipment needs for FY92 will include office furnishings (desk, chair and file cabinets) @ \$1,500, a personal computer @ \$3,800, plus software @ \$600.

FISCAL IMPACT:

see page 3

HB 342

FISCAL IMPACT:Expenditures:State Fund:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Personal Services	5,536,182	5,536,182	0	5,506,944	5,506,944	0
Operating Expenses	3,802,378	3,835,960	33,582	3,748,677	3,760,843	12,166
Equipment	188,893	188,893	0	127,138	127,138	0
Benefits and Claims	110,953,000	110,953,000	0	118,060,000	118,060,000	0
Transfers	<u>2,941,701</u>	<u>2,941,701</u>	<u>0</u>	<u>2,959,054</u>	<u>2,959,054</u>	<u>0</u>
Total	123,422,154	123,455,736	33,582	130,401,813	130,413,979	12,166
<u>Funding:</u>						
State Special Revenue	26,570	26,570	0	0	0	0
Federal Special Revenue	0	0	0	0	0	0
Proprietary Fund	<u>123,395,584</u>	<u>123,429,166</u>	<u>33,582</u>	<u>130,401,813</u>	<u>130,413,979</u>	<u>12,166</u>
Total	123,422,154	123,455,736	33,582	130,401,813	130,413,979	12,166

Department of Labor and Industry: Employment Relations Division:

F.T.E.	59.75	60.75	1.00	59.75	60.75	1.00
Personal Services	1,572,170	1,596,217	24,047	1,570,746	1,594,738	23,992
Operating Expenses	918,451	936,004	17,553	917,227	932,680	15,453
Equipment	9,659	13,459	3,800	9,659	9,659	0
Benefits and Claims	<u>423,224</u>	<u>423,224</u>	<u>0</u>	<u>394,028</u>	<u>394,028</u>	<u>0</u>
Total	2,923,504	2,968,904	45,400	2,891,660	2,931,105	39,445
<u>Funding:</u>						
General Fund	423,224	423,224	0	394,028	394,028	0
State Special Revenue	1,808,298	1,853,698	45,400	1,801,539	1,840,984	39,445
Federal Special Revenue	688,237	688,237	0	692,348	692,348	0
Proprietary Fund	<u>3,745</u>	<u>3,745</u>	<u>0</u>	<u>3,745</u>	<u>3,745</u>	<u>0</u>
Total	2,923,504	2,968,904	45,400	2,891,660	2,931,105	39,445

TECHNICAL NOTES:

There is a discrepancy regarding the definition of construction among HB0187, HB0342 and the NCCI. Under 39-71-118(2)(d), MCA, partners or sole proprietors may currently elect not less than \$900 a month and not more than 1-1/2 times the average weekly wage for purposes of premium ratemaking and the determination of weekly wage for weekly compensation benefits. It is unclear whether this provision is intended to continue.

HB 342

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

HOUSE BILL NO. 342

INTRODUCED BY WANZENRIED, DRISCOLL, CONNELLY,

PIPINICH, BIANCHI

A BILL FOR AN ACT ENTITLED: "AN ACT MANDATING WORKERS' COMPENSATION COVERAGE FOR INDEPENDENT CONTRACTORS, SOLE PROPRIETORS, WORKING MEMBERS OF A PARTNERSHIP, CORPORATE OFFICERS, AND DEPENDENT MEMBERS OF AN EMPLOYER'S FAMILY WHEN ANY OF THESE PERSONS ARE ENGAGED IN A CONSTRUCTION TRADE INDUSTRY; CREATING REMEDIES FOR FAILURE TO PROVIDE COVERAGE; AND AMENDING SECTIONS 39-71-116, 39-71-401, 39-71-405, 39-71-721, 39-71-723, 39-72-102, AND 39-73-108, MCA."

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

**Section 1.** Section 39-71-116, MCA, is amended to read:

"39-71-116. **Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to the investigation, review, and settlement of claims; payment of benefits; setting of reserves; furnishing of services and facilities; and utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (3)(a) through (3)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary,

**SECOND READING**





1 as defined in subsections (3)(a) through (3)(e) of this  
2 section, exists).

3 (4) "Casual employment" means employment not in the  
4 usual course of trade, business, profession, or occupation  
5 of the employer.

6 (5) "Child" includes a posthumous child, a dependent  
7 stepchild, and a child legally adopted prior to the injury.

8 (6) "Construction trade"--means--a--trade--in--which--a  
9 person, whether by general contracting, subcontracting, as a  
10 sole proprietorship or partnership, as an employee, or  
11 otherwise, is directly involved in providing skilled or  
12 unskilled physical labor in the renovation or construction  
13 of buildings or other structures. The term includes but is  
14 not limited to general labor, carpentry, electrical work,  
15 plumbing, sheet-rocking, painting, and masonry. INDUSTRY"  
16 MEANS THE MAJOR GROUP OF GENERAL CONTRACTORS AND OPERATIVE  
17 BUILDERS, HEAVY CONSTRUCTION (OTHER THAN BUILDING  
18 CONSTRUCTION) CONTRACTORS, AND SPECIAL TRADE CONTRACTORS,  
19 LISTED IN MAJOR GROUPS 15 THROUGH 17 IN THE 1987 STANDARD  
20 INDUSTRIAL CLASSIFICATION MANUAL. The term does not include  
21 office workers, design professionals, salesmen, estimators,  
22 or any other related employment that is not directly  
23 involved on a regular basis in the provision of physical  
24 labor at a construction or renovation site.

25 †6†(7) "Days" means calendar days, unless otherwise

1 specified.

2 †7†(8) "Department" means the department of labor and  
3 industry.

4 †8†(9) "Fiscal year" means the period of time between  
5 July 1 and the succeeding June 30.

6 †9†(10) "Insurer" means an employer bound by  
7 compensation plan No. 1, an insurance company transacting  
8 business under compensation plan No. 2, the state fund under  
9 compensation plan No. 3, or the uninsured employers' fund  
10 provided for in part 5 of this chapter.

11 †10†(11) "Invalid" means one who is physically or  
12 mentally incapacitated.

13 †11†(12) "Maximum healing" means the status reached when  
14 a worker is as far restored medically as the permanent  
15 character of the work-related injury will permit.

16 †12†(13) "Order" means any decision, rule, direction,  
17 requirement, or standard of the department or any other  
18 determination arrived at or decision made by the department.

19 †13†(14) "Payroll", "annual payroll", or "annual payroll  
20 for the preceding year" means the average annual payroll of  
21 the employer for the preceding calendar year or, if the  
22 employer shall not have operated a sufficient or any length  
23 of time during such calendar year, 12 times the average  
24 monthly payroll for the current year. However, an estimate  
25 may be made by the department for any employer starting in

1 business if no average payrolls are available. This estimate  
 2 is to be adjusted by additional payment by the employer or  
 3 refund by the department, as the case may actually be, on  
 4 December 31 of such current year. An employer's payroll must  
 5 be computed by calculating all wages, as defined in  
 6 39-71-123, that are paid by an employer.

7 ~~(14)~~(15) "Permanent partial disability" means a  
 8 condition, after a worker has reached maximum healing, in  
 9 which a worker:

10 (a) has a medically determined physical restriction as  
 11 a result of an injury as defined in 39-71-119; and

12 (b) is able to return to work in the worker's job pool  
 13 pursuant to one of the options set forth in 39-71-1012 but  
 14 suffers impairment or partial wage loss, or both.

15 ~~(15)~~(16) "Permanent total disability" means a condition  
 16 resulting from injury as defined in this chapter, after a  
 17 worker reaches maximum healing, in which a worker is unable  
 18 to return to work in the worker's job pool after exhausting  
 19 all options set forth in 39-71-1012.

20 ~~(16)~~(17) The term "physician" includes "surgeon" and in  
 21 either case means one authorized by law to practice his  
 22 profession in this state.

23 ~~(17)~~(18) The "plant of the employer" includes the place  
 24 of business of a third person while the employer has access  
 25 to or control over such place of business for the purpose of

1 carrying on his usual trade, business, or occupation.

2 ~~(18)~~(19) "Public corporation" means the state or any  
 3 county, municipal corporation, school district, city, city  
 4 under commission form of government or special charter,  
 5 town, or village.

6 ~~(19)~~(20) "Reasonably safe place to work" means that the  
 7 place of employment has been made as free from danger to the  
 8 life or safety of the employee as the nature of the  
 9 employment will reasonably permit.

10 ~~(20)~~(21) "Reasonably safe tools and appliances" are such  
 11 tools and appliances as are adapted to and are reasonably  
 12 safe for use for the particular purpose for which they are  
 13 furnished.

14 ~~(21)~~(22) "Temporary total disability" means a condition  
 15 resulting from an injury as defined in this chapter that  
 16 results in total loss of wages and exists until the injured  
 17 worker reaches maximum healing.

18 ~~(22)~~(23) "Year", unless otherwise specified, means  
 19 calendar year."

20 **Section 2.** Section 39-71-401, MCA, is amended to read:

21 "39-71-401. **Employments covered and employments**  
 22 **exempted.** (1) Except as provided in subsection (2) of this  
 23 section, the Workers' Compensation Act applies to all  
 24 employers as defined in 39-71-117 and to all employees as  
 25 defined in 39-71-118. An employer who has any employee in

1 service under any appointment or contract of hire, expressed  
 2 or implied, oral or written, shall elect to be bound by the  
 3 provisions of compensation plan No. 1, 2, or 3. Every  
 4 employee whose employer is bound by the Workers'  
 5 Compensation Act is subject to and bound by the compensation  
 6 plan that has been elected by the employer.

7 (2) Unless the employer elects coverage for these  
 8 employments under this chapter and an insurer allows such an  
 9 election, the Workers' Compensation Act does not apply to  
 10 any of the following employments:

- 11 (a) household and domestic employment;
- 12 (b) casual employment as defined in 39-71-116;
- 13 (c) employment, in a position other than a construction  
 14 trade INDUSTRY, of a dependent member of an employer's  
 15 family for whom an exemption may be claimed by the employer  
 16 under the federal Internal Revenue Code;
- 17 (d) ~~employment in a position other than a construction~~  
 18 ~~trade~~, IN A POSITION OTHER THAN A CONSTRUCTION INDUSTRY, of  
 19 sole proprietors or working members of a partnership, except  
 20 as provided in subsection (3);
- 21 (e) employment of a broker or salesman performing under  
 22 a license issued by the board of realty regulation;
- 23 (f) employment of a direct seller engaged in the sale  
 24 of consumer products, primarily in the customer's home;
- 25 (g) employment for which a rule of liability for

1 injury, occupational disease, or death is provided under the  
 2 laws of the United States;

3 (h) employment of any person performing services in  
 4 return for aid or sustenance only, except employment of a  
 5 volunteer under 67-2-105;

6 (i) employment with any railroad engaged in interstate  
 7 commerce, except that railroad construction work is included  
 8 in and subject to the provisions of this chapter;

9 (j) employment as an official, including a timer,  
 10 referee, or judge, at a school amateur athletic event,  
 11 unless the person is otherwise employed by a school  
 12 district;

13 (k) any person performing services as a newspaper  
 14 carrier or free-lance correspondent if the person performing  
 15 the services or a parent or guardian of the person  
 16 performing the services in the case of a minor has  
 17 acknowledged in writing that the person performing the  
 18 services and the services are not covered. As used in this  
 19 subsection "free-lance correspondent" is a person who  
 20 submits articles or photographs for publication and is paid  
 21 by the article or by the photograph. As used in this  
 22 subsection "newspaper carrier":

23 (i) is a person who provides a newspaper with the  
 24 service of delivering newspapers singly or in bundles; but

25 (ii) does not include an employee of the paper who,

1 incidentally to his main duties, carries or delivers papers.

2 (L) COSMETOLOGIST'S SERVICES AND BARBER'S SERVICES AS  
3 DEFINED IN 39-51-204(1)(L).

4 (3) (a) A sole proprietor or a working member of a  
5 partnership who holds himself out or considers himself an  
6 independent contractor ~~{and--who--is--not--contracting}~~ for  
7 ~~cosmetologist's-services-or-barber's-services-as-defined--in~~  
8 ~~39-51-204(1)(L)}~~ must elect to be bound personally and  
9 individually by the provisions of compensation plan No. 1,  
10 2, or 3, but ~~unless he is contracting for~~ ~~cosmetologist's~~  
11 ~~barber's or construction trade services,~~ he may apply to  
12 the department for an exemption from the Workers'  
13 Compensation Act for himself UNLESS HE IS CONTRACTING FOR  
14 CONSTRUCTION INDUSTRY SERVICES.

15 (b) The application must be made in accordance with the  
16 rules adopted by the department. The department may deny the  
17 application only if it determines that the applicant is not  
18 an independent contractor.

19 (c) When an application is approved by the department,  
20 it is conclusive as to the status of an independent  
21 contractor and precludes the applicant from obtaining  
22 benefits under this chapter.

23 (d) When an election of an exemption is approved by the  
24 department, the election remains effective and the  
25 independent contractor retains his status as an independent

1 contractor until he notifies the department of any change in  
2 his status and provides a description of his present work  
3 status.

4 (e) If the department denies the application for  
5 exemption, the applicant may contest the denial by  
6 petitioning for review of the decision by an appeals referee  
7 in the manner provided for in 39-51-1109. An applicant  
8 dissatisfied with the decision of the appeals referee may  
9 appeal the decision in accordance with the procedure  
10 established in 39-51-2403 and 39-51-2404.

11 (4) (a) A private corporation shall provide coverage  
12 for its officers and other employees under the provisions of  
13 compensation plan No. 1, 2, or 3. However, pursuant to such  
14 rules as the department promulgates and subject in all cases  
15 to approval by the department, an officer of a private  
16 corporation may elect not to be bound as an employee under  
17 this chapter if he does not work in a construction trade  
18 INDUSTRY by giving a written notice, on a form provided by  
19 the department, served in the following manner:

20 (i) if the employer has elected to be bound by the  
21 provisions of compensation plan No. 1, by delivering the  
22 notice to the board of directors of the employer and the  
23 department; or

24 (ii) if the employer has elected to be bound by the  
25 provisions of compensation plan No. 2 or 3, by delivering

1 the notice to the board of directors of the employer, the  
2 department, and the insurer.

3 (b) If the employer changes plans or insurers, the  
4 officer's previous election is not effective and the officer  
5 shall again serve notice as provided if he elects not to be  
6 bound.

7 (c) The appointment or election of an employee as an  
8 officer of a corporation for the purpose of excluding the  
9 employee from coverage under this chapter does not entitle  
10 the officer to elect not to be bound as an employee under  
11 this chapter. In any case, the officer must sign the notice  
12 required by subsection (4)(a) under oath or affirmation, and  
13 he is subject to the penalties for false swearing under  
14 45-7-202 if he falsifies the notice.

15 (5) Each employer shall post a sign in the workplace at  
16 the locations where notices to employees are normally  
17 posted, informing employees about the employer's current  
18 provision of compensation insurance. A workplace is any  
19 location where an employee performs any work-related act in  
20 the course of employment, regardless of whether the location  
21 is temporary or permanent, and includes the place of  
22 business or property of a third person while the employer  
23 has access to or control over such place of business or  
24 property for the purpose of carrying on his usual trade,  
25 business, or occupation. The sign will be provided by the

1 department, distributed through insurers or directly by the  
2 department, and posted by employers in accordance with rules  
3 adopted by the department. An employer who purposely or  
4 knowingly fails to post a sign as provided in this  
5 subsection is subject to a \$50 fine for each citation."

6 **Section 3.** Section 39-71-405, MCA, is amended to read:

7 "39-71-405. Liability of employer who contracts work  
8 out. (1) An employer who contracts with an independent  
9 contractor, except an independent contractor working in a  
10 construction trade INDUSTRY, to have work performed of a  
11 kind which is a regular or a recurrent part of the work of  
12 the trade, business, occupation, or profession of such  
13 employer is liable for the payment of benefits under this  
14 chapter to the employees of the contractor if the contractor  
15 has not properly complied with the coverage requirements of  
16 the Worker's Compensation Act. Any insurer who becomes  
17 liable for payment of benefits may recover the amount of  
18 benefits paid and to be paid and necessary expenses from the  
19 contractor primarily liable therein.

20 (2) Where an employer contracts to have any work to be  
21 done by a contractor other than a contractor working in a  
22 construction trade INDUSTRY or an independent contractor,  
23 and the work so contracted to be done is a part or process  
24 in the trade or business of the employer, then the employer  
25 is liable to pay all benefits under this chapter to the same

1 extent as if the work were done without the intervention of  
 2 the contractor, and the work so contracted to be done shall  
 3 not be construed to be casual employment. Where an employer  
 4 contracts work to be done as specified in this subsection,  
 5 the contractor and the contractor's employees shall come  
 6 under that plan of compensation adopted by the employer.

7 (3) Where an employer contracts any work to be done,  
 8 wholly or in part for the employer, by an independent  
 9 contractor, where the work so contracted to be done is  
 10 casual employment as to such employer, then the contractor  
 11 shall become the employer for the purposes of this chapter."

12 **Section 4.** Section 39-72-102, MCA, is amended to read:

13 "39-72-102. Definitions. As used in this chapter,  
 14 unless the context requires otherwise, the following  
 15 definitions apply:

16 (1) "Beneficiary" is as defined in 39-71-116.

17 (2) "Child" is as defined in 39-71-116.

18 (3) "Department" means the department of labor and  
 19 industry.

20 (4) "Disablement" means the event of becoming  
 21 physically incapacitated by reason of an occupational  
 22 disease from performing work in the worker's job pool.  
 23 Silicosis, when complicated by active pulmonary  
 24 tuberculosis, is presumed to be total disablement.  
 25 "Disability", "total disability", and "totally disabled" are

1 synonymous with "disablement", but they have no reference to  
 2 "permanent partial disability".

3 (5) "Employee" is as defined in 39-71-118.

4 (6) "Employer" is as defined in 39-71-117.

5 (7) "Independent contractor" is as defined in  
 6 39-71-120.

7 (8) "Insurer" is as defined in 39-71-116.

8 (9) "Invalid" is as defined in 39-71-116.

9 (10) "Occupational disease" means harm, damage, or death  
 10 as set forth in 39-71-119(1) arising out of or contracted in  
 11 the course and scope of employment and caused by events  
 12 occurring on more than a single day or work shift. The term  
 13 does not include a physical or mental condition arising from  
 14 emotional or mental stress or from a nonphysical stimulus or  
 15 activity.

16 (11) "Order" is as defined in 39-71-116.

17 (12) "Pneumoconiosis" means a chronic dust disease of  
 18 the lungs arising out of employment in coal mines and  
 19 includes anthracosis, coal workers' pneumoconiosis,  
 20 silicosis, or anthracosilicosis arising out of such  
 21 employment.

22 (13) "Silicosis" means a chronic disease of the lungs  
 23 caused by the prolonged inhalation of silicon dioxide (SiO)  
 24 and characterized by small discrete nodules of fibrous  
 25 tissue similarly disseminated throughout both lungs, causing

1 the characteristic x-ray pattern, and by other variable  
2 clinical manifestations.

3 (14) "Wages" is as defined in 39-71-123.

4 (15) "Year" is as defined in 39-71-116~~(8)~~(9) and  
5 39-71-116~~(22)~~(23)."

6 **Section 5.** Section 39-71-721, MCA, is amended to read:

7 "39-71-721. Compensation for injury causing death --  
8 limitation. (1) (a) If an injured employee dies and the  
9 injury was the proximate cause of such death, then the  
10 beneficiary of the deceased is entitled to the same  
11 compensation as though the death occurred immediately  
12 following the injury. A beneficiary's eligibility for  
13 benefits commences after the date of death, and the benefit  
14 level is established as set forth in subsection (2).

15 (b) The insurer is entitled to recover any overpayments  
16 or compensation paid in a lump sum to a worker prior to  
17 death but not yet recouped. The insurer shall recover such  
18 payments from the beneficiary's biweekly payments as  
19 provided in 39-71-741(5).

20 (2) To beneficiaries as defined in  
21 39-71-116~~(2)~~(a)(3)(a) through ~~(2)~~(d)(3)(d), weekly  
22 compensation benefits for an injury causing death are  
23 66 2/3% of the decedent's wages. The maximum weekly  
24 compensation benefit may not exceed the state's average  
25 weekly wage at the time of injury. The minimum weekly

1 compensation benefit is 50% of the state's average weekly  
2 wage, but in no event may it exceed the decedent's actual  
3 wages at the time of his death.

4 (3) To beneficiaries as defined in  
5 39-71-116~~(2)~~(e)(3)(e) and ~~(2)~~(f)(3)(f), weekly benefits must  
6 be paid to the extent of the dependency at the time of the  
7 injury, subject to a maximum of 66 2/3% of the decedent's  
8 wages. The maximum weekly compensation may not exceed the  
9 state's average weekly wage at the time of injury.

10 (4) If the decedent leaves no beneficiary as defined in  
11 39-71-116~~(2)~~, a lump-sum payment of \$3,000 must be paid to  
12 the decedent's surviving parent or parents.

13 (5) If any beneficiary of a deceased employee dies, the  
14 right of such beneficiary to compensation under this chapter  
15 ceases. Death benefits must be paid to a surviving spouse  
16 for 500 weeks subsequent to the date of the deceased  
17 employee's death or until the spouse's remarriage, whichever  
18 occurs first. After benefit payments cease to a surviving  
19 spouse, death benefits must be paid to beneficiaries, if  
20 any, as defined in 39-71-116~~(2)~~(b)(3)(b) through  
21 ~~(2)~~(d)(3)(d).

22 (6) In all cases, benefits must be paid to  
23 beneficiaries, as defined in 39-71-116~~(2)~~.

24 (7) Benefits paid under this section may not be  
25 adjusted for cost of living as provided in 39-71-702.

1 (8) Notwithstanding subsections (2) and (3), beginning  
 2 July 1, 1987, through June 30, 1991, the maximum weekly  
 3 compensation benefits for injury causing death may not  
 4 exceed the state's average weekly wage of \$299 established  
 5 July 1, 1986. Beginning July 1, 1987, through June 30, 1991,  
 6 the minimum weekly compensation for injury causing death  
 7 shall be \$149.50, which is 50% of the state's average weekly  
 8 wage established July 1, 1986, but in no event may it exceed  
 9 the decedent's actual wages at the time of death."

10 **Section 6.** Section 39-71-723, MCA, is amended to read:

11 "39-71-723. How compensation to be divided among  
 12 beneficiaries. Compensation due to beneficiaries ~~shall~~ must  
 13 be paid to the surviving spouse, if any, or if none, then  
 14 divided equally among or for the benefit of the children. In  
 15 cases-where if beneficiaries are a surviving spouse and  
 16 stepchildren of such spouse, the compensation ~~shall~~ must be  
 17 divided equally among all beneficiaries. Compensation due to  
 18 beneficiaries as defined in ~~subsections-(2)(e)-and-(2)(f)-of~~  
 19 39-71-116(3)(e) and (3)(f), where when there is more than  
 20 one, ~~shall~~ must be divided equitably among them, and the  
 21 question of dependency and amount thereof ~~shall--be is~~ is a  
 22 question of fact for determination by the department."

23 **Section 7.** Section 39-73-108, MCA, is amended to read:

24 "39-73-108. Payment of benefits where when person  
 25 entitled is in institution. If any person who is entitled to

1 benefits under this chapter ~~shall-be~~ is an inmate in any  
 2 Montana state institution, benefits ~~shall~~ may not be paid to  
 3 him but ~~shall~~ must be paid his beneficiary, if any, as  
 4 defined in 39-71-116(2)."

5 NEW SECTION. **Section 8. Remedies for failure to**  
 6 **provide coverage.** (1) (a) A person may file a complaint with  
 7 the department asserting that:

8 (i) an employer has not provided workers' compensation  
 9 coverage for an employee in a construction trade INDUSTRY;

10 (ii) a sole proprietor or a working member of a  
 11 partnership who holds himself out or considers himself an  
 12 independent contractor in a construction trade INDUSTRY has  
 13 not provided coverage for himself.

14 (b) The department must investigate the complaint  
 15 within 5 working days of its filing and either issue a cease  
 16 and desist order as provided in subsection (2) or dismiss  
 17 the complaint as unsupported by fact.

18 (c) The department may assess the costs of  
 19 investigating a frivolous complaint against the person who  
 20 files the complaint and may assess against the employer the  
 21 costs of investigating a complaint that is not frivolous.

22 (2) The department shall issue an order to:

23 (a) an employer who has an employee in service in a  
 24 construction trade INDUSTRY under an appointment or contract  
 25 of hire, expressed, implied, oral, or written, who does not



1 provide workers' compensation coverage for that employee,  
2 ordering the employer to cease and desist from continuing to  
3 employ the employee until the employer has obtained coverage  
4 for the employee;

5 (b) a sole proprietor or a working member of a  
6 partnership who holds himself out or considers himself an  
7 independent contractor in a construction ~~trade~~ INDUSTRY who  
8 has not obtained workers' compensation coverage for himself,  
9 ordering him to cease and desist from continuing the  
10 construction project until he has provided coverage for  
11 himself.

12 (3) The department may bring an action in district  
13 court to enforce a cease and desist order by injunction or  
14 other means.

15 NEW SECTION. **Section 9.** Codification instruction.  
16 [Section 8] is intended to be codified as an integral part  
17 of Title 39, chapter 71, and the provisions of Title 39,  
18 chapter 71, apply to [section 8].

-End-

## 1 HOUSE BILL NO. 342

2 INTRODUCED BY WANZENRIED, DRISCOLL, CONNELLY,

3 PIPINICH, BIANCHI

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT MANDATING WORKERS'  
6 COMPENSATION COVERAGE FOR INDEPENDENT CONTRACTORS, SOLE  
7 PROPRIETORS, WORKING MEMBERS OF A PARTNERSHIP, CORPORATE  
8 OFFICERS, AND DEPENDENT MEMBERS OF AN EMPLOYER'S FAMILY WHEN  
9 ANY OF THESE PERSONS ARE ENGAGED IN A CONSTRUCTION TRADE  
10 INDUSTRY; CREATING REMEDIES FOR FAILURE TO PROVIDE COVERAGE;  
11 AND AMENDING SECTIONS 39-71-116, 39-71-401, 39-71-405,  
12 39-71-721, 39-71-723, 39-72-102, AND 39-73-108, MCA."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:15 **Section 1.** Section 39-71-116, MCA, is amended to read:16 "39-71-116. Definitions. Unless the context otherwise  
17 requires, words and phrases employed in this chapter have  
18 the following meanings:

19 (1) "Administer and pay" includes all actions by the  
20 state fund under the Workers' Compensation Act and the  
21 Occupational Disease Act of Montana necessary to the  
22 investigation, review, and settlement of claims; payment of  
23 benefits; setting of reserves; furnishing of services and  
24 facilities; and utilization of actuarial, audit, accounting,  
25 vocational rehabilitation, and legal services.

1 (2) "Average weekly wage" means the mean weekly  
2 earnings of all employees under covered employment, as  
3 defined and established annually by the Montana department  
4 of labor and industry. It is established at the nearest  
5 whole dollar number and must be adopted by the department  
6 prior to July 1 of each year.

7 (3) "Beneficiary" means:

8 (a) a surviving spouse living with or legally entitled  
9 to be supported by the deceased at the time of injury;

10 (b) an unmarried child under the age of 18 years;

11 (c) an unmarried child under the age of 22 years who is  
12 a full-time student in an accredited school or is enrolled  
13 in an accredited apprenticeship program;14 (d) an invalid child over the age of 18 years who is  
15 dependent upon the decedent for support at the time of  
16 injury;17 (e) a parent who is dependent upon the decedent for  
18 support at the time of the injury (however, such a parent is  
19 a beneficiary only when no beneficiary, as defined in  
20 subsections (3)(a) through (3)(d) of this section, exists);  
21 and22 (f) a brother or sister under the age of 18 years if  
23 dependent upon the decedent for support at the time of the  
24 injury (however, such a brother or sister is a beneficiary  
25 only until the age of 18 years and only when no beneficiary,

THIRD READING

1 as defined in subsections (3)(a) through (3)(e) of this  
2 section, exists).

3 (4) "Casual employment" means employment not in the  
4 usual course of trade, business, profession, or occupation  
5 of the employer.

6 (5) "Child" includes a posthumous child, a dependent  
7 stepchild, and a child legally adopted prior to the injury.

8 (6) "Construction trade"--means--a--trade--in--which--a  
9 person, whether by general contracting, subcontracting, as a  
10 sole--proprietorship--or--partnership,--as--an--employee, or  
11 otherwise, is directly involved in providing skilled or  
12 unskilled physical labor in the renovation or construction  
13 of buildings or other structures. The term includes but is  
14 not limited to general labor, carpentry, electrical work,  
15 plumbing, sheet-rocking, painting, and masonry. INDUSTRY"  
16 MEANS THE MAJOR GROUP OF GENERAL CONTRACTORS AND OPERATIVE  
17 BUILDERS, HEAVY CONSTRUCTION (OTHER THAN BUILDING  
18 CONSTRUCTION) CONTRACTORS, AND SPECIAL TRADE CONTRACTORS,  
19 LISTED IN MAJOR GROUPS 15 THROUGH 17 IN THE 1987 STANDARD  
20 INDUSTRIAL CLASSIFICATION MANUAL. The term does not include  
21 office workers, design professionals, salesmen, estimators,  
22 or any other related employment that is not directly  
23 involved on a regular basis in the provision of physical  
24 labor at a construction or renovation site.

25 (7) "Days" means calendar days, unless otherwise

1 specified.

2 (7)(8) "Department" means the department of labor and  
3 industry.

4 (8)(9) "Fiscal year" means the period of time between  
5 July 1 and the succeeding June 30.

6 (9)(10) "Insurer" means an employer bound by  
7 compensation plan No. 1, an insurance company transacting  
8 business under compensation plan No. 2, the state fund under  
9 compensation plan No. 3, or the uninsured employers' fund  
10 provided for in part 5 of this chapter.

11 (10)(11) "Invalid" means one who is physically or  
12 mentally incapacitated.

13 (11)(12) "Maximum healing" means the status reached when  
14 a worker is as far restored medically as the permanent  
15 character of the work-related injury will permit.

16 (12)(13) "Order" means any decision, rule, direction,  
17 requirement, or standard of the department or any other  
18 determination arrived at or decision made by the department.

19 (13)(14) "Payroll", "annual payroll", or "annual payroll  
20 for the preceding year" means the average annual payroll of  
21 the employer for the preceding calendar year or, if the  
22 employer shall not have operated a sufficient or any length  
23 of time during such calendar year, 12 times the average  
24 monthly payroll for the current year. However, an estimate  
25 may be made by the department for any employer starting in

1 business if no average payrolls are available. This estimate  
 2 is to be adjusted by additional payment by the employer or  
 3 refund by the department, as the case may actually be, on  
 4 December 31 of such current year. An employer's payroll must  
 5 be computed by calculating all wages, as defined in  
 6 39-71-123, that are paid by an employer.

7 ~~(14)~~(15) "Permanent partial disability" means a  
 8 condition, after a worker has reached maximum healing, in  
 9 which a worker:

10 (a) has a medically determined physical restriction as  
 11 a result of an injury as defined in 39-71-119; and

12 (b) is able to return to work in the worker's job pool  
 13 pursuant to one of the options set forth in 39-71-1012 but  
 14 suffers impairment or partial wage loss, or both.

15 ~~(15)~~(16) "Permanent total disability" means a condition  
 16 resulting from injury as defined in this chapter, after a  
 17 worker reaches maximum healing, in which a worker is unable  
 18 to return to work in the worker's job pool after exhausting  
 19 all options set forth in 39-71-1012.

20 ~~(16)~~(17) The term "physician" includes "surgeon" and in  
 21 either case means one authorized by law to practice his  
 22 profession in this state.

23 ~~(17)~~(18) The "plant of the employer" includes the place  
 24 of business of a third person while the employer has access  
 25 to or control over such place of business for the purpose of

1 carrying on his usual trade, business, or occupation.

2 ~~(18)~~(19) "Public corporation" means the state or any  
 3 county, municipal corporation, school district, city, city  
 4 under commission form of government or special charter,  
 5 town, or village.

6 ~~(19)~~(20) "Reasonably safe place to work" means that the  
 7 place of employment has been made as free from danger to the  
 8 life or safety of the employee as the nature of the  
 9 employment will reasonably permit.

10 ~~(20)~~(21) "Reasonably safe tools and appliances" are such  
 11 tools and appliances as are adapted to and are reasonably  
 12 safe for use for the particular purpose for which they are  
 13 furnished.

14 ~~(21)~~(22) "Temporary total disability" means a condition  
 15 resulting from an injury as defined in this chapter that  
 16 results in total loss of wages and exists until the injured  
 17 worker reaches maximum healing.

18 ~~(22)~~(23) "Year", unless otherwise specified, means  
 19 calendar year."

20 **Section 2.** Section 39-71-401, MCA, is amended to read:  
 21 "39-71-401. **Employments covered and employments**  
 22 **exempted.** (1) Except as provided in subsection (2) of this  
 23 section, the Workers' Compensation Act applies to all  
 24 employers as defined in 39-71-117 and to all employees as  
 25 defined in 39-71-118. An employer who has any employee in

1 service under any appointment or contract of hire, expressed  
 2 or implied, oral or written, shall elect to be bound by the  
 3 provisions of compensation plan No. 1, 2, or 3. Every  
 4 employee whose employer is bound by the Workers'  
 5 Compensation Act is subject to and bound by the compensation  
 6 plan that has been elected by the employer.

7 (2) Unless the employer elects coverage for these  
 8 employments under this chapter and an insurer allows such an  
 9 election, the Workers' Compensation Act does not apply to  
 10 any of the following employments:

- 11 (a) household and domestic employment;
- 12 (b) casual employment as defined in 39-71-116;
- 13 (c) employment, in a position other than a construction  
 14 trade INDUSTRY, of a dependent member of an employer's  
 15 family for whom an exemption may be claimed by the employer  
 16 under the federal Internal Revenue Code;
- 17 (d) ~~employment, in a position other than a construction~~  
 18 ~~trade, IN A POSITION OTHER THAN A CONSTRUCTION INDUSTRY~~, of  
 19 sole proprietors or working members of a partnership, except  
 20 as provided in subsection (3);
- 21 (e) employment of a broker or salesman performing under  
 22 a license issued by the board of realty regulation;
- 23 (f) employment of a direct seller engaged in the sale  
 24 of consumer products, primarily in the customer's home;
- 25 (g) employment for which a rule of liability for

1 injury, occupational disease, or death is provided under the  
 2 laws of the United States;

3 (h) employment of any person performing services in  
 4 return for aid or sustenance only, except employment of a  
 5 volunteer under 67-2-105;

6 (i) employment with any railroad engaged in interstate  
 7 commerce, except that railroad construction work is included  
 8 in and subject to the provisions of this chapter;

9 (j) employment as an official, including a timer,  
 10 referee, or judge, at a school amateur athletic event,  
 11 unless the person is otherwise employed by a school  
 12 district;

13 (k) any person performing services as a newspaper  
 14 carrier or free-lance correspondent if the person performing  
 15 the services or a parent or guardian of the person  
 16 performing the services in the case of a minor has  
 17 acknowledged in writing that the person performing the  
 18 services and the services are not covered. As used in this  
 19 subsection "free-lance correspondent" is a person who  
 20 submits articles or photographs for publication and is paid  
 21 by the article or by the photograph. As used in this  
 22 subsection "newspaper carrier":

23 (i) is a person who provides a newspaper with the  
 24 service of delivering newspapers singly or in bundles; but

25 (ii) does not include an employee of the paper who,

1 incidentally to his main duties, carries or delivers papers.

2 (L) COSMETOLOGIST'S SERVICES AND BARBER'S SERVICES AS  
 3 DEFINED IN 39-51-204(1)(L).

4 (3) (a) A sole proprietor or a working member of a  
 5 partnership who holds himself out or considers himself an  
 6 independent contractor ~~{and--who--is--not--contracting}~~ for  
 7 ~~cosmetologist's-services-or-barber's-services-as-defined--in~~  
 8 ~~39-51-204(i)+(i)}~~ must elect to be bound personally and  
 9 individually by the provisions of compensation plan No. 1,  
 10 2, or 3, but ~~unless he is contracting for--cosmetologist's~~  
 11 ~~barber's--or--construction--trade-services,~~ he may apply to  
 12 the department for an exemption from the Workers'  
 13 Compensation Act for himself UNLESS HE IS CONTRACTING FOR  
 14 CONSTRUCTION INDUSTRY SERVICES.

15 (b) The application must be made in accordance with the  
 16 rules adopted by the department. The department may deny the  
 17 application only if it determines that the applicant is not  
 18 an independent contractor.

19 (c) When an application is approved by the department,  
 20 it is conclusive as to the status of an independent  
 21 contractor and precludes the applicant from obtaining  
 22 benefits under this chapter.

23 (d) When an election of an exemption is approved by the  
 24 department, the election remains effective and the  
 25 independent contractor retains his status as an independent

1 contractor until he notifies the department of any change in  
 2 his status and provides a description of his present work  
 3 status.

4 (e) If the department denies the application for  
 5 exemption, the applicant may contest the denial by  
 6 petitioning for review of the decision by an appeals referee  
 7 in the manner provided for in 39-51-1109. An applicant  
 8 dissatisfied with the decision of the appeals referee may  
 9 appeal the decision in accordance with the procedure  
 10 established in 39-51-2403 and 39-51-2404.

11 (4) (a) A private corporation shall provide coverage  
 12 for its officers and other employees under the provisions of  
 13 compensation plan No. 1, 2, or 3. However, pursuant to such  
 14 rules as the department promulgates and subject in all cases  
 15 to approval by the department, an officer of a private  
 16 corporation may elect not to be bound as an employee under  
 17 this chapter if he does not work in a construction trade  
 18 INDUSTRY by giving a written notice, on a form provided by  
 19 the department, served in the following manner:

20 (i) if the employer has elected to be bound by the  
 21 provisions of compensation plan No. 1, by delivering the  
 22 notice to the board of directors of the employer and the  
 23 department; or

24 (ii) if the employer has elected to be bound by the  
 25 provisions of compensation plan No. 2 or 3, by delivering

1 the notice to the board of directors of the employer, the  
2 department, and the insurer.

3 (b) If the employer changes plans or insurers, the  
4 officer's previous election is not effective and the officer  
5 shall again serve notice as provided if he elects not to be  
6 bound.

7 (c) The appointment or election of an employee as an  
8 officer of a corporation for the purpose of excluding the  
9 employee from coverage under this chapter does not entitle  
10 the officer to elect not to be bound as an employee under  
11 this chapter. In any case, the officer must sign the notice  
12 required by subsection (4)(a) under oath or affirmation, and  
13 he is subject to the penalties for false swearing under  
14 45-7-202 if he falsifies the notice.

15 (5) Each employer shall post a sign in the workplace at  
16 the locations where notices to employees are normally  
17 posted, informing employees about the employer's current  
18 provision of compensation insurance. A workplace is any  
19 location where an employee performs any work-related act in  
20 the course of employment, regardless of whether the location  
21 is temporary or permanent, and includes the place of  
22 business or property of a third person while the employer  
23 has access to or control over such place of business or  
24 property for the purpose of carrying on his usual trade,  
25 business, or occupation. The sign will be provided by the

1 department, distributed through insurers or directly by the  
2 department, and posted by employers in accordance with rules  
3 adopted by the department. An employer who purposely or  
4 knowingly fails to post a sign as provided in this  
5 subsection is subject to a \$50 fine for each citation."

6 **Section 3.** Section 39-71-405, MCA, is amended to read:

7 "39-71-405. Liability of employer who contracts work  
8 out. (1) An employer who contracts with an independent  
9 contractor, except an independent contractor working in a  
10 construction trade INDUSTRY, to have work performed of a  
11 kind which is a regular or a recurrent part of the work of  
12 the trade, business, occupation, or profession of such  
13 employer is liable for the payment of benefits under this  
14 chapter to the employees of the contractor if the contractor  
15 has not properly complied with the coverage requirements of  
16 the Worker's Compensation Act. Any insurer who becomes  
17 liable for payment of benefits may recover the amount of  
18 benefits paid and to be paid and necessary expenses from the  
19 contractor primarily liable therein.

20 (2) Where an employer contracts to have any work to be  
21 done by a contractor other than a contractor working in a  
22 construction trade INDUSTRY or an independent contractor,  
23 and the work so contracted to be done is a part or process  
24 in the trade or business of the employer, then the employer  
25 is liable to pay all benefits under this chapter to the same

1 extent as if the work were done without the intervention of  
 2 the contractor, and the work so contracted to be done shall  
 3 not be construed to be casual employment. Where an employer  
 4 contracts work to be done as specified in this subsection,  
 5 the contractor and the contractor's employees shall come  
 6 under that plan of compensation adopted by the employer.

7 (3) Where an employer contracts any work to be done,  
 8 wholly or in part for the employer, by an independent  
 9 contractor, where the work so contracted to be done is  
 10 casual employment as to such employer, then the contractor  
 11 shall become the employer for the purposes of this chapter."

12 **Section 4.** Section 39-72-102, MCA, is amended to read:

13 "39-72-102. Definitions. As used in this chapter,  
 14 unless the context requires otherwise, the following  
 15 definitions apply:

16 (1) "Beneficiary" is as defined in 39-71-116.

17 (2) "Child" is as defined in 39-71-116.

18 (3) "Department" means the department of labor and  
 19 industry.

20 (4) "Disablement" means the event of becoming  
 21 physically incapacitated by reason of an occupational  
 22 disease from performing work in the worker's job pool.  
 23 Silicosis, when complicated by active pulmonary  
 24 tuberculosis, is presumed to be total disablement.  
 25 "Disability", "total disability", and "totally disabled" are

1 synonymous with "disablement", but they have no reference to  
 2 "permanent partial disability".

3 (5) "Employee" is as defined in 39-71-118.

4 (6) "Employer" is as defined in 39-71-117.

5 (7) "Independent contractor" is as defined in  
 6 39-71-120.

7 (8) "Insurer" is as defined in 39-71-116.

8 (9) "Invalid" is as defined in 39-71-116.

9 (10) "Occupational disease" means harm, damage, or death  
 10 as set forth in 39-71-119(1) arising out of or contracted in  
 11 the course and scope of employment and caused by events  
 12 occurring on more than a single day or work shift. The term  
 13 does not include a physical or mental condition arising from  
 14 emotional or mental stress or from a nonphysical stimulus or  
 15 activity.

16 (11) "Order" is as defined in 39-71-116.

17 (12) "Pneumoconiosis" means a chronic dust disease of  
 18 the lungs arising out of employment in coal mines and  
 19 includes anthracosis, coal workers' pneumoconiosis,  
 20 silicosis, or anthracosilicosis arising out of such  
 21 employment.

22 (13) "Silicosis" means a chronic disease of the lungs  
 23 caused by the prolonged inhalation of silicon dioxide (SiO)  
 24 and characterized by small discrete nodules of fibrous  
 25 tissue similarly disseminated throughout both lungs, causing



1 the characteristic x-ray pattern, and by other variable  
2 clinical manifestations.

3 (14) "Wages" is as defined in 39-71-123.

4 (15) "Year" is as defined in 39-71-116~~(8)~~(9) and  
5 39-71-116~~(22)~~(23)."

6 **Section 5.** Section 39-71-721, MCA, is amended to read:

7 \*39-71-721. Compensation for injury causing death --  
8 limitation. (1) (a) If an injured employee dies and the  
9 injury was the proximate cause of such death, then the  
10 beneficiary of the deceased is entitled to the same  
11 compensation as though the death occurred immediately  
12 following the injury. A beneficiary's eligibility for  
13 benefits commences after the date of death, and the benefit  
14 level is established as set forth in subsection (2).

15 (b) The insurer is entitled to recover any overpayments  
16 or compensation paid in a lump sum to a worker prior to  
17 death but not yet recouped. The insurer shall recover such  
18 payments from the beneficiary's biweekly payments as  
19 provided in 39-71-741(5).

20 (2) To beneficiaries as defined in  
21 39-71-116~~(2)~~(3)(a) through ~~(2)~~(3)(d), weekly  
22 compensation benefits for an injury causing death are  
23 66 2/3% of the decedent's wages. The maximum weekly  
24 compensation benefit may not exceed the state's average  
25 weekly wage at the time of injury. The minimum weekly

1 compensation benefit is 50% of the state's average weekly  
2 wage, but in no event may it exceed the decedent's actual  
3 wages at the time of his death.

4 (3) To beneficiaries as defined in  
5 39-71-116~~(2)~~(3)(e) and ~~(2)~~(3)(f), weekly benefits must  
6 be paid to the extent of the dependency at the time of the  
7 injury, subject to a maximum of 66 2/3% of the decedent's  
8 wages. The maximum weekly compensation may not exceed the  
9 state's average weekly wage at the time of injury.

10 (4) If the decedent leaves no beneficiary as defined in  
11 39-71-116~~(2)~~, a lump-sum payment of \$3,000 must be paid to  
12 the decedent's surviving parent or parents.

13 (5) If any beneficiary of a deceased employee dies, the  
14 right of such beneficiary to compensation under this chapter  
15 ceases. Death benefits must be paid to a surviving spouse  
16 for 500 weeks subsequent to the date of the deceased  
17 employee's death or until the spouse's remarriage, whichever  
18 occurs first. After benefit payments cease to a surviving  
19 spouse, death benefits must be paid to beneficiaries, if  
20 any, as defined in 39-71-116~~(2)~~(3)(b) through  
21 ~~(2)~~(3)(d).

22 (6) In all cases, benefits must be paid to  
23 beneficiaries, as defined in 39-71-116~~(2)~~.

24 (7) Benefits paid under this section may not be  
25 adjusted for cost of living as provided in 39-71-702.

(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of \$299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be \$149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death."

**Section 6.** Section 39-71-723, MCA, is amended to read:

"39-71-723. How compensation to be divided among beneficiaries. Compensation due to beneficiaries shall must be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. ~~in cases where~~ If beneficiaries are a surviving spouse and stepchildren of such spouse, the compensation shall must be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in ~~subsections (2)(e) and (2)(f) of 39-71-116(3)(e) and (3)(f),~~ where when there is more than one, shall must be divided equitably among them, and the question of dependency and amount thereof shall ~~be~~ is a question of fact for determination by the department."

**Section 7.** Section 39-73-108, MCA, is amended to read:

"39-73-108. Payment of benefits where when person entitled is in institution. If any person who is entitled to

benefits under this chapter shall ~~be~~ is an inmate in any Montana state institution, benefits shall may not be paid to him but shall must be paid his beneficiary, if any, as defined in 39-71-116(2)."

**NEW SECTION. Section 8. Remedies for failure to provide coverage.** (1) (a) A person may file a complaint with the department asserting that:

(i) an employer has not provided workers' compensation coverage for an employee in a construction trade INDUSTRY;

(ii) a sole proprietor or a working member of a partnership who holds himself out or considers himself an independent contractor in a construction trade INDUSTRY has not provided coverage for himself.

(b) The department must investigate the complaint within 5 working days of its filing and either issue a cease and desist order as provided in subsection (2) or dismiss the complaint as unsupported by fact.

(c) The department may assess the costs of investigating a frivolous complaint against the person who files the complaint and may assess against the employer the costs of investigating a complaint that is not frivolous.

(2) The department shall issue an order to:

(a) an employer who has an employee in service in a construction trade INDUSTRY under an appointment or contract of hire, expressed, implied, oral, or written, who does not

1 provide workers' compensation coverage for that employee,  
2 ordering the employer to cease and desist from continuing to  
3 employ the employee until the employer has obtained coverage  
4 for the employee;

5 (b) a sole proprietor or a working member of a  
6 partnership who holds himself out or considers himself an  
7 independent contractor in a construction trade INDUSTRY who  
8 has not obtained workers' compensation coverage for himself,  
9 ordering him to cease and desist from continuing the  
10 construction project until he has provided coverage for  
11 himself.

12 (3) The department may bring an action in district  
13 court to enforce a cease and desist order by injunction or  
14 other means.

15 NEW SECTION. Section 9. Codification instruction.  
16 [Section 8] is intended to be codified as an integral part  
17 of Title 39, chapter 71, and the provisions of Title 39,  
18 chapter 71, apply to [section 8].

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 26, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 342 (third reading copy -- blue), respectfully report that House Bill No. 342 be amended and as so amended be concurred in:

1. Page 19.

Following: line 18

Insert: "NEW SECTION. Section 10. Applicability -- exemption.

(1) [This act] does not apply to any construction project bid by an employer prior to October 1, 1991.

(2) Notwithstanding any other provision of [this act], an independent contractor may apply to the department of labor and industry for an exemption from [this act] in the manner provided for in 39-71-401 if the independent contractor can demonstrate, on a quarterly basis, proof of insurance for himself that provides compensation and benefits providing coverage for medical claims and loss of wages resulting from injuries and occupational disease that is comparable to the coverage provided under Title 39, chapters 71 and 72."

Signed: \_\_\_\_\_

  
Thomas E. Towe, Vice-Chairman

LB 3/26/91  
Amd. Coord.

SB 3-26-91 11:20  
Sec. of Senate

SENATE  
HB 342

SENATE COMMITTEE OF THE WHOLE AMENDMENT

April 2, 1991 3:02 pm

Mr. Chairman: I move to amend House Bill No. 342 (reference copy -- salmon) as follows:

1. Title, line 5.

Strike: "MANDATING"

Insert: "CLARIFYING"

2. Title, line 10.

Following: "INDUSTRY;"

Strike: remainder of line 10 in its entirety

3. Title, line 11.

Strike: "39-71-405,"

4. Page 7, lines 14 and 15.

Following: "employment" on line 14

Strike: remainder of line 14 through "L" on line 15

5. Page 9, line 14.

Strike: "UNLESS"

Insert: "even if"

6. Page 10, lines 18 and 19.

Following: "chapter" on line 18

Strike: remainder of line 18 through "INDUSTRY" on line 19

7. Page 12, line 7 through page 13, line 12.

Strike: section 3 in its entirety

Re-number: subsequent sections

8. Page 18, line 6 through page 19, line 19.

Strike: sections 8 and 9 in their entirety

Re-number: subsequent section

ADOPT

REJECT

Signed: \_\_\_\_\_

*Aklestad*  
Senator Aklestad

*JK 4-3-91*  
Amd. Coord.

*SB 4-3-91 8:30*  
Sec. of Senate

SENATE  
HB 342

1 HOUSE BILL NO. 342  
 2 INTRODUCED BY WANZENRIED, DRISCOLL, CONNELLY,  
 3 PIPINICH, BIANCHI  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT MANDATING WORKERS'  
 6 COMPENSATION COVERAGE FOR INDEPENDENT CONTRACTORS, SOLE  
 7 PROPRIETORS, WORKING MEMBERS OF A PARTNERSHIP, CORPORATE  
 8 OFFICERS, AND DEPENDENT MEMBERS OF AN EMPLOYER'S FAMILY WHEN  
 9 ANY OF THESE PERSONS ARE ENGAGED IN A CONSTRUCTION TRADE  
 10 INDUSTRY; CREATING REMEDIES FOR FAILURE TO PROVIDE COVERAGE;  
 11 AND AMENDING SECTIONS 39-71-116, 39-71-401, 39-71-405,  
 12 39-71-721, 39-71-723, 39-72-102, AND 39-73-108, MCA; AND  
 13 PROVIDING AN APPLICABILITY DATE."  
 14

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

16 Section 1. Section 39-71-116, MCA, is amended to read:  
 17 "39-71-116. Definitions. Unless the context otherwise  
 18 requires, words and phrases employed in this chapter have  
 19 the following meanings:

20 (1) "Administer and pay" includes all actions by the  
 21 state fund under the Workers' Compensation Act and the  
 22 Occupational Disease Act of Montana necessary to the  
 23 investigation, review, and settlement of claims; payment of  
 24 benefits; setting of reserves; furnishing of services and  
 25 facilities; and utilization of actuarial, audit, accounting,

1 vocational rehabilitation, and legal services.

2 (2) "Average weekly wage" means the mean weekly  
 3 earnings of all employees under covered employment, as  
 4 defined and established annually by the Montana department  
 5 of labor and industry. It is established at the nearest  
 6 whole dollar number and must be adopted by the department  
 7 prior to July 1 of each year.

8 (3) "Beneficiary" means:

9 (a) a surviving spouse living with or legally entitled  
 10 to be supported by the deceased at the time of injury;

11 (b) an unmarried child under the age of 18 years;

12 (c) an unmarried child under the age of 22 years who is  
 13 a full-time student in an accredited school or is enrolled  
 14 in an accredited apprenticeship program;

15 (d) an invalid child over the age of 18 years who is  
 16 dependent upon the decedent for support at the time of  
 17 injury;

18 (e) a parent who is dependent upon the decedent for  
 19 support at the time of the injury (however, such a parent is  
 20 a beneficiary only when no beneficiary, as defined in  
 21 subsections (3)(a) through (3)(d) of this section, exists);  
 22 and

23 (f) a brother or sister under the age of 18 years if  
 24 dependent upon the decedent for support at the time of the  
 25 injury (however, such a brother or sister is a beneficiary

1 only until the age of 18 years and only when no beneficiary,  
 2 as defined in subsections (3)(a) through (3)(e) of this  
 3 section, exists).

4 (4) "Casual employment" means employment not in the  
 5 usual course of trade, business, profession, or occupation  
 6 of the employer.

7 (5) "Child" includes a posthumous child, a dependent  
 8 stepchild, and a child legally adopted prior to the injury.

9 (6) "Construction trade"--means--a--trade--in--which--a  
 10 person,--whether--by--general--contracting,--subcontracting,--as--a  
 11 sole--proprietorship--or--partnership,--as--an--employee,--or  
 12 otherwise,--is--directly--involved--in--providing--skilled--or  
 13 unskilled--physical--labor--in--the--renovation--or--construction  
 14 of--buildings--or--other--structures. The term includes but is  
 15 not limited to general labor, carpentry, electrical work,  
 16 plumbing, sheet-rocking, painting, and masonry. INDUSTRY"  
 17 MEANS THE MAJOR GROUP OF GENERAL CONTRACTORS AND OPERATIVE  
 18 BUILDERS, HEAVY CONSTRUCTION (OTHER THAN BUILDING  
 19 CONSTRUCTION) CONTRACTORS, AND SPECIAL TRADE CONTRACTORS,  
 20 LISTED IN MAJOR GROUPS 15 THROUGH 17 IN THE 1987 STANDARD  
 21 INDUSTRIAL CLASSIFICATION MANUAL. The term does not include  
 22 office workers, design professionals, salesmen, estimators,  
 23 or any other related employment that is not directly  
 24 involved on a regular basis in the provision of physical  
 25 labor at a construction or renovation site.

1 ~~(6)~~(7) "Days" means calendar days, unless otherwise  
 2 specified.

3 ~~(7)~~(8) "Department" means the department of labor and  
 4 industry.

5 ~~(8)~~(9) "Fiscal year" means the period of time between  
 6 July 1 and the succeeding June 30.

7 ~~(9)~~(10) "Insurer" means an employer bound by  
 8 compensation plan No. 1, an insurance company transacting  
 9 business under compensation plan No. 2, the state fund under  
 10 compensation plan No. 3, or the uninsured employers' fund  
 11 provided for in part 5 of this chapter.

12 ~~(10)~~(11) "Invalid" means one who is physically or  
 13 mentally incapacitated.

14 ~~(11)~~(12) "Maximum healing" means the status reached when  
 15 a worker is as far restored medically as the permanent  
 16 character of the work-related injury will permit.

17 ~~(12)~~(13) "Order" means any decision, rule, direction,  
 18 requirement, or standard of the department or any other  
 19 determination arrived at or decision made by the department.

20 ~~(13)~~(14) "Payroll", "annual payroll", or "annual payroll  
 21 for the preceding year" means the average annual payroll of  
 22 the employer for the preceding calendar year or, if the  
 23 employer shall not have operated a sufficient or any length  
 24 of time during such calendar year, 12 times the average  
 25 monthly payroll for the current year. However, an estimate

1 may be made by the department for any employer starting in  
 2 business if no average payrolls are available. This estimate  
 3 is to be adjusted by additional payment by the employer or  
 4 refund by the department, as the case may actually be, on  
 5 December 31 of such current year. An employer's payroll must  
 6 be computed by calculating all wages, as defined in  
 7 39-71-123, that are paid by an employer.

8 ~~(14)~~(15) "Permanent partial disability" means a  
 9 condition, after a worker has reached maximum healing, in  
 10 which a worker:

11 (a) has a medically determined physical restriction as  
 12 a result of an injury as defined in 39-71-119; and

13 (b) is able to return to work in the worker's job pool  
 14 pursuant to one of the options set forth in 39-71-1012 but  
 15 suffers impairment or partial wage loss, or both.

16 ~~(15)~~(16) "Permanent total disability" means a condition  
 17 resulting from injury as defined in this chapter, after a  
 18 worker reaches maximum healing, in which a worker is unable  
 19 to return to work in the worker's job pool after exhausting  
 20 all options set forth in 39-71-1012.

21 ~~(16)~~(17) The term "physician" includes "surgeon" and in  
 22 either case means one authorized by law to practice his  
 23 profession in this state.

24 ~~(17)~~(18) The "plant of the employer" includes the place  
 25 of business of a third person while the employer has access

1 to or control over such place of business for the purpose of  
 2 carrying on his usual trade, business, or occupation.

3 ~~(18)~~(19) "Public corporation" means the state or any  
 4 county, municipal corporation, school district, city, city  
 5 under commission form of government or special charter,  
 6 town, or village.

7 ~~(19)~~(20) "Reasonably safe place to work" means that the  
 8 place of employment has been made as free from danger to the  
 9 life or safety of the employee as the nature of the  
 10 employment will reasonably permit.

11 ~~(20)~~(21) "Reasonably safe tools and appliances" are such  
 12 tools and appliances as are adapted to and are reasonably  
 13 safe for use for the particular purpose for which they are  
 14 furnished.

15 ~~(21)~~(22) "Temporary total disability" means a condition  
 16 resulting from an injury as defined in this chapter that  
 17 results in total loss of wages and exists until the injured  
 18 worker reaches maximum healing.

19 ~~(22)~~(23) "Year", unless otherwise specified, means  
 20 calendar year."

21 **Section 2.** Section 39-71-401, MCA, is amended to read:

22 "39-71-401. Employments covered and employments  
 23 exempted. (1) Except as provided in subsection (2) of this  
 24 section, the Workers' Compensation Act applies to all  
 25 employers as defined in 39-71-117 and to all employees as



1 defined in 39-71-118. An employer who has any employee in  
 2 service under any appointment or contract of hire, expressed  
 3 or implied, oral or written, shall elect to be bound by the  
 4 provisions of compensation plan No. 1, 2, or 3. Every  
 5 employee whose employer is bound by the Workers'  
 6 Compensation Act is subject to and bound by the compensation  
 7 plan that has been elected by the employer.

8 (2) Unless the employer elects coverage for these  
 9 employments under this chapter and an insurer allows such an  
 10 election, the Workers' Compensation Act does not apply to  
 11 any of the following employments:

- 12 (a) household and domestic employment;
- 13 (b) casual employment as defined in 39-71-116;
- 14 (c) employment, in a position other than a construction  
 15 trade INDUSTRY, of a dependent member of an employer's  
 16 family for whom an exemption may be claimed by the employer  
 17 under the federal Internal Revenue Code;
- 18 (d) ~~employment, in a position other than a construction~~  
 19 trade, IN A POSITION OTHER THAN A CONSTRUCTION INDUSTRY, of  
 20 sole proprietors or working members of a partnership, except  
 21 as provided in subsection (3);
- 22 (e) employment of a broker or salesman performing under  
 23 a license issued by the board of realty regulation;
- 24 (f) employment of a direct seller engaged in the sale  
 25 of consumer products, primarily in the customer's home;

1 (g) employment for which a rule of liability for  
 2 injury, occupational disease, or death is provided under the  
 3 laws of the United States;

4 (h) employment of any person performing services in  
 5 return for aid or sustenance only, except employment of a  
 6 volunteer under 67-2-105;

7 (i) employment with any railroad engaged in interstate  
 8 commerce, except that railroad construction work is included  
 9 in and subject to the provisions of this chapter;

10 (j) employment as an official, including a timer,  
 11 referee, or judge, at a school amateur athletic event,  
 12 unless the person is otherwise employed by a school  
 13 district;

14 (k) any person performing services as a newspaper  
 15 carrier or free-lance correspondent if the person performing  
 16 the services or a parent or guardian of the person  
 17 performing the services in the case of a minor has  
 18 acknowledged in writing that the person performing the  
 19 services and the services are not covered. As used in this  
 20 subsection "free-lance correspondent" is a person who  
 21 submits articles or photographs for publication and is paid  
 22 by the article or by the photograph. As used in this  
 23 subsection "newspaper carrier":

24 (i) is a person who provides a newspaper with the  
 25 service of delivering newspapers singly or in bundles; but

1 (ii) does not include an employee of the paper who,  
 2 incidentally to his main duties, carries or delivers papers.

3 (L) COSMETOLOGIST'S SERVICES AND BARBER'S SERVICES AS  
 4 DEFINED IN 39-51-204(1)(L).

5 (3) (a) A sole proprietor or a working member of a  
 6 partnership who holds himself out or considers himself an  
 7 independent contractor ~~{and who is not contracting}~~ for  
 8 ~~cosmetologist's services or barber's services as defined in~~  
 9 ~~39-51-204(1)(L)}~~ must elect to be bound personally and  
 10 individually by the provisions of compensation plan No. 1,  
 11 2, or 3, but ~~unless he is contracting for cosmetologist's~~  
 12 ~~barber's or construction trade services,~~ he may apply to  
 13 the department for an exemption from the Workers'  
 14 Compensation Act for himself UNLESS HE IS CONTRACTING FOR  
 15 CONSTRUCTION INDUSTRY SERVICES.

16 (b) The application must be made in accordance with the  
 17 rules adopted by the department. The department may deny the  
 18 application only if it determines that the applicant is not  
 19 an independent contractor.

20 (c) When an application is approved by the department,  
 21 it is conclusive as to the status of an independent  
 22 contractor and precludes the applicant from obtaining  
 23 benefits under this chapter.

24 (d) When an election of an exemption is approved by the  
 25 department, the election remains effective and the

1 independent contractor retains his status as an independent  
 2 contractor until he notifies the department of any change in  
 3 his status and provides a description of his present work  
 4 status.

5 (e) If the department denies the application for  
 6 exemption, the applicant may contest the denial by  
 7 petitioning for review of the decision by an appeals referee  
 8 in the manner provided for in 39-51-1109. An applicant  
 9 dissatisfied with the decision of the appeals referee may  
 10 appeal the decision in accordance with the procedure  
 11 established in 39-51-2403 and 39-51-2404.

12 (4) (a) A private corporation shall provide coverage  
 13 for its officers and other employees under the provisions of  
 14 compensation plan No. 1, 2, or 3. However, pursuant to such  
 15 rules as the department promulgates and subject in all cases  
 16 to approval by the department, an officer of a private  
 17 corporation may elect not to be bound as an employee under  
 18 this chapter if he does not work in a construction trade  
 19 INDUSTRY by giving a written notice, on a form provided by  
 20 the department, served in the following manner:

21 (i) if the employer has elected to be bound by the  
 22 provisions of compensation plan No. 1, by delivering the  
 23 notice to the board of directors of the employer and the  
 24 department; or

25 (ii) if the employer has elected to be bound by the

1 provisions of compensation plan No. 2 or 3, by delivering  
2 the notice to the board of directors of the employer, the  
3 department, and the insurer.

4 (b) If the employer changes plans or insurers, the  
5 officer's previous election is not effective and the officer  
6 shall again serve notice as provided if he elects not to be  
7 bound.

8 (c) The appointment or election of an employee as an  
9 officer of a corporation for the purpose of excluding the  
10 employee from coverage under this chapter does not entitle  
11 the officer to elect not to be bound as an employee under  
12 this chapter. In any case, the officer must sign the notice  
13 required by subsection (4)(a) under oath or affirmation, and  
14 he is subject to the penalties for false swearing under  
15 45-7-202 if he falsifies the notice.

16 (5) Each employer shall post a sign in the workplace at  
17 the locations where notices to employees are normally  
18 posted, informing employees about the employer's current  
19 provision of compensation insurance. A workplace is any  
20 location where an employee performs any work-related act in  
21 the course of employment, regardless of whether the location  
22 is temporary or permanent, and includes the place of  
23 business or property of a third person while the employer  
24 has access to or control over such place of business or  
25 property for the purpose of carrying on his usual trade,

1 business, or occupation. The sign will be provided by the  
2 department, distributed through insurers or directly by the  
3 department, and posted by employers in accordance with rules  
4 adopted by the department. An employer who purposely or  
5 knowingly fails to post a sign as provided in this  
6 subsection is subject to a \$50 fine for each citation."

7 **Section 3.** Section 39-71-405, MCA, is amended to read:

8 "39-71-405. Liability of employer who contracts work  
9 out. (1) An employer who contracts with an independent  
10 contractor, except an independent contractor working in a  
11 construction trade INDUSTRY, to have work performed of a  
12 kind which is a regular or a recurrent part of the work of  
13 the trade, business, occupation, or profession of such  
14 employer is liable for the payment of benefits under this  
15 chapter to the employees of the contractor if the contractor  
16 has not properly complied with the coverage requirements of  
17 the Worker's Compensation Act. Any insurer who becomes  
18 liable for payment of benefits may recover the amount of  
19 benefits paid and to be paid and necessary expenses from the  
20 contractor primarily liable therein.

21 (2) Where an employer contracts to have any work to be  
22 done by a contractor other than a contractor working in a  
23 construction trade INDUSTRY or an independent contractor,  
24 and the work so contracted to be done is a part or process  
25 in the trade or business of the employer, then the employer

1 is liable to pay all benefits under this chapter to the same  
 2 extent as if the work were done without the intervention of  
 3 the contractor, and the work so contracted to be done shall  
 4 not be construed to be casual employment. Where an employer  
 5 contracts work to be done as specified in this subsection,  
 6 the contractor and the contractor's employees shall come  
 7 under that plan of compensation adopted by the employer.

8 (3) Where an employer contracts any work to be done,  
 9 wholly or in part for the employer, by an independent  
 10 contractor, where the work so contracted to be done is  
 11 casual employment as to such employer, then the contractor  
 12 shall become the employer for the purposes of this chapter."

13 **Section 4.** Section 39-72-102, MCA, is amended to read:

14 **"39-72-102. Definitions.** As used in this chapter,  
 15 unless the context requires otherwise, the following  
 16 definitions apply:

- 17 (1) "Beneficiary" is as defined in 39-71-116.  
 18 (2) "Child" is as defined in 39-71-116.  
 19 (3) "Department" means the department of labor and  
 20 industry.  
 21 (4) "Disablement" means the event of becoming  
 22 physically incapacitated by reason of an occupational  
 23 disease from performing work in the worker's job pool.  
 24 Silicosis, when complicated by active pulmonary  
 25 tuberculosis, is presumed to be total disablement.

1 "Disability", "total disability", and "totally disabled" are  
 2 synonymous with "disablement", but they have no reference to  
 3 "permanent partial disability".

4 (5) "Employee" is as defined in 39-71-118.

5 (6) "Employer" is as defined in 39-71-117.

6 (7) "Independent contractor" is as defined in  
 7 39-71-120.

8 (8) "Insurer" is as defined in 39-71-116.

9 (9) "Invalid" is as defined in 39-71-116.

10 (10) "Occupational disease" means harm, damage, or death  
 11 as set forth in 39-71-119(1) arising out of or contracted in  
 12 the course and scope of employment and caused by events  
 13 occurring on more than a single day or work shift. The term  
 14 does not include a physical or mental condition arising from  
 15 emotional or mental stress or from a nonphysical stimulus or  
 16 activity.

17 (11) "Order" is as defined in 39-71-116.

18 (12) "Pneumoconiosis" means a chronic dust disease of  
 19 the lungs arising out of employment in coal mines and  
 20 includes anthracosis, coal workers' pneumoconiosis,  
 21 silicosis, or anthracosilicosis arising out of such  
 22 employment.

23 (13) "Silicosis" means a chronic disease of the lungs  
 24 caused by the prolonged inhalation of silicon dioxide (SiO)  
 25 and characterized by small discrete nodules of fibrous

1 tissue similarly disseminated throughout both lungs, causing  
2 the characteristic x-ray pattern, and by other variable  
3 clinical manifestations.

4 (14) "Wages" is as defined in 39-71-123.

5 (15) "Year" is as defined in 39-71-116~~(8)~~(9) and  
6 39-71-116~~(22)~~(23)."

7 **Section 5.** Section 39-71-721, MCA, is amended to read:

8 "39-71-721. Compensation for injury causing death --  
9 limitation. (1) (a) If an injured employee dies and the  
10 injury was the proximate cause of such death, then the  
11 beneficiary of the deceased is entitled to the same  
12 compensation as though the death occurred immediately  
13 following the injury. A beneficiary's eligibility for  
14 benefits commences after the date of death, and the benefit  
15 level is established as set forth in subsection (2).

16 (b) The insurer is entitled to recover any overpayments  
17 or compensation paid in a lump sum to a worker prior to  
18 death but not yet recouped. The insurer shall recover such  
19 payments from the beneficiary's biweekly payments as  
20 provided in 39-71-741(5).

21 (2) To beneficiaries as defined in  
22 39-71-116~~(2)~~(a)(3)(a) through ~~(2)~~(d)(3)(d), weekly  
23 compensation benefits for an injury causing death are  
24 66 2/3% of the decedent's wages. The maximum weekly  
25 compensation benefit may not exceed the state's average

1 weekly wage at the time of injury. The minimum weekly  
2 compensation benefit is 50% of the state's average weekly  
3 wage, but in no event may it exceed the decedent's actual  
4 wages at the time of his death.

5 (3) To beneficiaries as defined in  
6 39-71-116~~(2)~~(e)(3)(e) and ~~(2)~~(f)(3)(f), weekly benefits must  
7 be paid to the extent of the dependency at the time of the  
8 injury, subject to a maximum of 66 2/3% of the decedent's  
9 wages. The maximum weekly compensation may not exceed the  
10 state's average weekly wage at the time of injury.

11 (4) If the decedent leaves no beneficiary as defined in  
12 39-71-116~~(2)~~, a lump-sum payment of \$3,000 must be paid to  
13 the decedent's surviving parent or parents.

14 (5) If any beneficiary of a deceased employee dies, the  
15 right of such beneficiary to compensation under this chapter  
16 ceases. Death benefits must be paid to a surviving spouse  
17 for 500 weeks subsequent to the date of the deceased  
18 employee's death or until the spouse's remarriage, whichever  
19 occurs first. After benefit payments cease to a surviving  
20 spouse, death benefits must be paid to beneficiaries, if  
21 any, as defined in 39-71-116~~(2)~~(b)(3)(b) through  
22 ~~(2)~~(d)(3)(d).

23 (6) In all cases, benefits must be paid to  
24 beneficiaries, as defined in 39-71-116~~(2)~~.

25 (7) Benefits paid under this section may not be

1 adjusted for cost of living as provided in 39-71-702.

2 (8) Notwithstanding subsections (2) and (3), beginning  
3 July 1, 1987, through June 30, 1991, the maximum weekly  
4 compensation benefits for injury causing death may not  
5 exceed the state's average weekly wage of \$299 established  
6 July 1, 1986. Beginning July 1, 1987, through June 30, 1991,  
7 the minimum weekly compensation for injury causing death  
8 shall be \$149.50, which is 50% of the state's average weekly  
9 wage established July 1, 1986, but in no event may it exceed  
10 the decedent's actual wages at the time of death."

11 **Section 6.** Section 39-71-723, MCA, is amended to read:

12 "39-71-723. How compensation to be divided among  
13 beneficiaries. Compensation due to beneficiaries shall must  
14 be paid to the surviving spouse, if any, or if none, then  
15 divided equally among or for the benefit of the children. In  
16 cases--where If beneficiaries are a surviving spouse and  
17 stepchildren of such spouse, the compensation shall must be  
18 divided equally among all beneficiaries. Compensation due to  
19 beneficiaries as defined in ~~subsections-(2)(e)-and-(2)(f)-of~~  
20 39-71-116(3)(e) and (3)(f), where when there is more than  
21 one, shall must be divided equitably among them, and the  
22 question of dependency and amount thereof shall ~~be is~~ a  
23 question of fact for determination by the department."

24 **Section 7.** Section 39-73-108, MCA, is amended to read:

25 "39-73-108. Payment of benefits where when person

1 entitled is in institution. If any person who is entitled to  
2 benefits under this chapter shall ~~be is~~ an inmate in any  
3 Montana state institution, benefits shall may not be paid to  
4 him but shall must be paid his beneficiary, if any, as  
5 defined in 39-71-116(2)."

6 **NEW SECTION. Section 8. Remedies for failure to**  
7 **provide coverage.** (1) (a) A person may file a complaint with  
8 the department asserting that:

9 (i) an employer has not provided workers' compensation  
10 coverage for an employee in a construction trade INDUSTRY;

11 (ii) a sole proprietor or a working member of a  
12 partnership who holds himself out or considers himself an  
13 independent contractor in a construction trade INDUSTRY has  
14 not provided coverage for himself.

15 (b) The department must investigate the complaint  
16 within 5 working days of its filing and either issue a cease  
17 and desist order as provided in subsection (2) or dismiss  
18 the complaint as unsupported by fact.

19 (c) The department may assess the costs of  
20 investigating a frivolous complaint against the person who  
21 files the complaint and may assess against the employer the  
22 costs of investigating a complaint that is not frivolous.

23 (2) The department shall issue an order to:

24 (a) an employer who has an employee in service in a  
25 construction trade INDUSTRY under an appointment or contract

1 of hire, expressed, implied, oral, or written, who does not  
 2 provide workers' compensation coverage for that employee,  
 3 ordering the employer to cease and desist from continuing to  
 4 employ the employee until the employer has obtained coverage  
 5 for the employee;

6 (b) a sole proprietor or a working member of a  
 7 partnership who holds himself out or considers himself an  
 8 independent contractor in a construction trade INDUSTRY who  
 9 has not obtained workers' compensation coverage for himself,  
 10 ordering him to cease and desist from continuing the  
 11 construction project until he has provided coverage for  
 12 himself.

13 (3) The department may bring an action in district  
 14 court to enforce a cease and desist order by injunction or  
 15 other means.

16 NEW SECTION. Section 9. Codification instruction.

17 [Section 8] is intended to be codified as an integral part  
 18 of Title 39, chapter 71, and the provisions of Title 39,  
 19 chapter 71, apply to [section 8].

20 NEW SECTION. SECTION 10. APPLICABILITY -- EXEMPTION.

21 (1) [THIS ACT] DOES NOT APPLY TO ANY CONSTRUCTION PROJECT  
 22 BID BY AN EMPLOYER PRIOR TO OCTOBER 1, 1991.

23 (2) NOTWITHSTANDING ANY OTHER PROVISION OF [THIS ACT],  
 24 AN INDEPENDENT CONTRACTOR MAY APPLY TO THE DEPARTMENT OF  
 25 LABOR AND INDUSTRY FOR AN EXEMPTION FROM [THIS ACT] IN THE

1 MANNER PROVIDED FOR IN 39-71-401 IF THE INDEPENDENT  
 2 CONTRACTOR CAN DEMONSTRATE, ON A QUARTERLY BASIS, PROOF OF  
 3 INSURANCE FOR HIMSELF THAT PROVIDES COMPENSATION AND  
 4 BENEFITS PROVIDING COVERAGE FOR MEDICAL CLAIMS AND LOSS OF  
 5 WAGES RESULTING FROM INJURIES AND OCCUPATIONAL DISEASE THAT  
 6 IS COMPARABLE TO THE COVERAGE PROVIDED UNDER TITLE 39,  
 7 CHAPTERS 71 AND 72.

-End-

## 1 HOUSE BILL NO. 342

2 INTRODUCED BY WANZENRIED, DRISCOLL, CONNELLY,

3 PIPINICH, BIANCHI

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT MANDATING CLARIFYING  
6 WORKERS' COMPENSATION COVERAGE FOR INDEPENDENT CONTRACTORS,  
7 SOLE PROPRIETORS, WORKING MEMBERS OF A PARTNERSHIP,  
8 CORPORATE OFFICERS, AND DEPENDENT MEMBERS OF AN EMPLOYER'S  
9 FAMILY WHEN ANY OF THESE PERSONS ARE ENGAGED IN A  
10 CONSTRUCTION TRADE INDUSTRY; ~~CREATING-REMEDIES-FOR-FAILURE~~  
11 ~~TO--PROVIDE--COVERAGE~~; AND AMENDING SECTIONS 39-71-116,  
12 39-71-401, ~~39-71-405~~, 39-71-721, 39-71-723, 39-72-102, AND  
13 39-73-108, MCA; AND PROVIDING AN APPLICABILITY DATE."

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:16 **Section 1.** Section 39-71-116, MCA, is amended to read:17 "39-71-116. Definitions. Unless the context otherwise  
18 requires, words and phrases employed in this chapter have  
19 the following meanings:

20 (1) "Administer and pay" includes all actions by the  
21 state fund under the Workers' Compensation Act and the  
22 Occupational Disease Act of Montana necessary to the  
23 investigation, review, and settlement of claims; payment of  
24 benefits; setting of reserves; furnishing of services and  
25 facilities; and utilization of actuarial, audit, accounting,

1 vocational rehabilitation, and legal services.

2 (2) "Average weekly wage" means the mean weekly  
3 earnings of all employees under covered employment, as  
4 defined and established annually by the Montana department  
5 of labor and industry. It is established at the nearest  
6 whole dollar number and must be adopted by the department  
7 prior to July 1 of each year.

8 (3) "Beneficiary" means:

9 (a) a surviving spouse living with or legally entitled  
10 to be supported by the decedent at the time of injury;

11 (b) an unmarried child under the age of 18 years;

12 (c) an unmarried child under the age of 22 years who is  
13 a full-time student in an accredited school or is enrolled  
14 in an accredited apprenticeship program;15 (d) an invalid child over the age of 18 years who is  
16 dependent upon the decedent for support at the time of  
17 injury;18 (e) a parent who is dependent upon the decedent for  
19 support at the time of the injury (however, such a parent is  
20 a beneficiary only when no beneficiary, as defined in  
21 subsections (3)(a) through (3)(d) of this section, exists);  
22 and23 (f) a brother or sister under the age of 18 years if  
24 dependent upon the decedent for support at the time of the  
25 injury (however, such a brother or sister is a beneficiary

REFERENCE BILL

AS AMENDED HB 342



1 only until the age of 18 years and only when no beneficiary,  
 2 as defined in subsections (3)(a) through (3)(e) of this  
 3 section, exists).

4 (4) "Casual employment" means employment not in the  
 5 usual course of trade, business, profession, or occupation  
 6 of the employer.

7 (5) "Child" includes a posthumous child, a dependent  
 8 stepchild, and a child legally adopted prior to the injury.

9 (6) "Construction trade" means a trade in which a  
 10 person, whether by general contracting, subcontracting, as a  
 11 sole proprietorship or partnership, as an employee or  
 12 otherwise, is directly involved in providing skilled or  
 13 unskilled physical labor in the renovation or construction  
 14 of buildings or other structures. The term includes but is  
 15 not limited to general labor, carpentry, electrical work,  
 16 plumbing, sheet-rocking, painting, and masonry. INDUSTRY"  
 17 MEANS THE MAJOR GROUP OF GENERAL CONTRACTORS AND OPERATIVE  
 18 BUILDERS, HEAVY CONSTRUCTION (OTHER THAN BUILDING  
 19 CONSTRUCTION) CONTRACTORS, AND SPECIAL TRADE CONTRACTORS,  
 20 LISTED IN MAJOR GROUPS 15 THROUGH 17 IN THE 1987 STANDARD  
 21 INDUSTRIAL CLASSIFICATION MANUAL. The term does not include  
 22 office workers, design professionals, salesmen, estimators,  
 23 or any other related employment that is not directly  
 24 involved on a regular basis in the provision of physical  
 25 labor at a construction or renovation site.

1 ~~(6)~~(7) "Days" means calendar days, unless otherwise  
 2 specified.

3 ~~(7)~~(8) "Department" means the department of labor and  
 4 industry.

5 ~~(8)~~(9) "Fiscal year" means the period of time between  
 6 July 1 and the succeeding June 30.

7 ~~(9)~~(10) "Insurer" means an employer bound by  
 8 compensation plan No. 1, an insurance company transacting  
 9 business under compensation plan No. 2, the state fund under  
 10 compensation plan No. 3, or the uninsured employers' fund  
 11 provided for in part 5 of this chapter.

12 ~~(10)~~(11) "Invalid" means one who is physically or  
 13 mentally incapacitated.

14 ~~(11)~~(12) "Maximum healing" means the status reached when  
 15 a worker is as far restored medically as the permanent  
 16 character of the work-related injury will permit.

17 ~~(12)~~(13) "Order" means any decision, rule, direction,  
 18 requirement, or standard of the department or any other  
 19 determination arrived at or decision made by the department.

20 ~~(13)~~(14) "Payroll", "annual payroll", or "annual payroll  
 21 for the preceding year" means the average annual payroll of  
 22 the employer for the preceding calendar year or, if the  
 23 employer shall not have operated a sufficient or any length  
 24 of time during such calendar year, 12 times the average  
 25 monthly payroll for the current year. However, an estimate

1 may be made by the department for any employer starting in  
 2 business if no average payrolls are available. This estimate  
 3 is to be adjusted by additional payment by the employer or  
 4 refund by the department, as the case may actually be, on  
 5 December 31 of such current year. An employer's payroll must  
 6 be computed by calculating all wages, as defined in  
 7 39-71-123, that are paid by an employer.

8 ~~(14)~~(15) "Permanent partial disability" means a  
 9 condition, after a worker has reached maximum healing, in  
 10 which a worker:

11 (a) has a medically determined physical restriction as  
 12 a result of an injury as defined in 39-71-119; and

13 (b) is able to return to work in the worker's job pool  
 14 pursuant to one of the options set forth in 39-71-1012 but  
 15 suffers impairment or partial wage loss, or both.

16 ~~(15)~~(16) "Permanent total disability" means a condition  
 17 resulting from injury as defined in this chapter, after a  
 18 worker reaches maximum healing, in which a worker is unable  
 19 to return to work in the worker's job pool after exhausting  
 20 all options set forth in 39-71-1012.

21 ~~(16)~~(17) The term "physician" includes "surgeon" and in  
 22 either case means one authorized by law to practice his  
 23 profession in this state.

24 ~~(17)~~(18) The "plant of the employer" includes the place  
 25 of business of a third person while the employer has access

1 to or control over such place of business for the purpose of  
 2 carrying on his usual trade, business, or occupation.

3 ~~(18)~~(19) "Public corporation" means the state or any  
 4 county, municipal corporation, school district, city, city  
 5 under commission form of government or special charter,  
 6 town, or village.

7 ~~(19)~~(20) "Reasonably safe place to work" means that the  
 8 place of employment has been made as free from danger to the  
 9 life or safety of the employee as the nature of the  
 10 employment will reasonably permit.

11 ~~(20)~~(21) "Reasonably safe tools and appliances" are such  
 12 tools and appliances as are adapted to and are reasonably  
 13 safe for use for the particular purpose for which they are  
 14 furnished.

15 ~~(21)~~(22) "Temporary total disability" means a condition  
 16 resulting from an injury as defined in this chapter that  
 17 results in total loss of wages and exists until the injured  
 18 worker reaches maximum healing.

19 ~~(22)~~(23) "Year", unless otherwise specified, means  
 20 calendar year."

21 **Section 2.** Section 39-71-401, MCA, is amended to read:

22 "39-71-401. **Employments covered and employments**  
 23 **exempted.** (1) Except as provided in subsection (2) of this  
 24 section, the Workers' Compensation Act applies to all  
 25 employers as defined in 39-71-117 and to all employees as

1 defined in 39-71-118. An employer who has any employee in  
 2 service under any appointment or contract of hire, expressed  
 3 or implied, oral or written, shall elect to be bound by the  
 4 provisions of compensation plan No. 1, 2, or 3. Every  
 5 employee whose employer is bound by the Workers'  
 6 Compensation Act is subject to and bound by the compensation  
 7 plan that has been elected by the employer.

8 (2) Unless the employer elects coverage for these  
 9 employments under this chapter and an insurer allows such an  
 10 election, the Workers' Compensation Act does not apply to  
 11 any of the following employments:

12 (a) household and domestic employment;

13 (b) casual employment as defined in 39-71-116;

14 (c) ~~employment in a position other than a construction~~  
 15 ~~trade industry~~ of a dependent member of an employer's  
 16 family for whom an exemption may be claimed by the employer  
 17 under the federal Internal Revenue Code;

18 (d) ~~employment in a position other than a construction~~  
 19 ~~trade, in a position other than a construction industry~~, of  
 20 sole proprietors or working members of a partnership, except  
 21 as provided in subsection (3);

22 (e) employment of a broker or salesman performing under  
 23 a license issued by the board of realty regulation;

24 (f) employment of a direct seller engaged in the sale  
 25 of consumer products, primarily in the customer's home;

1 (g) employment for which a rule of liability for  
 2 injury, occupational disease, or death is provided under the  
 3 laws of the United States;

4 (h) employment of any person performing services in  
 5 return for aid or sustenance only, except employment of a  
 6 volunteer under 67-2-105;

7 (i) employment with any railroad engaged in interstate  
 8 commerce, except that railroad construction work is included  
 9 in and subject to the provisions of this chapter;

10 (j) employment as an official, including a timer,  
 11 referee, or judge, at a school amateur athletic event,  
 12 unless the person is otherwise employed by a school  
 13 district;

14 (k) any person performing services as a newspaper  
 15 carrier or free-lance correspondent if the person performing  
 16 the services or a parent or guardian of the person  
 17 performing the services in the case of a minor has  
 18 acknowledged in writing that the person performing the  
 19 services and the services are not covered. As used in this  
 20 subsection "free-lance correspondent" is a person who  
 21 submits articles or photographs for publication and is paid  
 22 by the article or by the photograph. As used in this  
 23 subsection "newspaper carrier":

24 (i) is a person who provides a newspaper with the  
 25 service of delivering newspapers singly or in bundles; but

1 (ii) does not include an employee of the paper who,  
 2 incidentally to his main duties, carries or delivers papers.

3 (L) COSMETOLOGIST'S SERVICES AND BARBER'S SERVICES AS  
 4 DEFINED IN 39-51-204(1)(L).

5 (3) (a) A sole proprietor or a working member of a  
 6 partnership who holds himself out or considers himself an  
 7 independent contractor ~~and who is not contracting for~~  
 8 ~~cosmetologist's services or barber's services as defined in~~  
 9 ~~39-51-204(1)(i)~~ must elect to be bound personally and  
 10 individually by the provisions of compensation plan No. 1,  
 11 2, or 3, ~~but unless he is contracting for cosmetologist's,~~  
 12 ~~barber's, or construction trade services,~~ he may apply to  
 13 the department for an exemption from the Workers'  
 14 Compensation Act for himself UNLESS EVEN IF HE IS  
 15 CONTRACTING FOR CONSTRUCTION INDUSTRY SERVICES.

16 (b) The application must be made in accordance with the  
 17 rules adopted by the department. The department may deny the  
 18 application only if it determines that the applicant is not  
 19 an independent contractor.

20 (c) When an application is approved by the department,  
 21 it is conclusive as to the status of an independent  
 22 contractor and precludes the applicant from obtaining  
 23 benefits under this chapter.

24 (d) When an election of an exemption is approved by the  
 25 department, the election remains effective and the

1 independent contractor retains his status as an independent  
 2 contractor until he notifies the department of any change in  
 3 his status and provides a description of his present work  
 4 status.

5 (e) If the department denies the application for  
 6 exemption, the applicant may contest the denial by  
 7 petitioning for review of the decision by an appeals referee  
 8 in the manner provided for in 39-51-1109. An applicant  
 9 dissatisfied with the decision of the appeals referee may  
 10 appeal the decision in accordance with the procedure  
 11 established in 39-51-2403 and 39-51-2404.

12 (4) (a) A private corporation shall provide coverage  
 13 for its officers and other employees under the provisions of  
 14 compensation plan No. 1, 2, or 3. However, pursuant to such  
 15 rules as the department promulgates and subject in all cases  
 16 to approval by the department, an officer of a private  
 17 corporation may elect not to be bound as an employee under  
 18 this chapter ~~if he does not work in a construction trade~~  
 19 INDUSTRY by giving a written notice, on a form provided by  
 20 the department, served in the following manner:

21 (i) if the employer has elected to be bound by the  
 22 provisions of compensation plan No. 1, by delivering the  
 23 notice to the board of directors of the employer and the  
 24 department; or

25 (ii) if the employer has elected to be bound by the

1 provisions of compensation plan No. 2 or 3, by delivering  
2 the notice to the board of directors of the employer, the  
3 department, and the insurer.

4 (b) If the employer changes plans or insurers, the  
5 officer's previous election is not effective and the officer  
6 shall again serve notice as provided if he elects not to be  
7 bound.

8 (c) The appointment or election of an employee as an  
9 officer of a corporation for the purpose of excluding the  
10 employee from coverage under this chapter does not entitle  
11 the officer to elect not to be bound as an employee under  
12 this chapter. In any case, the officer must sign the notice  
13 required by subsection (4)(a) under oath or affirmation, and  
14 he is subject to the penalties for false swearing under  
15 45-7-202 if he falsifies the notice.

16 (5) Each employer shall post a sign in the workplace at  
17 the locations where notices to employees are normally  
18 posted, informing employees about the employer's current  
19 provision of compensation insurance. A workplace is any  
20 location where an employee performs any work-related act in  
21 the course of employment, regardless of whether the location  
22 is temporary or permanent, and includes the place of  
23 business or property of a third person while the employer  
24 has access to or control over such place of business or  
25 property for the purpose of carrying on his usual trade,

1 business, or occupation. The sign will be provided by the  
2 department, distributed through insurers or directly by the  
3 department, and posted by employers in accordance with rules  
4 adopted by the department. An employer who purposely or  
5 knowingly fails to post a sign as provided in this  
6 subsection is subject to a \$50 fine for each citation."

7 ~~Section 39-71-405, MCA, is amended to read:~~  
8 ~~"39-71-405. Liability of employer who contracts work~~  
9 ~~out: (1) An employer who contracts with an independent~~  
10 ~~contractor, except an independent contractor working in a~~  
11 ~~construction trade INDUSTRY, to have work performed of a~~  
12 ~~kind which is a regular or a recurrent part of the work of~~  
13 ~~the trade, business, occupation, or profession of such~~  
14 ~~employer is liable for the payment of benefits under this~~  
15 ~~chapter to the employees of the contractor if the contractor~~  
16 ~~has not properly complied with the coverage requirements of~~  
17 ~~the Worker's Compensation Act. Any insurer who becomes~~  
18 ~~liable for payment of benefits may recover the amount of~~  
19 ~~benefits paid and to be paid and necessary expenses from the~~  
20 ~~contractor primarily liable therein.~~

21 ~~(2) Where an employer contracts to have any work to be~~  
22 ~~done by a contractor other than a contractor working in a~~  
23 ~~construction trade INDUSTRY or an independent contractor,~~  
24 ~~and the work so contracted to be done is a part or process~~  
25 ~~in the trade or business of the employer, then the employer~~

1 is liable to pay all benefits under this chapter to the same  
 2 extent as if the work were done without the intervention of  
 3 the contractor, and the work so contracted to be done shall  
 4 not be construed to be casual employment. Where an employer  
 5 contracts work to be done as specified in this subsection,  
 6 the contractor and the contractor's employees shall come  
 7 under that plan of compensation adopted by the employer.

8 (3) Where an employer contracts any work to be done,  
 9 wholly or in part for the employer, by an independent  
 10 contractor, where the work so contracted to be done is  
 11 casual employment as to such employer, then the contractor  
 12 shall become the employer for the purposes of this chapter."

13 **Section 3.** Section 39-72-102, MCA, is amended to read:

14 "39-72-102. Definitions. As used in this chapter,  
 15 unless the context requires otherwise, the following  
 16 definitions apply:

17 (1) "Beneficiary" is as defined in 39-71-116.

18 (2) "Child" is as defined in 39-71-116.

19 (3) "Department" means the department of labor and  
 20 industry.

21 (4) "Disablement" means the event of becoming  
 22 physically incapacitated by reason of an occupational  
 23 disease from performing work in the worker's job pool.  
 24 Silicosis, when complicated by active pulmonary  
 25 tuberculosis, is presumed to be total disablement.

1 "Disability", "total disability", and "totally disabled" are  
 2 synonymous with "disablement", but they have no reference to  
 3 "permanent partial disability".

4 (5) "Employee" is as defined in 39-71-118.

5 (6) "Employer" is as defined in 39-71-117.

6 (7) "Independent contractor" is as defined in  
 7 39-71-120.

8 (8) "Insurer" is as defined in 39-71-116.

9 (9) "Invalid" is as defined in 39-71-116.

10 (10) "Occupational disease" means harm, damage, or death  
 11 as set forth in 39-71-119(1) arising out of or contracted in  
 12 the course and scope of employment and caused by events  
 13 occurring on more than a single day or work shift. The term  
 14 does not include a physical or mental condition arising from  
 15 emotional or mental stress or from a nonphysical stimulus or  
 16 activity.

17 (11) "Order" is as defined in 39-71-116.

18 (12) "Pneumoconiosis" means a chronic dust disease of  
 19 the lungs arising out of employment in coal mines and  
 20 includes anthracosis, coal workers' pneumoconiosis,  
 21 silicosis, or anthracosilicosis arising out of such  
 22 employment.

23 (13) "Silicosis" means a chronic disease of the lungs  
 24 caused by the prolonged inhalation of silicon dioxide (SiO)  
 25 and characterized by small discrete nodules of fibrous

1 tissue similarly disseminated throughout both lungs, causing  
 2 the characteristic x-ray pattern, and by other variable  
 3 clinical manifestations.

4 (14) "Wages" is as defined in 39-71-123.

5 (15) "Year" is as defined in 39-71-116+8+9 and  
 6 39-71-116+22+23."

7 **Section 4.** Section 39-71-721, MCA, is amended to read:

8 "39-71-721. Compensation for injury causing death --  
 9 limitation. (1) (a) If an injured employee dies and the  
 10 injury was the proximate cause of such death, then the  
 11 beneficiary of the deceased is entitled to the same  
 12 compensation as though the death occurred immediately  
 13 following the injury. A beneficiary's eligibility for  
 14 benefits commences after the date of death, and the benefit  
 15 level is established as set forth in subsection (2).

16 (b) The insurer is entitled to recover any overpayments  
 17 or compensation paid in a lump sum to a worker prior to  
 18 death but not yet recouped. The insurer shall recover such  
 19 payments from the beneficiary's biweekly payments as  
 20 provided in 39-71-741(5).

21 (2) To beneficiaries as defined in  
 22 39-71-116+2+a+3+a through +2+d+3+d, weekly  
 23 compensation benefits for an injury causing death are  
 24 66 2/3% of the decedent's wages. The maximum weekly  
 25 compensation benefit may not exceed the state's average

1 weekly wage at the time of injury. The minimum weekly  
 2 compensation benefit is 50% of the state's average weekly  
 3 wage, but in no event may it exceed the decedent's actual  
 4 wages at the time of his death.

5 (3) To beneficiaries as defined in  
 6 39-71-116+2+e+3+e and +2+f+3+f, weekly benefits must  
 7 be paid to the extent of the dependency at the time of the  
 8 injury, subject to a maximum of 66 2/3% of the decedent's  
 9 wages. The maximum weekly compensation may not exceed the  
 10 state's average weekly wage at the time of injury.

11 (4) If the decedent leaves no beneficiary as defined in  
 12 39-71-116+2+, a lump-sum payment of \$3,000 must be paid to  
 13 the decedent's surviving parent or parents.

14 (5) If any beneficiary of a deceased employee dies, the  
 15 right of such beneficiary to compensation under this chapter  
 16 ceases. Death benefits must be paid to a surviving spouse  
 17 for 500 weeks subsequent to the date of the deceased  
 18 employee's death or until the spouse's remarriage, whichever  
 19 occurs first. After benefit payments cease to a surviving  
 20 spouse, death benefits must be paid to beneficiaries, if  
 21 any, as defined in 39-71-116+2+b+3+b through  
 22 +2+d+3+d.

23 (6) In all cases, benefits must be paid to  
 24 beneficiaries, as defined in 39-71-116+2+.

25 (7) Benefits paid under this section may not be

1 adjusted for cost of living as provided in 39-71-702.

2 (8) Notwithstanding subsections (2) and (3), beginning  
3 July 1, 1987, through June 30, 1991, the maximum weekly  
4 compensation benefits for injury causing death may not  
5 exceed the state's average weekly wage of \$299 established  
6 July 1, 1986. Beginning July 1, 1987, through June 30, 1991,  
7 the minimum weekly compensation for injury causing death  
8 shall be \$149.50, which is 50% of the state's average weekly  
9 wage established July 1, 1986, but in no event may it exceed  
10 the decedent's actual wages at the time of death."

11 **Section 5.** Section 39-71-723, MCA, is amended to read:

12 "39-71-723. How compensation to be divided among  
13 beneficiaries. Compensation due to beneficiaries shall must  
14 be paid to the surviving spouse, if any, or if none, then  
15 divided equally among or for the benefit of the children. In  
16 cases where if beneficiaries are a surviving spouse and  
17 stepchildren of such spouse, the compensation shall must be  
18 divided equally among all beneficiaries. Compensation due to  
19 beneficiaries as defined in subsections ~~(2)(e) and (2)(f)~~ of  
20 39-71-116(3)(e) and (3)(f), where when there is more than  
21 one, shall must be divided equitably among them, and the  
22 question of dependency and amount thereof shall ~~be~~ is a  
23 question of fact for determination by the department."

24 **Section 6.** Section 39-73-108, MCA, is amended to read:

25 "39-73-108. Payment of benefits where when person

1 entitled is in institution. If any person who is entitled to  
2 benefits under this chapter shall ~~be~~ is an inmate in any  
3 Montana state institution, benefits shall may not be paid to  
4 him but shall must be paid his beneficiary, if any, as  
5 defined in 39-71-116(2)."

6 ~~NEW SECTION. Section 8. Remedies for failure to~~  
7 ~~provide coverage: (i) (a) A person may file a complaint with~~  
8 ~~the department asserting that:~~

9 ~~(i) an employer has not provided workers' compensation~~  
10 ~~coverage for an employee in a construction trade INDUSTRY;~~

11 ~~(ii) a sole proprietor or a working member of a~~  
12 ~~partnership who holds himself out or considers himself an~~  
13 ~~independent contractor in a construction trade INDUSTRY has~~  
14 ~~not provided coverage for himself;~~

15 ~~(b) The department must investigate the complaint~~  
16 ~~within 5 working days of its filing and either issue a cease~~  
17 ~~and desist order as provided in subsection (2) or dismiss~~  
18 ~~the complaint as unsupported by fact;~~

19 ~~(c) The department may assess the costs of~~  
20 ~~investigating a frivolous complaint against the person who~~  
21 ~~files the complaint and may assess against the employer the~~  
22 ~~costs of investigating a complaint that is not frivolous;~~

23 ~~(2) The department shall issue an order to:~~

24 ~~(a) an employer who has an employee in service in a~~  
25 ~~construction trade INDUSTRY under an appointment or contract~~



1 of--hire, expressed, implied, oral, or written, who does not  
2 provide workers' compensation coverage for that employee,  
3 ordering the employer to cease and desist from continuing to  
4 employ the employee until the employer has obtained coverage  
5 for the employee.

6 (b) a sole proprietor or a working member of a  
7 partnership who holds himself out or considers himself an  
8 independent contractor in a construction trade INDUSTRY who  
9 has not obtained workers' compensation coverage for himself,  
10 ordering him to cease and desist from continuing the  
11 construction project until he has provided coverage for  
12 himself.

13 (3) The department may bring an action in district  
14 court to enforce a cease and desist order by injunction or  
15 other means.

16 NEW SECTION. Section 9. Codification instruction:  
17 {Section 8} is intended to be codified as an integral part  
18 of Title 39, chapter 71, and the provisions of Title 39,  
19 chapter 71, apply to {section 8}.

20 NEW SECTION. SECTION 7. APPLICABILITY -- EXEMPTION.

21 (1) [THIS ACT] DOES NOT APPLY TO ANY CONSTRUCTION PROJECT  
22 BID BY AN EMPLOYER PRIOR TO OCTOBER 1, 1991.

23 (2) NOTWITHSTANDING ANY OTHER PROVISION OF [THIS ACT],  
24 AN INDEPENDENT CONTRACTOR MAY APPLY TO THE DEPARTMENT OF  
25 LABOR AND INDUSTRY FOR AN EXEMPTION FROM [THIS ACT] IN THE

1 MANNER PROVIDED FOR IN 39-71-401 IF THE INDEPENDENT  
2 CONTRACTOR CAN DEMONSTRATE, ON A QUARTERLY BASIS, PROOF OF  
3 INSURANCE FOR HIMSELF THAT PROVIDES COMPENSATION AND  
4 BENEFITS PROVIDING COVERAGE FOR MEDICAL CLAIMS AND LOSS OF  
5 WAGES RESULTING FROM INJURIES AND OCCUPATIONAL DISEASE THAT  
6 IS COMPARABLE TO THE COVERAGE PROVIDED UNDER TITLE 39,  
7 CHAPTERS 71 AND 72.

-End-

4/23/91 pm  
3:30  
[Signature]

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered House Bill 342 and recommend that House Bill 342 (reference copy -- salmon - second printing) be amended as follows:

1. Title, line 11.  
Following: "~~AND~~"  
Insert: "CREATING REMEDIES FOR FAILURE TO PROVIDE COVERAGE; AND"
2. Title, line 13.  
Following: "MCA"  
Strike: "; AND PROVIDING AN APPLICABILITY DATE"
3. Page 7, line 19.  
Following: "~~trade,~~"  
Strike: ", IN A POSITION OTHER THAN A CONSTRUCTION INDUSTRY,"
4. Page 9, line 5.  
Following: "(a)"  
Insert: "(i)"
5. Page 9, lines 14 and 15.  
Following: "himself"  
Strike: remainder of line 14 through "SERVICES" on line 15  
Following: line 15  
Insert: "(ii) A sole proprietor or a working member of a partnership who holds himself out or considers himself an independent contractor and who is contracting for construction industry services must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, or must apply to the department for an exemption from the Workers' Compensation Act for himself."
6. Page 19, line 20 through page 20, line 7.  
Strike: section 7 in its entirety  
Insert: "NEW SECTION. Section 7. Remedies for failure to provide coverage -- construction industry. (1) The department shall, within 5 working days after receiving a complaint, investigate the complaint and apply the remedy as provided in 39-71-507(1) against an uninsured employer or a sole proprietor or a working member of a partnership who:  
(a) holds himself out to be or considers himself to be an independent contractor; and  
(b) has contracted for construction industry services and:

ADOPT

REJECT

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(i) has not elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3; or  
(ii) has not obtained an exemption from the Workers' Compensation Act for himself.  
(2) This section does not preclude the department from applying other remedies in Title 39, chapter 71, part 5, to independent contractors.

NEW SECTION. Section 8. Codification instruction.  
[Section 7] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 7]."

And this Free Conference Committee report be adopted.

For the House:

For the Senate:

[Signature]  
Rep. Wanzenried, Chair

[Signature]  
Sen. Doherty, Chair

[Signature]  
Rep. Driscoll

[Signature]  
Sen. Lynch

[Signature]  
Rep. Fagg

[Signature]  
Sen. Keating

FCCR #1  
HB 342  
861517CC.HSF

## 1 HOUSE BILL NO. 342

2 INTRODUCED BY WANZENRIED, DRISCOLL, CONNELLY,

3 PIPINICH, BIANCHI

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT MANDATING CLARIFYING  
6 WORKERS' COMPENSATION COVERAGE FOR INDEPENDENT CONTRACTORS,  
7 SOLE PROPRIETORS, WORKING MEMBERS OF A PARTNERSHIP,  
8 CORPORATE OFFICERS, AND DEPENDENT MEMBERS OF AN EMPLOYER'S  
9 FAMILY WHEN ANY OF THESE PERSONS ARE ENGAGED IN A  
10 CONSTRUCTION TRADE INDUSTRY; CREATING REMEDIES FOR FAILURE  
11 TO PROVIDE COVERAGE; AND CREATING REMEDIES FOR FAILURE TO  
12 PROVIDE COVERAGE; AND AMENDING SECTIONS 39-71-116,  
13 39-71-401, 39-71-405, 39-71-721, 39-71-723, 39-72-102, AND  
14 39-73-108, MCA--AND PROVIDING AN APPLICABILITY DATE."

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:17 **Section 1.** Section 39-71-116, MCA, is amended to read:18 "39-71-116. **Definitions.** Unless the context otherwise  
19 requires, words and phrases employed in this chapter have  
20 the following meanings:

21 (1) "Administer and pay" includes all actions by the  
22 state fund under the Workers' Compensation Act and the  
23 Occupational Disease Act of Montana necessary to the  
24 investigation, review, and settlement of claims; payment of  
25 benefits; setting of reserves; furnishing of services and

1 facilities; and utilization of actuarial, audit, accounting,  
2 vocational rehabilitation, and legal services.

3 (2) "Average weekly wage" means the mean weekly  
4 earnings of all employees under covered employment, as  
5 defined and established annually by the Montana department  
6 of labor and industry. It is established at the nearest  
7 whole dollar number and must be adopted by the department  
8 prior to July 1 of each year.

9 (3) "Beneficiary" means:

10 (a) a surviving spouse living with or legally entitled  
11 to be supported by the deceased at the time of injury;

12 (b) an unmarried child under the age of 18 years;

13 (c) an unmarried child under the age of 22 years who is  
14 a full-time student in an accredited school or is enrolled  
15 in an accredited apprenticeship program;

16 (d) an invalid child over the age of 18 years who is  
17 dependent upon the decedent for support at the time of  
18 injury;

19 (e) a parent who is dependent upon the decedent for  
20 support at the time of the injury (however, such a parent is  
21 a beneficiary only when no beneficiary, as defined in  
22 subsections (3)(a) through (3)(d) of this section, exists);  
23 and

24 (f) a brother or sister under the age of 18 years if  
25 dependent upon the decedent for support at the time of the

1 injury (however, such a brother or sister is a beneficiary  
2 only until the age of 18 years and only when no beneficiary,  
3 as defined in subsections (3)(a) through (3)(e) of this  
4 section, exists).

5 (4) "Casual employment" means employment not in the  
6 usual course of trade, business, profession, or occupation  
7 of the employer.

8 (5) "Child" includes a posthumous child, a dependent  
9 stepchild, and a child legally adopted prior to the injury.

10 (6) "Construction trade" means a trade in which a  
11 person, whether by general contracting, subcontracting, as a  
12 sole proprietorship or partnership, as an employee, or  
13 otherwise, is directly involved in providing skilled or  
14 unskilled physical labor in the renovation or construction  
15 of buildings or other structures. The term includes but is  
16 not limited to general labor, carpentry, electrical work,  
17 plumbing, sheet-rocking, painting, and masonry. INDUSTRY"  
18 MEANS THE MAJOR GROUP OF GENERAL CONTRACTORS AND OPERATIVE  
19 BUILDERS, HEAVY CONSTRUCTION (OTHER THAN BUILDING  
20 CONSTRUCTION) CONTRACTORS, AND SPECIAL TRADE CONTRACTORS,  
21 LISTED IN MAJOR GROUPS 15 THROUGH 17 IN THE 1987 STANDARD  
22 INDUSTRIAL CLASSIFICATION MANUAL. The term does not include  
23 office workers, design professionals, salesmen, estimators,  
24 or any other related employment that is not directly  
25 involved on a regular basis in the provision of physical

1 labor at a construction or renovation site.

2 (7) "Days" means calendar days, unless otherwise  
3 specified.

4 (8) "Department" means the department of labor and  
5 industry.

6 (9) "Fiscal year" means the period of time between  
7 July 1 and the succeeding June 30.

8 (10) "Insurer" means an employer bound by  
9 compensation plan No. 1, an insurance company transacting  
10 business under compensation plan No. 2, the state fund under  
11 compensation plan No. 3, or the uninsured employers' fund  
12 provided for in part 5 of this chapter.

13 (11) "Invalid" means one who is physically or  
14 mentally incapacitated.

15 (12) "Maximum healing" means the status reached when  
16 a worker is as far restored medically as the permanent  
17 character of the work-related injury will permit.

18 (13) "Order" means any decision, rule, direction,  
19 requirement, or standard of the department or any other  
20 determination arrived at or decision made by the department.

21 (14) "Payroll", "annual payroll", or "annual payroll  
22 for the preceding year" means the average annual payroll of  
23 the employer for the preceding calendar year or, if the  
24 employer shall not have operated a sufficient or any length  
25 of time during such calendar year, 12 times the average

1 monthly payroll for the current year. However, an estimate  
 2 may be made by the department for any employer starting in  
 3 business if no average payrolls are available. This estimate  
 4 is to be adjusted by additional payment by the employer or  
 5 refund by the department, as the case may actually be, on  
 6 December 31 of such current year. An employer's payroll must  
 7 be computed by calculating all wages, as defined in  
 8 39-71-123, that are paid by an employer.

9 ~~(14)~~(15) "Permanent partial disability" means a  
 10 condition, after a worker has reached maximum healing, in  
 11 which a worker:

12 (a) has a medically determined physical restriction as  
 13 a result of an injury as defined in 39-71-119; and

14 (b) is able to return to work in the worker's job pool  
 15 pursuant to one of the options set forth in 39-71-1012 but  
 16 suffers impairment or partial wage loss, or both.

17 ~~(15)~~(16) "Permanent total disability" means a condition  
 18 resulting from injury as defined in this chapter, after a  
 19 worker reaches maximum healing, in which a worker is unable  
 20 to return to work in the worker's job pool after exhausting  
 21 all options set forth in 39-71-1012.

22 ~~(16)~~(17) The term "physician" includes "surgeon" and in  
 23 either case means one authorized by law to practice his  
 24 profession in this state.

25 ~~(17)~~(18) The "plant of the employer" includes the place

1 of business of a third person while the employer has access  
 2 to or control over such place of business for the purpose of  
 3 carrying on his usual trade, business, or occupation.

4 ~~(18)~~(19) "Public corporation" means the state or any  
 5 county, municipal corporation, school district, city, city  
 6 under commission form of government or special charter,  
 7 town, or village.

8 ~~(19)~~(20) "Reasonably safe place to work" means that the  
 9 place of employment has been made as free from danger to the  
 10 life or safety of the employee as the nature of the  
 11 employment will reasonably permit.

12 ~~(20)~~(21) "Reasonably safe tools and appliances" are such  
 13 tools and appliances as are adapted to and are reasonably  
 14 safe for use for the particular purpose for which they are  
 15 furnished.

16 ~~(21)~~(22) "Temporary total disability" means a condition  
 17 resulting from an injury as defined in this chapter that  
 18 results in total loss of wages and exists until the injured  
 19 worker reaches maximum healing.

20 ~~(22)~~(23) "Year", unless otherwise specified, means  
 21 calendar year."

22 **Section 2.** Section 39-71-401, MCA, is amended to read:

23 "39-71-401. Employments covered and employments  
 24 exempted. (1) Except as provided in subsection (2) of this  
 25 section, the Workers' Compensation Act applies to all

1 employers as defined in 39-71-117 and to all employees as  
 2 defined in 39-71-118. An employer who has any employee in  
 3 service under any appointment or contract of hire, expressed  
 4 or implied, oral or written, shall elect to be bound by the  
 5 provisions of compensation plan No. 1, 2, or 3. Every  
 6 employee whose employer is bound by the Workers'  
 7 Compensation Act is subject to and bound by the compensation  
 8 plan that has been elected by the employer.

9 (2) Unless the employer elects coverage for these  
 10 employments under this chapter and an insurer allows such an  
 11 election, the Workers' Compensation Act does not apply to  
 12 any of the following employments:

- 13 (a) household and domestic employment;
- 14 (b) casual employment as defined in 39-71-116;
- 15 (c) ~~employment in a position other than a construction~~  
 16 ~~trade INDUSTRY~~ of a dependent member of an employer's  
 17 family for whom an exemption may be claimed by the employer  
 18 under the federal Internal Revenue Code;
- 19 (d) ~~employment in a position other than a construction~~  
 20 ~~trade, IN-A-POSITION-OTHER-THAN-A-CONSTRUCTION-INDUSTRY~~ of  
 21 sole proprietors or working members of a partnership, except  
 22 as provided in subsection (3);
- 23 (e) employment of a broker or salesman performing under  
 24 a license issued by the board of realty regulation;
- 25 (f) employment of a direct seller engaged in the sale

- 1 of consumer products, primarily in the customer's home;
- 2 (g) employment for which a rule of liability for  
 3 injury, occupational disease, or death is provided under the  
 4 laws of the United States;
- 5 (h) employment of any person performing services in  
 6 return for aid or sustenance only, except employment of a  
 7 volunteer under 67-2-105;
- 8 (i) employment with any railroad engaged in interstate  
 9 commerce, except that railroad construction work is included  
 10 in and subject to the provisions of this chapter;
- 11 (j) employment as an official, including a timer,  
 12 referee, or judge, at a school amateur athletic event,  
 13 unless the person is otherwise employed by a school  
 14 district;
- 15 (k) any person performing services as a newspaper  
 16 carrier or free-lance correspondent if the person performing  
 17 the services or a parent or guardian of the person  
 18 performing the services in the case of a minor has  
 19 acknowledged in writing that the person performing the  
 20 services and the services are not covered. As used in this  
 21 subsection "free-lance correspondent" is a person who  
 22 submits articles or photographs for publication and is paid  
 23 by the article or by the photograph. As used in this  
 24 subsection "newspaper carrier":  
 25 (l) is a person who provides a newspaper with the

1 service of delivering newspapers singly or in bundles; but

2 (ii) does not include an employee of the paper who,  
3 incidentally to his main duties, carries or delivers papers.

4 (L) COSMETOLOGIST'S SERVICES AND BARBER'S SERVICES AS  
5 DEFINED IN 39-51-204(1)(L).

6 (3) (a) (I) A sole proprietor or a working member of a  
7 partnership who holds himself out or considers himself an  
8 independent contractor ~~{and--who--is--not--contracting}~~ for  
9 ~~cosmetologist's services or barber's services as defined in~~  
10 ~~39-51-204(1)(L)}~~ must elect to be bound personally and  
11 individually by the provisions of compensation plan No. 1,  
12 2, or 3, but ~~unless he is contracting for cosmetologist's~~  
13 ~~barber's or construction trade services,~~ he may apply to  
14 the department for an exemption from the Workers'  
15 Compensation Act for himself ~~UNLESS EVEN IF HE IS~~  
16 ~~CONTRACTING FOR CONSTRUCTION INDUSTRY SERVICES.~~

17 (II) A SOLE PROPRIETOR OR A WORKING MEMBER OF A  
18 PARTNERSHIP WHO HOLDS HIMSELF OUT OR CONSIDERS HIMSELF AN  
19 INDEPENDENT CONTRACTOR AND WHO IS CONTRACTING FOR  
20 CONSTRUCTION INDUSTRY SERVICES MUST ELECT TO BE BOUND  
21 PERSONALLY AND INDIVIDUALLY BY THE PROVISIONS OF  
22 COMPENSATION PLAN NO. 1, 2, OR 3, OR MUST APPLY TO THE  
23 DEPARTMENT FOR AN EXEMPTION FROM THE WORKERS' COMPENSATION  
24 ACT FOR HIMSELF.

25 (b) The application must be made in accordance with the

1 rules adopted by the department. The department may deny the  
2 application only if it determines that the applicant is not  
3 an independent contractor.

4 (c) When an application is approved by the department,  
5 it is conclusive as to the status of an independent  
6 contractor and precludes the applicant from obtaining  
7 benefits under this chapter.

8 (d) When an election of an exemption is approved by the  
9 department, the election remains effective and the  
10 independent contractor retains his status as an independent  
11 contractor until he notifies the department of any change in  
12 his status and provides a description of his present work  
13 status.

14 (e) If the department denies the application for  
15 exemption, the applicant may contest the denial by  
16 petitioning for review of the decision by an appeals referee  
17 in the manner provided for in 39-51-1109. An applicant  
18 dissatisfied with the decision of the appeals referee may  
19 appeal the decision in accordance with the procedure  
20 established in 39-51-2403 and 39-51-2404.

21 (4) (a) A private corporation shall provide coverage  
22 for its officers and other employees under the provisions of  
23 compensation plan No. 1, 2, or 3. However, pursuant to such  
24 rules as the department promulgates and subject in all cases  
25 to approval by the department, an officer of a private

1 corporation may elect not to be bound as an employee under  
2 this chapter ~~if he does not work in a construction trade~~  
3 ~~INDUSTRY~~ by giving a written notice, on a form provided by  
4 the department, served in the following manner:

5 (i) if the employer has elected to be bound by the  
6 provisions of compensation plan No. 1, by delivering the  
7 notice to the board of directors of the employer and the  
8 department; or

9 (ii) if the employer has elected to be bound by the  
10 provisions of compensation plan No. 2 or 3, by delivering  
11 the notice to the board of directors of the employer, the  
12 department, and the insurer.

13 (b) If the employer changes plans or insurers, the  
14 officer's previous election is not effective and the officer  
15 shall again serve notice as provided if he elects not to be  
16 bound.

17 (c) The appointment or election of an employee as an  
18 officer of a corporation for the purpose of excluding the  
19 employee from coverage under this chapter does not entitle  
20 the officer to elect not to be bound as an employee under  
21 this chapter. In any case, the officer must sign the notice  
22 required by subsection (4)(a) under oath or affirmation, and  
23 he is subject to the penalties for false swearing under  
24 45-7-202 if he falsifies the notice.

25 (5) Each employer shall post a sign in the workplace at

1 the locations where notices to employees are normally  
2 posted, informing employees about the employer's current  
3 provision of compensation insurance. A workplace is any  
4 location where an employee performs any work-related act in  
5 the course of employment, regardless of whether the location  
6 is temporary or permanent, and includes the place of  
7 business or property of a third person while the employer  
8 has access to or control over such place of business or  
9 property for the purpose of carrying on his usual trade,  
10 business, or occupation. The sign will be provided by the  
11 department, distributed through insurers or directly by the  
12 department, and posted by employers in accordance with rules  
13 adopted by the department. An employer who purposely or  
14 knowingly fails to post a sign as provided in this  
15 subsection is subject to a \$50 fine for each citation."

16 ~~Section 37--Section 39-71-405, MCA, is amended to read:~~  
17 ~~"39-71-405--liability-of-employer--who--contracts--work~~  
18 ~~out--(i)--An--employer--who--contracts--with--an--independent~~  
19 ~~contractor--except--an--independent--contractor--working--in--a~~  
20 ~~construction trade INDUSTRY--to--have--work--performed--of--a~~  
21 ~~kind--which--is--a--regular--or--a--recurrent--part--of--the--work--of~~  
22 ~~the--trade,--business,--occupation,--or--profession--of--such~~  
23 ~~employer--is--liable--for--the--payment--of--benefits--under--this~~  
24 ~~chapter--to--the--employees--of--the--contractor--if--the--contractor~~  
25 ~~has--not--properly--complied--with--the--coverage--requirements--of~~



1 the Worker's Compensation Act. Any insurer who becomes  
2 liable for payment of benefits may recover the amount of  
3 benefits paid and to be paid and necessary expenses from the  
4 contractor primarily liable therein.

5 {2}--Where an employer contracts to have any work to be  
6 done by a contractor other than a contractor working in a  
7 construction trade INDUSTRY or an independent contractor,  
8 and the work so contracted to be done is a part or process  
9 in the trade or business of the employer, then the employer  
10 is liable to pay all benefits under this chapter to the same  
11 extent as if the work were done without the intervention of  
12 the contractor, and the work so contracted to be done shall  
13 not be construed to be casual employment. Where an employer  
14 contracts work to be done as specified in this subsection,  
15 the contractor and the contractor's employees shall come  
16 under that plan of compensation adopted by the employer.

17 {3}--Where an employer contracts any work to be done,  
18 wholly or in part for the employer, by an independent  
19 contractor, where the work so contracted to be done is  
20 casual employment as to such employer, then the contractor  
21 shall become the employer for the purposes of this chapter."

22 **Section 3.** Section 39-72-102, MCA, is amended to read:

23 "39-72-102. Definitions. As used in this chapter,  
24 unless the context requires otherwise, the following  
25 definitions apply:

1 (1) "Beneficiary" is as defined in 39-71-116.

2 (2) "Child" is as defined in 39-71-116.

3 (3) "Department" means the department of labor and  
4 industry.

5 (4) "Disablement" means the event of becoming  
6 physically incapacitated by reason of an occupational  
7 disease from performing work in the worker's job pool.  
8 Silicosis, when complicated by active pulmonary  
9 tuberculosis, is presumed to be total disablement.  
10 "Disability", "total disability", and "totally disabled" are  
11 synonymous with "disablement", but they have no reference to  
12 "permanent partial disability".

13 (5) "Employee" is as defined in 39-71-118.

14 (6) "Employer" is as defined in 39-71-117.

15 (7) "Independent contractor" is as defined in  
16 39-71-120.

17 (8) "Insurer" is as defined in 39-71-116.

18 (9) "Invalid" is as defined in 39-71-116.

19 (10) "Occupational disease" means harm, damage, or death  
20 as set forth in 39-71-119(1) arising out of or contracted in  
21 the course and scope of employment and caused by events  
22 occurring on more than a single day or work shift. The term  
23 does not include a physical or mental condition arising from  
24 emotional or mental stress or from a nonphysical stimulus or  
25 activity.

1 (11) "Order" is as defined in 39-71-116.

2 (12) "Pneumoconiosis" means a chronic dust disease of  
3 the lungs arising out of employment in coal mines and  
4 includes anthracosis, coal workers' pneumoconiosis,  
5 silicosis, or anthracosilicosis arising out of such  
6 employment.

7 (13) "Silicosis" means a chronic disease of the lungs  
8 caused by the prolonged inhalation of silicon dioxide (SiO)  
9 and characterized by small discrete nodules of fibrous  
10 tissue similarly disseminated throughout both lungs, causing  
11 the characteristic x-ray pattern, and by other variable  
12 clinical manifestations.

13 (14) "Wages" is as defined in 39-71-123.

14 (15) "Year" is as defined in 39-71-116~~(8)~~(9) and  
15 39-71-116~~(22)~~(23)."

16 **Section 4.** Section 39-71-721, MCA, is amended to read:

17 **"39-71-721. Compensation for injury causing death --**  
18 **limitation.** (1) (a) If an injured employee dies and the  
19 injury was the proximate cause of such death, then the  
20 beneficiary of the deceased is entitled to the same  
21 compensation as though the death occurred immediately  
22 following the injury. A beneficiary's eligibility for  
23 benefits commences after the date of death, and the benefit  
24 level is established as set forth in subsection (2).

25 (b) The insurer is entitled to recover any overpayments

1 or compensation paid in a lump sum to a worker prior to  
2 death but not yet recouped. The insurer shall recover such  
3 payments from the beneficiary's biweekly payments as  
4 provided in 39-71-741(5).

5 (2) To beneficiaries as defined in  
6 39-71-116~~(2)~~(3)(a) through ~~(2)~~(3)(d), weekly  
7 compensation benefits for an injury causing death are  
8 66 2/3% of the decedent's wages. The maximum weekly  
9 compensation benefit may not exceed the state's average  
10 weekly wage at the time of injury. The minimum weekly  
11 compensation benefit is 50% of the state's average weekly  
12 wage, but in no event may it exceed the decedent's actual  
13 wages at the time of his death.

14 (3) To beneficiaries as defined in  
15 39-71-116~~(2)~~(3)(e) and ~~(2)~~(3)(f), weekly benefits must  
16 be paid to the extent of the dependency at the time of the  
17 injury, subject to a maximum of 66 2/3% of the decedent's  
18 wages. The maximum weekly compensation may not exceed the  
19 state's average weekly wage at the time of injury.

20 (4) If the decedent leaves no beneficiary as defined in  
21 39-71-116~~(2)~~, a lump-sum payment of \$3,000 must be paid to  
22 the decedent's surviving parent or parents.

23 (5) If any beneficiary of a deceased employee dies, the  
24 right of such beneficiary to compensation under this chapter  
25 ceases. Death benefits must be paid to a surviving spouse

1 for 500 weeks subsequent to the date of the deceased  
2 employee's death or until the spouse's remarriage, whichever  
3 occurs first. After benefit payments cease to a surviving  
4 spouse, death benefits must be paid to beneficiaries, if  
5 any, as defined in 39-71-116(2)(b)(3)(b) through  
6 (2)(d)(3)(d).

7 (6) In all cases, benefits must be paid to  
8 beneficiaries, as defined in 39-71-116(2).

9 (7) Benefits paid under this section may not be  
10 adjusted for cost of living as provided in 39-71-702.

11 (8) Notwithstanding subsections (2) and (3), beginning  
12 July 1, 1987, through June 30, 1991, the maximum weekly  
13 compensation benefits for injury causing death may not  
14 exceed the state's average weekly wage of \$299 established  
15 July 1, 1986. Beginning July 1, 1987, through June 30, 1991,  
16 the minimum weekly compensation for injury causing death  
17 shall be \$149.50, which is 50% of the state's average weekly  
18 wage established July 1, 1986, but in no event may it exceed  
19 the decedent's actual wages at the time of death."

20 **Section 5.** Section 39-71-723, MCA, is amended to read:

21 "39-71-723. How compensation to be divided among  
22 beneficiaries. Compensation due to beneficiaries shall must  
23 be paid to the surviving spouse, if any, or if none, then  
24 divided equally among or for the benefit of the children. In  
25 cases--where If beneficiaries are a surviving spouse and

1 stepchildren of such spouse, the compensation shall must be  
2 divided equally among all beneficiaries. Compensation due to  
3 beneficiaries as defined in subsections-(2)(e)-and-(2)(f)-of  
4 39-71-116(3)(e) and (3)(f), where when there is more than  
5 one, shall must be divided equitably among them, and the  
6 question of dependency and amount thereof shall-be is a  
7 question of fact for determination by the department."

8 **Section 6.** Section 39-73-108, MCA, is amended to read:

9 "39-73-108. Payment of benefits where when person  
10 entitled is in institution. If any person who is entitled to  
11 benefits under this chapter shall-be is an inmate in any  
12 Montana state institution, benefits shall may not be paid to  
13 him but shall must be paid his beneficiary, if any, as  
14 defined in 39-71-116(2)."

15 ~~NEW SECTION--Section-8--Remedies---for---failure---to~~  
16 ~~provide-coverage-(i)-(a)-A-person-may-file-a-complaint-with~~  
17 ~~the-department-asserting-that-~~

18 ~~(i)--an-employer-has-not-provided-workers--compensation~~  
19 ~~coverage-for-an-employee-in-a-construction-trade INDUSTRY,~~

20 ~~(ii)-a---sole---proprietor---or---a---working---member---of---a~~  
21 ~~partnership-who-holds-himself-out-or---considers---himself---an~~  
22 ~~independent---contractor-in-a-construction-trade INDUSTRY has~~  
23 ~~not-provided-coverage-for-himself-~~

24 ~~(b)--The--department--must--investigate--the---complaint~~  
25 ~~within-5-working-days-of-its-filing-and-either-issue-a-cease~~

1 and--desist--order--as-provided-in-subsection-(2)-or-dismiss  
2 the--complaint-as-unsupported-by-fact;

3 (c)--The--department---may---assess---the---costs---of  
4 investigating--a--frivolous-complaint-against-the-person-who  
5 files-the-complaint-and-may-assess-against-the-employer--the  
6 costs-of-investigating-a-complaint-that-is-not-frivolous;

7 (2)--The-department-shall-issue-an-order-to:

8 (a)--an--employer--who--has--an-employee-in-service--in-a  
9 construction-trade INDUSTRY under-an-appointment-or-contract  
10 of-hire,--expressed,--implied,--oral,--or-written,--who--does--not  
11 provide--workers'-compensation--coverage-for-that-employee,  
12 ordering-the-employer-to-cess-and-desist-from-continuing-to  
13 employ-the-employee-until-the-employer-has-obtained-coverage  
14 for-the-employee;

15 (b)--a--sole--proprietor--or--a--working--member--of--a  
16 partnership--who--holds--himself-out-or-considers-himself-an  
17 independent-contractor-in-a-construction-trade INDUSTRY who  
18 has-not-obtained-workers'-compensation-coverage-for-himself,  
19 ordering--him--to--cess--and--desist--from--continuing--the  
20 construction--project--until--he--has--provided-coverage-for  
21 himself;

22 (3)--The-department-may--bring--an--action--in--district  
23 court--to--enforce-a-cess-and-desist-order-by-injunction-or  
24 other-means;

25 NEW-SECTION--Section-9--Codification-----instruction:

1 {Section-8}-is-intended-to-be-codified-as-an--integral--part  
2 of--Title--39,--chapter--71,--and-the-provisions-of-Title-39,  
3 chapter-71,--apply-to-{section-8};

4 NEW-SECTION--SECTION 7. --APPLICABILITY-----EXEMPTION-  
5 {1}--{THIS--ACT}--DOES--NOT--APPLY--TO--ANY--CONSTRUCTION--PROJECT  
6 BID-BY--AN--EMPLOYER--PRIOR--TO--OCTOBER-17-1991;

7 {2}--NOTWITHSTANDING--ANY--OTHER--PROVISION--OF--{THIS--ACT},  
8 AN--INDEPENDENT--CONTRACTOR--MAY--APPLY--TO--THE--DEPARTMENT--OF  
9 LABOR--AND--INDUSTRY--FOR--AN--EXEMPTION--FROM--{THIS--ACT}--IN--THE  
10 MANNER---PROVIDED---FOR--IN--39-71-401--IF--THE--INDEPENDENT  
11 CONTRACTOR--CAN--DEMONSTRATE,--ON--A--QUARTERLY--BASIS,--PROOF--OF  
12 INSURANCE---FOR---HIMSELF--THAT--PROVIDES--COMPENSATION--AND  
13 BENEFITS--PROVIDING--COVERAGE--FOR--MEDICAL--CLAIMS--AND--LOSS--OF  
14 WAGES--RESULTING--FROM--INJURIES--AND--OCCUPATIONAL--DISEASE--THAT  
15 IS--COMPARABLE--TO--THE--COVERAGE--PROVIDED--UNDER--TITLE--39,  
16 CHAPTERS--71--AND--72;

17 NEW SECTION. SECTION 7. REMEDIES FOR FAILURE TO  
18 PROVIDE COVERAGE -- CONSTRUCTION INDUSTRY. (1) THE  
19 DEPARTMENT SHALL, WITHIN 5 WORKING DAYS AFTER RECEIVING A  
20 COMPLAINT, INVESTIGATE THE COMPLAINT AND APPLY THE REMEDY AS  
21 PROVIDED IN 39-71-507(1) AGAINST AN UNINSURED EMPLOYER OR A  
22 SOLE PROPRIETOR OR A WORKING MEMBER OF A PARTNERSHIP WHO:

23 (A) HOLDS HIMSELF OUT TO BE OR CONSIDERS HIMSELF TO BE  
24 AN INDEPENDENT CONTRACTOR; AND

25 (B) HAS CONTRACTED FOR CONSTRUCTION INDUSTRY SERVICES

1 AND:

2 (I) HAS NOT ELECTED TO BE BOUND PERSONALLY AND  
3 INDIVIDUALLY BY THE PROVISIONS OF COMPENSATION PLAN NO. 1,  
4 2, OR 3; OR

5 (II) HAS NOT OBTAINED AN EXEMPTION FROM THE WORKERS'  
6 COMPENSATION ACT FOR HIMSELF.

7 (2) THIS SECTION DOES NOT PRECLUDE THE DEPARTMENT FROM  
8 APPLYING OTHER REMEDIES IN TITLE 39, CHAPTER 71, PART 5, TO  
9 INDEPENDENT CONTRACTORS.

10 NEW SECTION. SECTION 8. CODIFICATION INSTRUCTION.  
11 [SECTION 7] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART  
12 OF TITLE 39, CHAPTER 71, AND THE PROVISIONS OF TITLE 39,  
13 CHAPTER 71, APPLY TO [SECTION 7].

-End-