

*Senate*

BILL NO. 430

INTRODUCED BY LABOR & EMPLOYMENT RELATIONS COMMITTEE *Lee*  
Chairman  
BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL CLARIFICATION AND REVISION OF THE OCCUPATIONAL DISEASE ACT OF MONTANA."

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

Section 1. There is a new B.C.M. section numbered 92-1303.1 that reads as follows:

92-1303.1. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 92-413.

(2) "Child" is as defined in 92-417.

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing any work for remuneration or profit.

"Silicosis", when complicated by active pulmonary tuberculosis, is presumed to be total disablement.

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

(4) "Division" is as defined in 92-426.

(5) "Employer" is as defined in 92-410.1.

(6) "Employee" is as defined in 92-411.

(7) "Husband" is as defined in 92-425.

(8) "Independent contractor" is as defined in 92-438.1.

(9) "Insurer" is as defined in 92-435. The term includes an employer who is self-insured under compensation plan No. 1.

(10) "Invalid" is as defined in 92-416.

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

(12) "Order" is as defined in 92-429.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO<sub>2</sub>), characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(14) "Wages" is as defined in 92-423.1.

(15) "Wife" is as defined in 92-424.

(16) "Year" is as defined in 92-433.

Section 2. Section 92-1311, R.C.M. 1947, is amended to

1 read as follows:

2 "92-1311. Payment of compensation -- exceptions and  
3 limitations. ~~4. (1) Compensation when he has complied with~~  
4 ~~other provisions of this chapter, compensation shall be paid~~  
5 ~~to every employee a claimant who becomes disabled by reason~~  
6 ~~of occupational disease arising out of his employment,~~  
7 ~~subject to the following conditions, and when claims are~~  
8 ~~presented and notices given in accordance with the~~  
9 ~~limitations of sections 92-1312 and 92-1313 set forth in~~  
10 ~~this chapter.~~

11 ~~4. (a) No Except as provided for in this section,~~  
12 ~~compensation shall may not be paid when the last day of the~~  
13 ~~injurious exposure of the employee to the hazard of the~~  
14 ~~occupational disease has occurred prior to the effective~~  
15 ~~date of this act except as in this section, paragraph "A,"~~  
16 ~~subparagraph 4 provided July 1, 1959.~~

17 ~~2. (b) No compensation shall may be paid for a disease,~~  
18 ~~other than silicosis or due to ionizing radiation, unless~~  
19 ~~total disability results within one hundred twenty (120)~~  
20 ~~days from the last day upon which the employee actually~~  
21 ~~worked for the employer against whom compensation is~~  
22 ~~claimed, provided that the board However, the division,~~  
23 ~~upon good cause shown, may waive this limitation in the~~  
24 ~~interest of justice, but in any case said the period may not~~  
25 ~~be extended to more than one 1 year from the date of last~~

1 employment by the said employer.

2 ~~3. (c) No Except as provided for in subsection (1) (d)~~  
3 ~~of this section, no compensation shall may be paid in case~~  
4 ~~of for silicosis unless during the eight 8 years immediately~~  
5 ~~preceding the disablement the injured employee has been~~  
6 ~~exposed to harmful quantities of silicon dioxide dust for a~~  
7 ~~total period of not less than one thousand (1,000)~~  
8 ~~workshifts in employment in this state and unless total~~  
9 ~~disability results within four 4 years from the last day~~  
10 ~~upon which the employee actually worked for the employer~~  
11 ~~against whom compensation is claimed.~~

12 ~~4. (d) Provided, however, that any 1 silicotic employee~~  
13 ~~who is discharged by his employer to escape liability for~~  
14 ~~silicosis benefits under this act chapter shall be is~~  
15 ~~eligible to receive compensation under this act chapter when~~  
16 ~~totally disabled if he has seven hundred (700) actual~~  
17 ~~workshifts since January 1, 1954, for that employer,~~  
18 ~~provided, further, when When any employee in employment on~~  
19 ~~or after January 1, 1959, because he has an occupational~~  
20 ~~disease incurred in and caused by such employment, which is~~  
21 ~~not yet disabling, is discharged or transferred from the~~  
22 ~~employment in which he is engaged, or when an employee he~~  
23 ~~ceases such his employment and it is in fact, as determined~~  
24 ~~by the medical panel, inadvisable for him on account of such~~  
25 ~~a nondisabling occupational disease, to continue in it,~~

1 employment and he suffers wage loss by reason of such the  
 2 discharge, transfer, or such cessation, the board division  
 3 may allow compensation on account thereof as it may deem  
 4 considers just, not exceeding five thousand dollars  
 5 ~~(\$5,000.00)~~ \$10,000.

6 ~~5. No claim shall be maintained nor compensation paid~~  
 7 ~~unless the claim has been filed with the employer, the~~  
 8 ~~insurer, of [or] the board, in writing under oath within the~~  
 9 ~~time fixed by section 92-1312.~~

10 ~~B. (2) The compensation~~ Compensation shall be paid to  
 11 ~~the beneficiary and dependents~~ beneficiaries of every  
 12 employee covered by this act chapter in cases where death  
 13 results from an occupational disease arising out of his  
 14 employment, subject to the following conditions:

15 ~~4. (a) No~~ Except as provided for in subsection (1) (d)  
 16 of this section, compensation shall may not be paid when the  
 17 last day of injurious exposure of the employee to the  
 18 hazards of the occupational diseases ~~has~~ occurred prior to  
 19 ~~the effective date of this act, except as in this section,~~  
 20 ~~paragraph "A," subparagraph 4 of this act provided July 1,~~  
 21 1959.

22 ~~2. (b) No compensation shall~~ may be paid for death from  
 23 silicosis unless during the eight 8 years immediately  
 24 preceding the disablement the deceased employee has been  
 25 exposed to harmful quantities of silicon dioxide dust for a

1 period of not less than ~~one thousand~~ (1,000) workshifts in  
 2 employment in this state.

3 ~~3. (c) No compensation shall~~ may be paid for death from  
 4 silicosis unless the death results within ~~four~~ (4) years  
 5 from the last day upon which the employee actually worked  
 6 for the employer against whom compensation is claimed,  
 7 except in those cases where death results during a period of  
 8 continuous total disability from silicosis for which  
 9 compensation has been paid or awarded, or for which a claim,  
 10 compensable but for such death, is on file with the  
 11 ~~commission~~ division. In such cases compensation shall be  
 12 paid if death results within ~~seven~~ (7) years from the last  
 13 day upon which the employee actually worked for the employer  
 14 against whom compensation is claimed.

15 ~~4. (d) No compensation shall~~ may be paid for death from  
 16 any occupational disease, other than silicosis or due to  
 17 ionizing radiation, unless death results within ~~one~~ (1) year  
 18 from the last day upon which the employee actually worked  
 19 for the employer against whom compensation is claimed,  
 20 except in those cases where death results during a period of  
 21 continuous total disability from an occupational disease,  
 22 other than silicosis or ionizing radiation, for which  
 23 compensation has been paid or awarded, or for which a claim,  
 24 compensable but for such death, is on file with the ~~board~~  
 25 division. In such cases compensation shall be paid if death

1 results within ~~three~~ (3) years from the last day upon which  
 2 the employee actually worked for the employer against whom  
 3 compensation is claimed.

4 ~~5. No claim shall be maintained nor compensation paid~~  
 5 ~~unless the claim has been filed with the employer, the~~  
 6 ~~insurer or the board, as the case may be in writing within~~  
 7 ~~the time fixed by section 92-1312.~~

8 G. (3) Proof of the exposure to silicon dioxide dust  
 9 for a period of not less than ~~one thousand two hundred~~  
 10 ~~(1,200)~~ workshifts in employment in this state, with proof  
 11 of total disability from silicosis, ~~shall be~~ is prima facie  
 12 evidence of exposure to harmful quantities of such dust  
 13 during all such period."

14 Section 3. There is a new E.C.M. section numbered  
 15 92-1312.1 that reads as follows:

16 92-1312.1 Time when claims must be presented. (1) When  
 17 a claimant seeks benefits under this chapter, his claims for  
 18 benefits must be presented in writing to the employer, the  
 19 employer's insurer, or the division within 1 year from the  
 20 date the claimant knew or should have known that his total  
 21 disability condition resulted from an occupational disease.  
 22 When a beneficiary seeks benefits under this chapter, his  
 23 claims for death benefits must be presented in writing to  
 24 the employer, the employer's insurer, or the division within  
 25 1 year from the date the beneficiaries knew or should have

1 known that the decedent's death was related to an  
 2 occupational disease.

3 (2) The division may, upon a reasonable showing by the  
 4 claimant or a decedent's beneficiaries that the claimant or  
 5 the beneficiaries could not have known that the claimant's  
 6 condition or the employee's death was related to an  
 7 occupational disease, waive the claim time requirement up to  
 8 an additional 2 years.

9 (3) Notwithstanding the provisions of subsections (1)  
 10 and (2) of this section, no claim to recover benefits under  
 11 this chapter may be maintained unless the claim is properly  
 12 filed within 3 years after the last day upon which the  
 13 claimant or the deceased employee actually worked for the  
 14 employer against whom compensation is claimed.

15 Section 4. Section 92-1314, E.C.M. 1947, is amended to  
 16 read as follows:

17 "92-1314. ~~Medical~~ Pulmonary specialist medical panel,  
 18 ~~Premedical committee,~~ and pulmonary specialists. (1) The  
 19 Montana medical association may, at least annually, certify  
 20 to the ~~board~~ division as "~~medical committee members~~" thirty  
 21 ~~(30) or more licensed physicians of the state of Montana who~~  
 22 ~~are particularly qualified in the diagnosis, care and~~  
 23 ~~treatment of occupational diseases. In addition thereto, and~~  
 24 ~~simultaneously therewith the Montana medical association may~~  
 25 ~~certify to the board~~ as "pulmonary specialists members"

1 three ~~(3)~~ or more licensed physicians of the state who shall  
 2 have had at the time of certification at least ~~five~~ ~~(5)~~  
 3 years' practice in the diagnosis, care, and treatment of  
 4 diseases of the pulmonary tract and the interpretation of  
 5 ~~X-ray~~ X-ray films thereof and may also certify to the  
 6 division as occupational disease specialist nominees three  
 7 or more licensed physicians of the state who have at the  
 8 time of certification qualifications in the diagnosis, care,  
 9 and treatment of nonpulmonary occupational diseases. From  
 10 the two lists submitted as provided for in this section, the  
 11 division shall appoint two separate medical panels. One  
 12 panel is the pulmonary specialist medical panel and the  
 13 other is the occupational disease medical panel. The  
 14 division shall appoint from the list of pulmonary specialist  
 15 nominees three or more physicians to serve on the pulmonary  
 16 specialist medical panel. The division shall appoint from  
 17 the list of occupational disease specialist nominees three  
 18 or more physicians to serve on the occupational disease  
 19 specialist medical panel. From said list of physicians  
 20 certified as "medical committee nominees," the board shall  
 21 appoint thirty (30) physicians who shall serve as and be  
 22 hereinafter referred to as the "medical committee" and who  
 23 shall examine claimants for occupational disease  
 24 disabilities other than silicosis. From said list of  
 25 physicians so certified as "pulmonary specialist nominees"

1 ~~the board shall appoint three (3) or more physicians who~~  
 2 ~~shall serve as and be hereinafter referred to as "pulmonary~~  
 3 ~~specialists."~~

4 ~~(2) In the event that if the Montana medical~~  
 5 ~~association fails to make the certification as hereinabove~~  
 6 ~~provided, then, in that event, the board shall of its own~~  
 7 ~~choice appoint thirty (30) licensed physicians in the state~~  
 8 ~~of Montana who are particularly qualified in the diagnosis,~~  
 9 ~~care and treatment of occupational diseases which said~~  
 10 ~~physicians shall serve as and be hereinafter referred to as~~  
 11 ~~the "medical committee" and submit the two lists of nominees~~  
 12 ~~as provided for in this section, the division shall appoint~~  
 13 ~~members to the medical panels by appointing to the pulmonary~~  
 14 ~~specialist medical panel three (3) or more licensed~~  
 15 ~~physicians in the state of Montana who have had at the time~~  
 16 ~~of appointment at least five (5) years' practice in the~~  
 17 ~~diagnosis, care, and treatment of diseases of the pulmonary~~  
 18 ~~tract and the interpretation of X-ray X-ray films thereof,~~  
 19 ~~which latter group of three (3) or more shall serve as and~~  
 20 ~~be hereinafter referred to as "pulmonary specialists." The~~  
 21 ~~"medical committee," together with the "pulmonary~~  
 22 ~~specialists," shall be known as and hereinafter referred to~~  
 23 ~~as the "medical panel," and by appointing to the~~  
 24 ~~occupational disease medical panel three or more licensed~~  
 25 ~~physicians of the state who have at the time of appointment~~

1 qualifications to diagnose, care for, and treat nonpulmonary  
 2 occupational diseases."

3 Section 5. There is a new R.C.M. section numbered  
 4 92-1314.1 that reads as follows:

5 92-1314.1. Procedure for medical examination. (1) In  
 6 order to determine the compensability of claims under this  
 7 chapter based on pulmonary conditions, the following  
 8 procedure shall be followed:

9 (a) The division shall direct the claimant to a  
 10 pulmonary specialist who is a member of the pulmonary  
 11 specialist medical panel for an examination. The pulmonary  
 12 specialist shall conduct an examination to determine whether  
 13 the claimant is totally disabled and is suffering from a  
 14 pulmonary occupational disease. The pulmonary specialist  
 15 shall submit a report of his findings to the division.

16 (b) Either the claimant or the insurer may, within 20  
 17 days after the receipt of the report by the first pulmonary  
 18 specialist, request that the claimant be examined by a  
 19 second pulmonary specialist who shall be a member of the  
 20 pulmonary specialist medical panel. If a second examination  
 21 is requested, the division shall direct the claimant to a  
 22 second pulmonary specialist and the pulmonary specialist  
 23 shall conduct an examination to determine whether he  
 24 believes the claimant is totally disabled and is suffering  
 25 from a pulmonary disease. The pulmonary specialist shall

1 submit a report of his findings to the division. When a  
 2 second examination has been requested, the reports of the  
 3 examinations shall be submitted to the pulmonary specialist  
 4 medical panel for its review. The panel shall issue its  
 5 report concerning the claimant's physical condition and  
 6 whether the claimant is suffering from an occupational  
 7 disease.

8 (c) If a second examination is not requested, the  
 9 division shall issue its order determining whether the  
 10 claimant is entitled to occupational disease benefits based  
 11 on the report of the first examining physician. If a second  
 12 examination is requested, the division shall issue its order  
 13 based on the report of the pulmonary specialist medical  
 14 panel.

15 (2) In order to determine the compensability of claims  
 16 under this chapter based on nonpulmonary conditions, the  
 17 following procedure shall be followed:

18 (a) The division shall direct the claimant to an  
 19 occupational disease specialist who is a member of the  
 20 occupational disease medical panel for an examination. The  
 21 specialist shall conduct an examination to determine whether  
 22 the claimant is totally disabled and is suffering from an  
 23 occupational disease. The specialist shall submit a report  
 24 of his findings to the division.

25 (b) Either the claimant or the insurer may, within 20

1 days after the receipt of the report by the first  
 2 specialist, request that the claimant be examined by a  
 3 second specialist. If a second examination is requested, the  
 4 division shall direct the claimant to a second specialist  
 5 who is a member of the occupational disease medical panel  
 6 and the specialist shall conduct an examination to determine  
 7 whether he believes the claimant is totally disabled and is  
 8 suffering from an occupational disease. The specialist shall  
 9 submit a report of his findings to the division. When a  
 10 second examination has been requested, the reports of the  
 11 examinations shall be submitted to the occupational disease  
 12 medical panel for its review. The panel shall issue its  
 13 report concerning the claimant's physical condition and  
 14 whether the claimant is suffering from an occupational  
 15 disease.

16 (c) If a second examination is not requested, the  
 17 division shall issue its order determining whether the  
 18 claimant is entitled to occupational disease benefits based  
 19 on the report of the first examining specialist. If a second  
 20 examination is requested, the division shall issue its order  
 21 based on the report of the occupational disease medical  
 22 panel.

23 (3) A report submitted to the division by the  
 24 appropriate medical panel and placed in the division's  
 25 records is prima facie evidence as to the matters contained

1 in the report.

2 (4) Upon the division's own motion or if a claimant or  
 3 an insurer requests that a hearing be held by the division  
 4 prior to the time the division issues its final  
 5 determination concerning the claimant's entitlement to  
 6 occupational disease benefits, the division shall hold a  
 7 hearing.

8 (5) At a hearing held before the division or the  
 9 workers' compensation judge, the report of the medical panel  
 10 and the two medical examinations conducted by members of the  
 11 medical panel are exclusive and final and no other medical  
 12 evidence or additional medical examinations are admissible.  
 13 However, the physicians to which the claimant has been  
 14 referred as provided for in this section may, in order to  
 15 assist them in reaching their conclusion, consult with the  
 16 claimant's attending physician.

17 (6) Within 20 days after the division has issued its  
 18 order of determination as to whether the claimant is  
 19 entitled to benefits under this chapter, a party may request  
 20 a rehearing. In order to perfect an appeal to the workers'  
 21 compensation judge, the appealing party must request a  
 22 rehearing before the division. The division may grant a  
 23 rehearing and, if a rehearing is granted, the division's  
 24 final determination shall not be issued until after the  
 25 rehearing. If the division does not grant a rehearing, the

1 division's final determination is issued on the date the  
2 rehearing is denied.

3 Section 6. Section 92-1315, E.C.M. 1947, is amended to  
4 read as follows:

5 "92-1315. ~~Procedure for medical examination, Standards~~  
6 ~~for determining whether death or disability due to~~  
7 ~~pneumoconiosis. 1. In order to determine the validity of~~  
8 ~~claims made pursuant to the provisions of this act, the~~  
9 ~~following procedure and no other shall be followed in the~~  
10 ~~course of the medical examination of the claimant for~~  
11 ~~official report to said board, claimant, employer, or~~  
12 ~~insurer, as the case may be.~~

13 ~~1. Upon the filing of a claim by a claimant for~~  
14 ~~occupational disease disability, other than silicosis or~~  
15 ~~pneumoconiosis, the board shall direct a member from said~~  
16 ~~"medical committee" to examine and determine the disability~~  
17 ~~of the claimant and submit a written report thereon to the~~  
18 ~~board.~~

19 ~~Upon the filing of a claim for compensation for~~  
20 ~~silicosis disability under this act, the board shall direct~~  
21 ~~an examination of and report to the board upon the claimant~~  
22 ~~by said "pulmonary specialists," or one of them, including~~  
23 ~~such X-ray and other pathological examination and tests as~~  
24 ~~in the opinion of such specialist or specialists may be~~  
25 ~~necessary for the purpose of determining diagnosis,~~

1 ~~disablement, and the nature and type of medical treatment,~~  
2 ~~hospitalization and other care required. If the claim is not~~  
3 ~~controverted as to any medical fact, the examination and~~  
4 ~~report of one of said specialists, shall be deemed the~~  
5 ~~examination and report of all "pulmonary specialists." If~~  
6 ~~the claim is controverted as to any medical fact, the report~~  
7 ~~shall be made by all of said specialists after a physical~~  
8 ~~examination by at least two (2) of them. The findings and~~  
9 ~~opinions of a majority of the number of said specialists~~  
10 ~~then appointed shall constitute the findings and opinions of~~  
11 ~~all of them. The contents of the report of said "pulmonary~~  
12 ~~specialists" when placed in the record shall constitute~~  
13 ~~prima facie evidence of fact as to the matter therein~~  
14 ~~contained. The "pulmonary specialists" or any one (1) of~~  
15 ~~them making the report shall be subject to examination upon~~  
16 ~~demand of any interested parties.~~

17 ~~The "pulmonary specialists," or any one (1) of them in~~  
18 ~~order to assist in reaching a conclusion may require the~~  
19 ~~attending physician or director of a hospital or a~~  
20 ~~sanitarium or other place in which treatment or care is~~  
21 ~~being given, or has been given, to attend at a convenient~~  
22 ~~time and place to consult with said specialists, or any one~~  
23 ~~of them and to describe the nature and type of care and~~  
24 ~~treatment and furnish any other evidence which said~~  
25 ~~specialist or specialists desire.~~



1       ~~Upon receiving the written report of such examining~~  
 2       ~~physician or physicians so appointed, the board shall~~  
 3       ~~forthwith determine whether or not the claimant shall~~  
 4       ~~receive the benefits pursuant to this act and it shall~~  
 5       ~~forward notice of its determination together with a true and~~  
 6       ~~correct copy of said medical report to the claimant and the~~  
 7       ~~employer or insurer as the case may be.~~

8       ~~2. If within twenty (20) days after receipt of such~~  
 9       ~~notice and medical report the claimant, employer or insurer,~~  
 10       ~~as the case may be, is dissatisfied with said determination~~  
 11       ~~by said board, they, or any of them, may demand a hearing~~  
 12       ~~before said board pursuant to the rehearing provisions of~~  
 13       ~~section 92-829. If, however, the board, claimant, employer~~  
 14       ~~or insurer, or any of them, is dissatisfied with the results~~  
 15       ~~of such first medical examination as indicated by said~~  
 16       ~~medical report, such dissatisfied party may upon thirty (30)~~  
 17       ~~days' notice in writing to all adversary parties and to the~~  
 18       ~~board require a re-examination by a member of said "medical~~  
 19       ~~panel"; provided, however, that if the benefits claimed are~~  
 20       ~~for a disability caused by silicosis the physician so~~  
 21       ~~selected by the dissatisfied party must be one of the~~  
 22       ~~"pulmonary specialists." Thereupon, after receipt of the~~  
 23       ~~report of medical re-examination, the board shall give like~~  
 24       ~~notice of its determination, whether said determination~~  
 25       ~~shall be the same as before or otherwise, together with a~~

1       ~~copy of said medical report, in the same manner as in the~~  
 2       ~~case of the first such examination and the party shall be~~  
 3       ~~entitled to a rehearing in the same manner as in the case of~~  
 4       ~~such first medical examination. The evidence of the two (2)~~  
 5       ~~medical examinations above described shall be final, and, as~~  
 6       ~~far as the medical examination of the claimant is concerned,~~  
 7       ~~no evidence of other or additional medical examinations~~  
 8       ~~shall be admissible before the board upon rehearing nor~~  
 9       ~~before any court upon the appeal, if any.~~

10       ~~B. The standards for determining death or total~~  
 11       ~~disability due to pneumoconiosis are as follows:~~

12       ~~4. (1) Total disability defined. A miner is under a~~  
 13       ~~total disability due to pneumoconiosis if: (a) He is~~  
 14       ~~suffering or suffered from a chronic dust disease of the~~  
 15       ~~lung which: (1) when diagnosed by chest roentgenogram,~~  
 16       ~~yields one or more large opacities (greater than one~~  
 17       ~~centimeter in diameter) and would be classified in category~~  
 18       ~~A, B, or C in the international classification of~~  
 19       ~~radiographs of the pneumoconioses by the international labor~~  
 20       ~~organization; or (2) when diagnosed by biopsy or autopsy,~~  
 21       ~~yields massive lesions in the lung, that is, shows the~~  
 22       ~~existence of progressive massive fibrosis; or (3) when~~  
 23       ~~established by diagnosis by means other than those specified~~  
 24       ~~in subparagraphs (1) or (2) of this paragraph, would be a~~  
 25       ~~condition which could reasonably be expected to yield the~~

1 ~~results described in subparagraph (1) or (2) of this~~  
 2 ~~paragraph had diagnosis been made as therein prescribed.~~  
 3 ~~Provided, however, that any diagnosis made under this clause~~  
 4 ~~shall be in accordance with generally accepted medical~~  
 5 ~~procedures for diagnosing pneumoconiosis.~~

6 ~~(b) (1) (a) He~~ he is unable to engage in any  
 7 substantial gainful activity by reason of pneumoconiosis  
 8 which can be expected to result in death or which has lasted  
 9 or can be expected to last for a continuous period of not  
 10 less than ~~twelve (12)~~ months; or

11 ~~(2) (b) where the requirements of paragraph (a) of this~~  
 12 ~~section are not, the finding that a miner is under a total~~  
 13 ~~disability is established by the~~ irrebuttable presumption  
 14 established in 92-1315.2(3) applies.

15 ~~2. (2) Evaluating total disability.~~ (a) Total  
 16 disability may not be found for purposes of this ~~part~~  
 17 section unless pneumoconiosis is the impairment involved.  
 18 Whether or not pneumoconiosis in a particular case  
 19 constitutes a disability as defined in ~~4. (b) subsection (1)~~  
 20 of this section is determined from all the facts of that  
 21 case. Primary consideration is given to the severity of the  
 22 individual's pneumoconiosis. ~~Medical~~ Except where other  
 23 evidence rebuts a finding of disability (e.g., the  
 24 individual is actually engaging in substantial gainful  
 25 activity), medical considerations alone can, ~~except where~~

1 ~~other evidence rebuts a finding of "disability," e.g., the~~  
 2 ~~individual is actually engaging in substantial gainful~~  
 3 ~~activity,~~ justify a finding that the individual is under a  
 4 disability where his impairment is one that meets the  
 5 duration requirement in ~~4. (b),~~ subsection (1)(a) of this  
 6 section and is listed in the appendix to this ~~subpart~~  
 7 subsection. However, the presumption established in  
 8 92-1315.2(3) applies.

9 (b) Pneumoconiosis may be found disabling if it does  
 10 prevent the individual from engaging in any substantial  
 11 gainful activity. ~~Such as The~~ individual, however, shall may  
 12 be determined to be under a disability only if his  
 13 pneumoconiosis is the primary reason for his inability to  
 14 engage in substantial gainful activity. ~~In any such case it~~  
 15 It must also be established that the individual has a  
 16 respiratory impairment because of pneumoconiosis, which is  
 17 demonstrated on the basis of an MVV and FEV<sup>1</sup> which are equal  
 18 to or less than the values specified in the following table  
 19 or by a medically equivalent test:

	equal to Height and	
(Inches)	to or less than	or less than
	L./Min.	L.
57 or less	52	1.4
58	53	1.4

1	59	54	1.4
2	60	55	1.5
3	61	56	1.5
4	62	57	1.5
5	63	58	1.5
6	64	59	1.6
7	65	60	1.6
8	66	61	1.6
9	67	62	1.7
10	68	63	1.7
11	69	64	1.8
12	70	65	1.8
13	71	66	1.8
14	72	67	1.9
15	73 or more	68	1.9
16	<del>3. (3) Evidence of pneumoconiosis.</del> (a) A finding of the		
17	existence of pneumoconiosis may not be made in the absence		
18	of:		
19	<del>(2) (i)</del> <u>(i)</u> A chest roentgenogram showing the existence		
20	of pneumoconiosis classified as category 1, 2, 3, A, B, or		
21	C, according to the international labor organization (1958),		
22	international labor organization (1968), or union		
23	internationale contra cancer/Cincinnati (1968)		
24	classifications of the pneumoconioses (if the chest		
25	roentgenogram is classified as category 2, it should be		

1 reclassified as category 0 or category 1 and only the latter  
2 accepted as evidence of pneumoconiosis); ~~or~~  
3 ~~(2) (ii)~~ (ii) ~~As~~ an autopsy showing the existence of  
4 pneumoconiosis; or  
5 ~~(2) (iii)~~ (iii) ~~A~~ a biopsy (other than a needle biopsy)  
6 showing the existence of pneumoconiosis. ~~Such~~ The biopsy  
7 ~~would~~ is not be expected to be performed for the sole  
8 purpose of diagnosing pneumoconiosis. Where a biopsy is  
9 performed for other purposes, however (e.g., in connection  
10 with a lung resection), the report thereof will be  
11 considered in determining the existence of pneumoconiosis.  
12 (b) The roentgenogram, to conform to accepted medical  
13 standards, should represent a posterior-anterior view of the  
14 chest, taken at a distance of ~~six~~ (6) feet between the ~~X-ray~~  
15 X-ray tube and the ~~X-ray~~ X-ray film on a 14 by 17 inch ~~X-ray~~  
16 X-ray film.  
17 (c) A report of autopsy or biopsy shall include a  
18 detailed gross (macroscopic) and microscopic description of  
19 the lungs or visualized portions of the lungs. If an  
20 operative procedure has been performed to obtain a portion  
21 of a lung, the evidence should include a copy of the  
22 operative note and the pathology report of the gross and  
23 microscopic examination of the surgical specimen. If an  
24 autopsy has been performed, the evidence should include a  
25 complete copy of the autopsy report.

1 ~~4. (4) Determining medical equivalence.~~ (a) An  
2 individual's impairment shall be determined to be medically  
3 the equivalent of an impairment listed in the appendix to  
4 this ~~subpart~~ subsection only if the medical findings with  
5 respect thereto are at least equivalent in severity and  
6 duration to the listed findings of the listed impairment.

7 (b) Any decision made under ~~2. (a) subsections (2) (a)~~  
8 and ~~6. (a) (5) (a) of this section~~ as to whether an  
9 individual's impairment is medically the equivalent of an  
10 impairment listed in the appendix to this ~~subpart,~~  
11 subsection shall be based on medical evidence demonstrated  
12 by medically acceptable clinical and laboratory diagnostic  
13 techniques, including a medical judgment furnished by one or  
14 more physicians designated by the ~~board,~~ division relative  
15 to the question of medical equivalence.

16 (c) Any decision as to whether a medical test is  
17 medically equivalent to the test described in ~~2. (b)~~  
18 subsection (2) (b) of this section shall be based on  
19 appropriate medical evidence, including a judgment furnished  
20 by one or more physicians designated by the ~~board,~~ division  
21 relative to the question of the medical equivalence of ~~each~~  
22 the test.

23 ~~5. (5) Evidence of origin of pneumoconiosis. (a) If a~~  
24 ~~miner was employed for ten (10) years or more in coal mines~~  
25 ~~and is suffering or has suffered from pneumoconiosis, it~~

1 ~~will be presumed, in the absence of evidence to the~~  
2 ~~contrary, that the pneumoconiosis arose out of such~~  
3 ~~employment.~~

4 ~~(b) In any other case, a~~ miner suffering or who has  
5 suffered from pneumoconiosis must submit the evidence  
6 necessary to establish that the pneumoconiosis arose out of  
7 employment in the coal mines. However, the presumption  
8 established in 92-1312.2(1) applies.

9 ~~6. (6) Death due to pneumoconiosis. (a) A miner's death~~  
10 ~~will be determined to have been due to pneumoconiosis if the~~  
11 ~~miner suffered from a chronic dust disease of the lung which~~  
12 ~~meets the requirements of 1. (a) or~~

13 ~~(b) If a deceased miner was employed for ten (10)~~  
14 ~~years or more in coal mines and died from a respirable~~  
15 ~~disease, it will be presumed, in the absence of evidence to~~  
16 ~~the contrary, that his death was due to pneumoconiosis. The~~  
17 ~~claimant must submit the evidence necessary to establish~~  
18 ~~that the miner's death was due to pneumoconiosis and that~~  
19 ~~the pneumoconiosis arose out of employment in coal mines.~~  
20 Death will be found due to a respirable disease when death  
21 is ascribed to a chronic dust disease, or to another chronic  
22 disease of the lung. Death will not be found due to a  
23 respirable disease in those cases in which the disease  
24 reported does not suggest a reasonable possibility that  
25 death was, in fact, due to pneumoconiosis; (e.g., cancer of

1 the lung, disease due to trauma, or pulmonary emboli}+2 ex  
 2 However, the presumptions established in subsections (2) and  
 3 (3) of 92-1315.2 apply.

4 ~~(c) Under circumstances other than those in paragraphs~~  
 5 ~~(a) or (b) of this section, the claimant must submit the~~  
 6 ~~evidence necessary to establish that the miner's death was~~  
 7 ~~due to pneumoconiosis and that the pneumoconiosis arose out~~  
 8 ~~of employment in coal mines."~~

9 Section 7. There is a new R.C.M. section numbered  
 10 92-1315.2 that reads as follows:

11 92-1315.2. Presumptions in determining whether death  
 12 or disability due to pneumoconiosis. In the event of death  
 13 or disability due to pneumoconiosis, the following  
 14 presumptions apply:

15 (1) If a miner who is suffering or who has suffered  
 16 from pneumoconiosis was employed for 10 years or more in one  
 17 or more coal mines, there is a rebuttable presumption that  
 18 his pneumoconiosis arose out of that employment.

19 (2) If a miner was employed for 10 years or more in  
 20 one or more coal mines and died from a respiratory disease,  
 21 there is a rebuttable presumption that the death was due to  
 22 pneumoconiosis.

23 (3) There is an irrebuttable presumption that the  
 24 miner is totally disabled due to pneumoconiosis or that  
 25 death was due to pneumoconiosis, as the case may be, if he

1 is suffering or suffered from a chronic dust disease of the  
 2 lung which:

3 (a) when diagnosed by chest roentgenogram, yields one  
 4 or more large opacities (greater than one centimeter in  
 5 diameter) and would be classified in category A, B, or C in  
 6 the international classification of radiographs of the  
 7 pneumoconioses by the international labor organization;

8 (b) when diagnosed by biopsy or autopsy, yields  
 9 massive lesions in the lung; or

10 (c) when diagnosis is made by other means, would be a  
 11 condition which would reasonably be expected to yield  
 12 results described in (a) or (b) above if diagnosis had been  
 13 made in the manner prescribed in (a) or (b).

14 Section 8. Section 92-1316, R.C.M. 1947, is amended to  
 15 read as follows:

16 "92-1316. Where silicosis pulmonary occupational  
 17 disease causes death. Where silicosis a pulmonary  
 18 occupational disease causes death and a claim for death  
 19 benefits is filed, the "pulmonary specialists," or any one  
 20 of them, if the medical evidence be not controverted, shall  
 21 examine all available evidence pertaining to the claim and  
 22 shall make findings and thereupon report to the board  
 23 division. The report ~~shall constitute~~ is prima facie  
 24 evidence of fact as to the matters therein contained."

25 Section 9. Section 92-1317, R.C.M. 1947, is amended to

1 read as follows:

2 "92-1317. When occupational disease other than  
3 ~~silicosis~~ a pulmonary disease causes death. When an  
4 occupational disease, other than ~~silicosis~~ a pulmonary  
5 disease, causes death and a claim for death benefits is  
6 filed therefor, ~~a member of the "medical committee"~~ the  
7 division shall select at least two physicians who in the  
8 division's judgment could properly determine the condition  
9 regarding the decedent's death in relation to a possible  
10 occupational disease, and the physicians shall examine all  
11 available evidence pertaining to the claim and shall make  
12 findings and ~~thereupon~~ report to the ~~board~~ division. The  
13 report ~~shall constitute~~ is prima facie evidence of fact as  
14 to the matters therein contained."

15 Section 10. Section 92-1318, R.C.M. 1947, is amended  
16 to read as follows:

17 "92-1318. Autopsy. Upon the filing of a claim for  
18 compensation for death caused by an occupational disease  
19 where an autopsy is necessary ~~accordingly and scientifically~~  
20 to ~~ascertain and~~ determine the cause of death, ~~such an~~  
21 autopsy shall be ordered by the ~~board, which~~ division. The  
22 autopsy shall be made under the supervision of the county  
23 coroner. The ~~board~~ division may designate a duly licensed  
24 physician who is a specialist in such examinations to  
25 perform or attend ~~such the~~ autopsies, and to certify his

1 findings thereon. ~~Such~~ The findings shall be examined by a  
2 ~~member of the medical panel, and shall be on file with the~~  
3 ~~board where it shall be a public record by the physicians~~  
4 ~~submitting reports under the provisions of 92-1316 and~~  
5 ~~92-1317 before the final reports under those sections are~~  
6 ~~submitted to the division."~~

7 Section 11. Section 92-1319, R.C.M. 1947, is amended  
8 to read as follows:

9 "92-1319. Periodic medical examinations. ~~A-(1)~~ The  
10 Upon the request of the division or the insurer, each  
11 employee entitled to compensation shall submit ~~himself for~~  
12 ~~to a~~ medical examination ~~by a member of the "medical panel,"~~  
13 from time to time by a physician designated by the division  
14 who is a member of the appropriate medical panel. The  
15 examination shall be at a place reasonably convenient for  
16 the ~~workman when requested by the board, the insurer or the~~  
17 ~~employee~~ employee.

18 ~~3-(2)~~ The request order directing the examination  
19 shall fix a time and place having regard to the convenience  
20 of the employee, his physical condition, and his ability to  
21 attend. The employee and any other party in interest may  
22 have a physician present at the examination if ~~such the~~  
23 physician is provided and paid for by the employee or other  
24 party.

25 ~~6-(3)~~ If the employee refuses to submit to the

1 examination or obstructs the examination, his right to  
 2 compensation ~~shall be~~ is suspended until the examination has  
 3 been made, and no compensation ~~shall be~~ is payable during or  
 4 for ~~such~~ the period of suspension.

5 ~~§~~ (4) A physician who makes or is present at the  
 6 examination may be required to testify as to the result  
 7 thereof.

8 ~~§~~ (5) The ~~board~~ division may reduce or suspend the  
 9 compensation of an employee who persists in unsanitary or  
 10 injurious practices tending to imperil or retard his  
 11 recovery, or who refuses to submit to such medical or  
 12 surgical treatment as is reasonably essential to promote his  
 13 recovery."

14 Section 12. Section 92-1320, R.C.M. 1947, is amended  
 15 to read as follows:

16 "92-1320. Payment of medical examination and autopsy  
 17 expenses. ~~Expense~~ The expense of the first medical  
 18 examination as provided in ~~section 92-1315~~ 92-1314.1 shall  
 19 be borne by the ~~employer if compensation is claimed under~~  
 20 ~~plan one, by the insurer if the claim is under plan two, and~~  
 21 ~~by the board if the claim is under plan three~~ insurer. The  
 22 expense of ~~re-examination~~ a reexamination shall be borne by  
 23 the dissatisfied party requesting ~~such re-examination~~ the  
 24 reexamination. The expense of the periodic medical  
 25 examinations, as provided in ~~section~~ 92-1319, shall be borne

1 by the party requesting ~~such~~ the periodic medical  
 2 examination. The expense of the autopsy, as provided for in  
 3 ~~section~~ 92-1318, shall be borne by the party requesting ~~such~~  
 4 the autopsy."

5 Section 13. Section 92-1323, R.C.M. 1947, is amended  
 6 to read as follows:

7 "92-1323. Prohibiting lump-sum settlements. (1) No  
 8 final and binding award made upon any claim pursuant to this  
 9 ~~act~~ chapter may be converted into a lump-sum payment, in  
 10 whole or in part, except ~~in case the claimant, after having~~  
 11 ~~filed a claim with the employer, the board or the insurer,~~  
 12 ~~as the case may be, shall have as provided in this section.~~  
 13 If a claimant has entered into a contract of employment with  
 14 an attorney for the recovery of ~~such claim,~~ benefits under  
 15 this chapter and the terms of ~~which the~~ employment contract  
 16 ~~shall be deemed to be~~ are reasonable, ~~compensation by said~~  
 17 ~~board for such attorney's services, in which case, the~~  
 18 amount of ~~such the~~ attorney's ~~compensation fee~~ may be  
 19 ordered by the ~~board~~ division to be paid by the ~~employer,~~  
 20 insurer ~~or the board as the case may be,~~ and thereafter  
 21 deducted proportionately from weekly payments thereafter to  
 22 be made to the claimant ~~pursuant to under this act, or said~~  
 23 ~~board chapter.~~ The division may at its option require such  
 24 payments to be deducted each week in ~~such an~~ amount as it  
 25 ~~deems~~ considers advisable from the payments thereafter to be

1 made to the claimant pursuant to under this act chapter and  
 2 paid to ~~said the~~ attorney as they are so deducted from the  
 3 weekly payments to the claimant.

4 (2) Whenever there are contested issues as to an  
 5 insurer's liability for a claim under this chapter,  
 6 including a claim based on 92-1311(1)(d), a claimant and an  
 7 insurer may enter into a full and final compromise  
 8 settlement of the claim. However, no such settlements are  
 9 binding on the parties until approved by the division. After  
 10 the division approves a full and final compromise  
 11 settlement, the claim is closed and the insurer's liability  
 12 for a settled claim is forever released."

13 Section 14. Section 92-1324, R.C.M. 1947, is amended  
 14 to read as follows:

15 "92-1324. Burial expenses. In addition to and separate  
 16 and apart from any other compensation or benefit provided  
 17 for in this act chapter, there shall be paid in case of  
 18 death of an employee, which death is the result of an  
 19 occupational disease contracted in the course of employment,  
 20 the reasonable burial expenses of the employee, not  
 21 exceeding ~~five hundred dollars (\$500.00)~~ the maximum amount  
 22 provided for in 92-705."

23 Section 15. Section 92-1325, R.C.M. 1947, is amended  
 24 to read as follows:

25 "92-1325. Medical and hospital expenses. In addition

1 to the compensation provided by this act chapter, the  
 2 following shall be furnished:

3 (1) If an employee becomes totally disabled from an  
 4 occupational disease, he ~~shall be is~~ entitled to receive,  
 5 without limitation as to length of time or dollar amount,  
 6 reasonable medical services, hospitalization, medicines, and  
 7 such other treatment as may be approved by the board  
 8 division not exceeding in amount the sum of twenty-five  
 9 hundred dollars (\$2,500.00), provided, however, that in such  
 10 cases of total disability where apportionment of such sum  
 11 does not meet such hospital expense, the board may allow an  
 12 additional amount for such additional hospital and medical  
 13 expenses as in special cases it may deem proper.

14 (2) ~~Any an~~ employee who suffers ~~any of the from an~~  
 15 occupational diseases disease listed in sections as defined  
 16 in 92-1304, but who is able to continue in his employment  
 17 while being treated therefor, ~~shall be is~~ entitled to  
 18 receive ~~such the~~ medical services, treatments, and medicines  
 19 reasonably required, not exceeding the value of ~~one thousand~~  
 20 dollars (\$1,000.00) \$2,500.

21 ~~The employer, or insurer, or the board shall not be~~  
 22 ~~required to furnish such services if the employee refuses to~~  
 23 ~~allow them to be furnished or if the employee is under~~  
 24 ~~hospital contract as provided in section 92-61C.~~

25 ~~When such employee is under a hospital contract as~~



1 ~~above and when hospital and medical facilities or both are~~  
 2 ~~inadequate to the needs of a disabled employee in a~~  
 3 ~~particular case such disabled employee may, any time, be~~  
 4 ~~placed where adequate hospital facilities are obtainable,~~  
 5 ~~and the cost thereof in whole or in part shall be a legal~~  
 6 ~~charge against the one so contracting to furnish hospital~~  
 7 ~~facilities, and the amount of such charge and the necessity~~  
 8 ~~therefor shall be determined by the board."~~

9 Section 16. Section 92-1330, R.C.M. 1987, is amended  
 10 to read as follows:

11 "92-1330. Agreement by employee to waive compensation  
 12 or to pay premium void — no liability in certain cases. (1)  
 13 An agreement by an employee to waive his rights to  
 14 ~~compensation and except as otherwise provided in this act,~~  
 15 ~~an agreement by an employee~~ coverage under the Occupational  
 16 Disease Act of Montana or to pay any portion of the premium  
 17 paid by his employer, ~~shall be is~~ void.

18 ~~4. (2) The an~~ employer may give, within ~~two~~ 2 weeks of  
 19 ~~the application the beginning of employment,~~ a physical  
 20 ~~examinations examination to the applicants an applicant~~ for  
 21 employment. Where an applicant for employment, whether ~~such~~  
 22 ~~applicant he~~ has been formerly employed by the employer to  
 23 whom application is made, or not, though not actually  
 24 disabled, is found upon competent medical and ~~X-ray~~ X-ray  
 25 examination to be afflicted with an occupational disease,

1 such the employer ~~shall is~~ not be liable under this ~~act~~  
 2 chapter for disability from the particular disease or  
 3 diseases with which the employee is found to be afflicted or  
 4 for any normal progression without aggravation of ~~said the~~  
 5 disease or diseases, if a report of ~~said the~~ the medical  
 6 examination be is approved by the ~~board~~ board division as  
 7 ~~hereinafter~~ provided in this section.

8 (3) The report of the medical examination of the  
 9 applicant for employment and ~~X-rays~~ X-rays, if any, shall be  
 10 delivered to the ~~board~~ board division by the employer within ~~five~~  
 11 ~~(5)~~ 15 days after ~~such the~~ the examination, ~~to such~~ with the  
 12 medical report and ~~X-rays~~ X-rays, if any, ~~there~~ shall be  
 13 attached a certificate by the examining physician certifying  
 14 that the medical report is the report of the physical  
 15 examination of the applicant for employment.

16 (4) The ~~board~~ board division shall submit ~~such the~~ the medical  
 17 report and ~~X-rays~~ X-rays, if any, to a physician of its  
 18 choice ~~from the medical panel,~~ and ~~such the~~ the physician shall  
 19 report to the ~~board~~ board division his finding as to whether the  
 20 medical report is satisfactory. The ~~board~~ board division shall  
 21 within ~~twenty~~ (20) days after the receipt of ~~such the~~  
 22 medical report from the employer enter its order approving  
 23 or disapproving ~~such the~~ the report and specifying the  
 24 particular disease or diseases found. ~~Such The~~ The order shall  
 25 be in writing stating the reasons for ~~such the~~ the approval or

1 disapproval. A copy of such the order shall be mailed to the  
 2 employer and ~~a copy of such order shall be mailed to~~ the  
 3 applicant for employment within ~~twenty-four (24)~~ hours after  
 4 the board division has approved or disapproved such the  
 5 report.

6 (5) An applicant for employment may commence work  
 7 prior to the approval or disapproval of such the report by  
 8 the board, but division. However, if the board shall  
 9 disapprove such division disapproves the report, the  
 10 employer may discharge such the applicant for employment  
 11 without liability to such applicant his.

12 (6) ~~Provided, however, that if~~ If no physical  
 13 examination is given to the applicant for employment within  
 14 ~~said two (2) week the 2-week~~ period, then such the applicant  
 15 for employment ~~shall be is~~ fully eligible to for the  
 16 benefits ~~of this act under this chapter~~.

17 ~~B. Employers may give within one hundred eighty (180)~~  
 18 ~~days after becoming subject to this act physical~~  
 19 ~~examinations to any employee which said employer has in his~~  
 20 ~~employment. Where an employee, though not actually disabled~~  
 21 ~~is found upon competent medical and X-ray examination to be~~  
 22 ~~afflicted with an occupational disease or diseases, such~~  
 23 ~~employer shall not be liable under this act for disability~~  
 24 ~~from the particular disease or diseases with which the~~  
 25 ~~employee is found to be afflicted or for any personal~~

1 ~~progression without aggravation of said disease or diseases,~~  
 2 ~~if a report of said medical examination be approved by the~~  
 3 ~~board as hereinbefore provided in subsection A of this~~  
 4 ~~section.~~

5 ~~Provided, however, that if no examination is given to~~  
 6 ~~the employee within said one hundred eighty (180) day period~~  
 7 ~~then such employee shall be fully eligible to the benefits~~  
 8 ~~of this act.~~

9 ~~C. All such reports shall become permanent records of~~  
 10 ~~the board.~~

11 (7) The board division may ~~make adcp~~ adopt reasonable rules  
 12 ~~and regulations~~ relative to the form, execution, and filing  
 13 of such reports submitted under this section not  
 14 inconsistent with the provisions of this act chapter."

15 Section 17. There is a new R.C.M. section numbered  
 16 92-1334.1 that reads as follows:

17 92-1334.1. Occupational disease coverage under  
 18 compensation plans. (1) Every employer enrolled under  
 19 compensation plan No. 1 (Title 92, chapter 9), every insurer  
 20 writing workers' compensation coverage under compensation  
 21 plan No. 2 (Title 92, chapter 10), and the state  
 22 compensation insurance fund under compensation plan No. 3  
 23 (Title 92, chapter 11), all provided for under the Workers'  
 24 Compensation Act, are considered to also provide full  
 25 coverage for claims under the occupational disease act. Any

1 policy of insurance for workers' compensation coverage under  
 2 the Workers' Compensation Act written by a private insurance  
 3 carrier or the state compensation insurance fund is  
 4 considered to provide full occupational disease coverage  
 5 under the provisions of Title 92, chapter 13.

6 (2) Except as provided in this chapter, the division  
 7 shall apply the appropriate provisions of Title 92, chapters  
 8 9, 10, and 11, to the administration of the Occupational  
 9 Disease Act of Montana in the same manner as they are  
 10 applied to the administration of the Workers' Compensation  
 11 Act.

12 (3) Under compensation plan No. 3, any premiums and  
 13 other receipts held by the division for occupational disease  
 14 insurance coverage shall be transferred and become part of  
 15 the workers' compensation industrial insurance account, and  
 16 payments for occupational disease claims by the state fund  
 17 shall be paid out of the industrial insurance account.

18 Section 18. Section 92-1335, R.C.M. 1947, is amended  
 19 to read as follows:

20 "92-1335. Hearing, findings, and awards. Upon  
 21 receiving a demand for hearing or rehearing by a party  
 22 dissatisfied by either the first or second determination of  
 23 responsibility by the board, as provided in section 92-1335,  
 24 the board shall hold such hearing within ninety (90) days  
 25 from the date of demand for hearing or rehearing. After the

1 final hearing by the board, it shall within thirty (30)  
 2 days, make and file a finding upon all facts involved in the  
 3 controversy, and its award, which shall state its  
 4 determination as to the rights of the parties. Appeals from  
 5 a final determination of the division shall be made to the  
 6 workers' compensation judge. The judge, after a hearing held  
 7 pursuant to 92-852, shall make a final determination  
 8 concerning the claimant's claim. The judge may overrule the  
 9 division only on the basis that the division's determination  
 10 is:

11 (1) in violation of constitutional or statutory  
 12 provisions;

13 (2) in excess of the statutory authority of the  
 14 agency;

15 (3) made upon unlawful procedure;

16 (4) affected by other error of law;

17 (5) clearly erroneous in view of the reliable,  
 18 probative, and substantial evidence on the whole record; or

19 (6) arbitrary or capricious or characterized by abuse  
 20 of discretion or clearly unwarranted exercise of  
 21 discretion."

22 Section 19. Section 92-1337, R.C.M. 1947, is amended  
 23 to read as follows:

24 "92-1337. Where payment due to child under eighteen  
 25 years. Where payment is due to a child under eighteen (18)

1 years of age or to a person adjudged incompetent, the ~~same~~  
 2 ~~payments~~ shall be made to the parent or to the duly  
 3 appointed conservator or guardian, as the case may be, and  
 4 the ~~written receipt of such parent or guardian payments~~  
 5 ~~shall~~ acquit the employer, the insurer ~~or board, as the case~~  
 6 ~~may be~~, of further liability. In other cases, payment shall  
 7 be made to the person entitled thereto or to his duly  
 8 authorized representative."

9 Section 20. Section 92-1339, R.C.M. 1947, is amended  
 10 to read as follows:

11 "92-1339. Common-law defenses not available. ~~4-~~  
 12 Employers subject to and who fail to comply with the  
 13 provisions of ~~section 92-1334~~ 92-1307 shall are not be  
 14 entitled to the benefits of this ~~act~~ chapter during the  
 15 period of noncompliance, and shall are not ~~avail himself of~~  
 16 entitled to invoke the defenses:

17 1-(1) ~~That that~~ the employee was negligent, unless  
 18 ~~such the~~ negligence was willful;

19 2-(2) ~~That that~~ the disability was caused by the  
 20 negligence of a fellow employee; or

21 3-(3) ~~That that~~ the employee had assumed the risks  
 22 inherent, incident to, or arising out of his employment, or  
 23 arising from the failure of the employer to provide and  
 24 maintain a reasonably safe place to work, or reasonably safe  
 25 tools or appliances."

1 Section 21. Section 92-1340, R.C.M. 1947, is amended  
 2 to read as follows:

3 "92-1340. Penalties for violation. An employer subject  
 4 to this ~~act~~ chapter who fails to comply with ~~section 92-1334~~  
 5 92-1307, or a person who violates any other provision of  
 6 this ~~act, does an act prohibited thereby, or fails or~~  
 7 ~~refuses to perform a duty imposed by this act within the~~  
 8 ~~time prescribed by law or by the board for which no penalty~~  
 9 ~~is specifically provided, or fails, neglects or refuses to~~  
 10 ~~obey an order of the board or a judgment of a court under~~  
 11 ~~the provisions of this act, chapter is guilty of a~~  
 12 ~~misdeemeanor punishable by a fine of not less than one~~  
 13 ~~hundred dollars (\$100.00) nor more than six hundred dollars~~  
 14 ~~(\$600.00) for the first offense, and not less than two~~  
 15 ~~hundred dollars (\$200.00) nor more than twelve hundred~~  
 16 ~~dollars (\$1200.00) for each subsequent offense no more than~~  
 17 \$500."

18 Section 22. Section 92-1343, R.C.M. 1947, is amended  
 19 to read as follows:

20 "92-1343. Legal action by board division. Upon request  
 21 of the board division, the attorney general shall institute  
 22 and prosecute actions for the enforcement of the provisions  
 23 of this ~~act chapter or for the recovery of money due the~~  
 24 ~~state occupational disease compensation account in the~~  
 25 ~~agency fund or for any penalty provided for in this act, and~~

1 be chapter. The attorney general shall prosecute or defend  
 2 all actions brought by or against the ~~board, or the members~~  
 3 ~~thereof~~ division in ~~their~~ its official capacity. The ~~board~~  
 4 division may compromise any action brought under this ~~act~~  
 5 chapter."

6 Section 23. Section 92-1346, R.C.M. 1947, is amended  
 7 to read as follows:

8 "92-1346. Claim forms prescribed by ~~board~~ division.  
 9 Claims for compensation under this ~~act~~ chapter shall be  
 10 filed on forms prescribed and provided for by the ~~board~~  
 11 division and shall be filed in the same manner as claims for  
 12 compensation under the ~~Workmen's~~ Workers' Compensation Act  
 13 unless ~~in this act~~ otherwise provided in this chapter."

14 Section 24. Section 92-1352, R.C.M. 1947, is amended  
 15 to read as follows:

16 "92-1352. Powers of ~~board~~ division. The ~~board~~ division  
 17 is hereby vested with full power, authority, and  
 18 jurisdiction to do and perform any and all things, whether  
 19 herein specifically designated or in addition thereto, which  
 20 are necessary or convenient in the exercise of any power,  
 21 authority, or jurisdiction conferred upon it under this ~~act~~  
 22 chapter."

23 Section 25. Section 92-1358, R.C.M. 1947, is amended  
 24 to read as follows:

25 "92-1358. Books, records, and payrolls to be open to

1 inspection. The books, records, and payrolls of the  
 2 employer, pertinent to the administration of this ~~act,~~  
 3 chapter shall always be open to inspection by the ~~board~~  
 4 division or any duly authorized employee thereof, for the  
 5 purpose of ascertaining the correctness of the payroll, the  
 6 number of ~~all~~ persons employed, and such other information  
 7 as may be necessary for the ~~board~~ division and its  
 8 management under this ~~act~~ chapter. Refusal on the part of  
 9 the employer to submit ~~said~~ the books, records, and payrolls  
 10 for ~~such~~ the inspection shall ~~subject~~ subjects the offending  
 11 employer to a penalty of ~~one hundred dollars~~ (\$100.00) for  
 12 each offense, to be collected by civil action in the name of  
 13 the state."

14 Section 26. Repealer. Sections 92-1303, 92-1306,  
 15 92-1309, 92-1312, 92-1313, 92-1328, 92-1334, 92-1336,  
 16 92-1344, 92-1349, and 92-1356, R.C.M. 1947, are repealed.

-End-

Approved by Committee  
on Labor & Employment  
Relations

*Senate*

BILL NO. 430

1 INTRODUCED BY LABOR & EMPLOYMENT RELATIONS COMMITTEE *Lee*  
2 Chairman  
3 BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL  
6 CLARIFICATION AND REVISION OF THE OCCUPATIONAL DISEASE ACT  
7 OF MONTANA."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. There is a new R.C.M. section numbered  
11 92-1303.1 that reads as follows:

12 92-1303.1. Definitions. As used in this chapter,  
13 unless the context requires otherwise, the following  
14 definitions apply:

- 15 (1) "Beneficiary" is as defined in 92-413.
- 16 (2) "Child" is as defined in 92-417.
- 17 (3) "Disablement" means the event of becoming  
18 physically incapacitated by reason of an occupational  
19 disease from performing any work for remuneration or profit.  
20 "Silicosis", when complicated by active pulmonary  
21 tuberculosis, is presumed to be total disablement.  
22 "Disability", "total disability", and "totally disabled" are  
23 synonymous with "disablement", but they have no reference to  
24 "partial permanent disability".

25 (4) "Division" is as defined in 92-426.

There are no changes in *SB430* & will not be re-run.

Please refer to white copy for complete text. SECOND READING

- 1 (5) "Employer" is as defined in 92-410.1.
- 2 (6) "Employee" is as defined in 92-411.
- 3 (7) "Husband" is as defined in 92-425.
- 4 (8) "Independent contractor" is as defined in  
5 92-438.1.
- 6 (9) "Insurer" is as defined in 92-435. The term  
7 includes an employer who is self-insured under compensation  
8 plan No. 1.
- 9 (10) "Invalid" is as defined in 92-416.
- 10 (11) "Pneumoconiosis" means a chronic dust disease of  
11 the lungs arising out of employment in coal mines and  
12 includes anthracosis, coal workers' pneumoconiosis,  
13 silicosis, or anthracosilicosis arising out of such  
14 employment.
- 15 (12) "Order" is as defined in 92-429.
- 16 (13) "Silicosis" means a chronic disease of the lungs  
17 caused by the prolonged inhalation of silicon dioxide  
18 (SiO<sub>2</sub>), characterized by small discrete nodules of fibrous  
19 tissue similarly disseminated throughout both lungs causing  
20 the characteristic x-ray pattern and by other variable  
21 clinical manifestations.
- 22 (14) "Wages" is as defined in 92-423.1.
- 23 (15) "Wife" is as defined in 92-424.
- 24 (16) "Year" is as defined in 92-433.
- 25 Section 2. Section 92-1311, R.C.M. 1947, is amended to

*SB430*

1 read as follows:

2 "92-1311. Payment of compensation -- exceptions and  
3 limitations. ~~A. (1) Compensation when he has complied with~~  
4 ~~other provisions of this chapter, compensation shall be paid~~  
5 ~~to every employee a claimant who becomes disabled by reason~~  
6 ~~of occupational disease arising out of his employment,~~  
7 ~~subject to the following conditions, and when claims are~~  
8 ~~presented and notices given in accordance with the~~  
9 ~~limitations of sections 92-1312 and 92-1313 set forth in~~  
10 ~~this chapter.~~

11 ~~4. (a) No Except as provided for in this section,~~  
12 ~~compensation shall may not be paid when the last day of the~~  
13 ~~injurious exposure of the employee to the hazard of the~~  
14 ~~occupational disease has occurred prior to the effective~~  
15 ~~date of this act except as in this section, paragraph "A,"~~  
16 ~~subparagraph 4 provided July 1, 1959.~~

17 ~~2. (b) No compensation shall may be paid for a disease,~~  
18 ~~other than silicosis or due to ionizing radiation, unless~~  
19 ~~total disability results within one hundred twenty (120)~~  
20 ~~days from the last day upon which the employee actually~~  
21 ~~worked for the employer against whom compensation is~~  
22 ~~claimed, provided that the board However, the division,~~  
23 ~~upon good cause shown, may waive this limitation in the~~  
24 ~~interest of justice, but in any case said the period may not~~  
25 ~~be extended to more than one 1 year from the date of last~~

1 employment by the said employer.

2 ~~3. (c) No Except as provided for in subsection (1) (d)~~  
3 ~~of this section, no compensation shall may be paid in case~~  
4 ~~of for silicosis unless during the eight 8 years immediately~~  
5 ~~preceding the disablement the injured employee has been~~  
6 ~~exposed to harmful quantities of silicon dioxide dust for a~~  
7 ~~total period of not less than one thousand (1,000)~~  
8 ~~workshifts in employment in this state and unless total~~  
9 ~~disability results within four 4 years from the last day~~  
10 ~~upon which the employee actually worked for the employer~~  
11 ~~against whom compensation is claimed.~~

12 ~~4. (d) Provided, however, that any a silicotic employee~~  
13 ~~who is discharged by his employer to escape liability for~~  
14 ~~silicosis benefits under this act chapter shall be is~~  
15 ~~eligible to receive compensation under this act chapter when~~  
16 ~~totally disabled if he has seven hundred (700) actual~~  
17 ~~workshifts since January 1, 1954, for that employer,~~  
18 ~~provided, further, when when any employee in employment on~~  
19 ~~or after January 1, 1959, because he has an occupational~~  
20 ~~disease incurred in and caused by such employment, which is~~  
21 ~~not yet disabling, is discharged or transferred from the~~  
22 ~~employment in which he is engaged, or when an employee he~~  
23 ~~ceases such his employment and it is in fact, as determined~~  
24 ~~by the medical panel, inadvisable for him on account of such~~  
25 ~~a nondisabling occupational disease, to continue in it~~

*Senate* BILL NO. 430

INTRODUCED BY LABOR & EMPLOYMENT RELATIONS COMMITTEE *Lee*  
Chairman  
BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL CLARIFICATION AND REVISION OF THE OCCUPATIONAL DISEASE ACT OF MONTANA."

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

Section 1. There is a new R.C.M. section numbered 92-1303.1 that reads as follows:

92-1303.1. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 92-413.

(2) "Child" is as defined in 92-417.

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing any work for remuneration or profit. "Silicosis", when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 92-426.

There are no changes in SB430 & will not be re-run.

Please refer to white copy for complete text. THIRD READING

(5) "Employer" is as defined in 92-410.1.

(6) "Employee" is as defined in 92-411.

(7) "Husband" is as defined in 92-425.

(8) "Independent contractor" is as defined in 92-438.1.

(9) "Insurer" is as defined in 92-435. The term includes an employer who is self-insured under compensation plan No. 1.

(10) "Invalid" is as defined in 92-416.

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

(12) "Order" is as defined in 92-429.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO<sub>2</sub>), characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(14) "Wages" is as defined in 92-423.1.

(15) "Wife" is as defined in 92-424.

(16) "Year" is as defined in 92-433.

Section 2. Section 92-1311, R.C.M. 1947, is amended to

*SB430*



1 read as follows:

2 "92-1311. Payment of compensation -- exceptions and  
3 limitations. ~~4. (1) Compensation when he has complied with~~  
4 ~~other provisions of this chapter, compensation shall be paid~~  
5 ~~to every employee a claimant who becomes disabled by reason~~  
6 ~~of occupational disease arising out of his employment,~~  
7 ~~subject to the following conditions, and when claims are~~  
8 ~~presented and notices given in accordance with the~~  
9 ~~limitations of sections 92-1312 and 92-1313 set forth in~~  
10 ~~this chapter.~~

11 ~~4. (a) No Except as provided for in this section,~~  
12 ~~compensation shall may not be paid when the last day of the~~  
13 ~~injurious exposure of the employee to the hazard of the~~  
14 ~~occupational disease has occurred prior to the effective~~  
15 ~~date of this act except as in this section, paragraph "A,"~~  
16 ~~subparagraph 4 provided July 1, 1959.~~

17 ~~2. (b) No compensation shall may be paid for a disease,~~  
18 ~~other than silicosis or due to ionizing radiation, unless~~  
19 ~~total disability results within one hundred twenty (120)~~  
20 ~~days from the last day upon which the employee actually~~  
21 ~~worked for the employer against whom compensation is~~  
22 ~~claimed, provided that the board However, the division,~~  
23 ~~upon good cause shown, may waive this limitation in the~~  
24 ~~interest of justice, but in any case said the period may not~~  
25 ~~be extended to more than one 1 year from the date of last~~

1 employment by the said employer.

2 ~~3. (c) No Except as provided for in subsection (1) (d)~~  
3 ~~of this section, no compensation shall may be paid in case~~  
4 ~~of for silicosis unless during the eight 8 years immediately~~  
5 ~~preceding the disablement the injured employee has been~~  
6 ~~exposed to harmful quantities of silicon dioxide dust for a~~  
7 ~~total period of not less than one thousand (1,000)~~  
8 ~~workshifts in employment in this state and unless total~~  
9 ~~disability results within four 4 years from the last day~~  
10 ~~upon which the employee actually worked for the employer~~  
11 ~~against whom compensation is claimed.~~

12 ~~4. (d) Provided, however, that any a silicotic employee~~  
13 ~~who is discharged by his employer to escape liability for~~  
14 ~~silicosis benefits under this act chapter shall be is~~  
15 ~~eligible to receive compensation under this act chapter when~~  
16 ~~totally disabled if he has seven hundred (700) actual~~  
17 ~~workshifts since January 1, 1954, for that employer,~~  
18 ~~provided, further, when when any employee in employment on~~  
19 ~~or after January 1, 1959, because he has an occupational~~  
20 ~~disease incurred in and caused by such employment, which is~~  
21 ~~not yet disabling, is discharged or transferred from the~~  
22 ~~employment in which he is engaged, or when an employee he~~  
23 ~~ceases such his employment and it is in fact, as determined~~  
24 ~~by the medical panel, inadvisable for him on account of such~~  
25 ~~a nondisabling occupational disease, to continue in it,~~

## SENATE BILL NO. 430

INTRODUCED BY LABOR AND EMPLOYMENT RELATIONS COMMITTEE

LEE, CHAIRMAN

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL  
CLARIFICATION AND REVISION OF THE OCCUPATIONAL DISEASE ACT  
OF MONTANA."

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

Section 1. There is a new R.C.M. section numbered  
92-1303.1 that reads as follows:

92-1303.1. Definitions. As used in this chapter,  
unless the context requires otherwise, the following  
definitions apply:

(1) "Beneficiary" is as defined in 92-413.

(2) "Child" is as defined in 92-417.

(3) "Disablement" means the event of becoming  
physically incapacitated by reason of an occupational  
disease from performing any work for remuneration or profit.  
"Silicosis", when complicated by active pulmonary  
tuberculosis, is presumed to be total disablement.  
"Disability", "total disability", and "totally disabled" are  
synonymous with "disablement", but they have no reference to  
"partial permanent disability".

(4) "Division" is as defined in 92-426.

(5) "Employer" is as defined in 92-410.1.

(6) "Employee" is as defined in 92-411.

(7) "Husband" is as defined in 92-425.

(8) "Independent contractor" is as defined in  
92-438.1.

(9) "Insurer" is as defined in 92-435. The term  
includes an employer who is self-insured under compensation  
plan No. 1.

(10) "Invalid" is as defined in 92-416.

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

(12) "Order" is as defined in 92-429.

(13) "Silicosis" means a chronic disease of the lungs  
caused by the prolonged inhalation of silicon dioxide  
(SiO<sub>2</sub>), characterized by small discrete nodules of fibrous  
tissue similarly disseminated throughout both lungs causing  
the characteristic x-ray pattern and by other variable  
clinical manifestations.

(14) "Wages" is as defined in 92-423.1.

(15) "Wife" is as defined in 92-424.

(16) "Year" is as defined in 92-433.

REFERENCE BILL

1 Section 2. Section 92-1311, R.C.M. 1947, is amended to  
2 read as follows:

3 \*92-1311. Payment of compensation -- exceptions and  
4 limitations. ~~\*All compensation when he has complied with~~  
5 ~~other provisions of this chapter, compensation shall be paid~~  
6 ~~to every employee a claimant~~ who becomes disabled by reason  
7 of occupational disease arising out of his employment,  
8 subject to the following conditions ~~and when claims are~~  
9 ~~presented and notices given in accordance with the~~  
10 ~~limitations of sections 92-1312 and 92-1313 set forth in~~  
11 ~~this chapter.~~

12 ~~\*(a) No Except as provided for in this section,~~  
13 compensation ~~shall may not~~ be paid when the last day of the  
14 injurious exposure of the employee to the hazard of the  
15 occupational disease has occurred prior to ~~the effective~~  
16 ~~date of this act except as in this section, paragraph "A"~~  
17 ~~subparagraph 4 provided July 1, 1959.~~

18 ~~\*(b) No compensation shall may~~ be paid for a disease,  
19 other than silicosis or due to ionizing radiation, unless  
20 total disability results within ~~one hundred twenty (120)~~  
21 days from the last day upon which the employee actually  
22 worked for the employer against whom compensation is  
23 claimed, ~~provided that the board~~ However, the division,  
24 upon good cause shown, may waive this limitation in the  
25 interest of justice, but in any case ~~said~~ the period may not

1 be extended to more than one 1 year from the date of last  
2 employment by the said employer.

3 ~~\*(c) No Except as provided for in subsection (1)(d)~~  
4 ~~of this section, no~~ compensation ~~shall may~~ be paid in case  
5 of ~~for~~ silicosis unless during the eight 8 years immediately  
6 preceding the disablement the injured employee has been  
7 exposed to harmful quantities of silicon dioxide dust for a  
8 total period of not less than ~~one thousand (1,000)~~  
9 workshifts in employment in this state and unless total  
10 disability results within four 4 years from the last day  
11 upon which the employee actually worked for the employer  
12 against whom compensation is claimed.

13 ~~\*(d) Provided, however, that any A~~ silicotic employee  
14 who is discharged by his employer to escape liability for  
15 silicosis benefits under this act ~~chapter shall be is~~  
16 eligible to receive compensation under this act ~~chapter~~ when  
17 totally disabled if he has ~~seven hundred (700)~~ actual  
18 workshifts since January 1, 1954, for that employer, ~~and~~  
19 ~~provided, further, when when~~ any employee in employment on  
20 or after January 1, 1959, because he has an occupational  
21 disease incurred in and caused by such employment, which is  
22 not yet disabling, is discharged or transferred from the  
23 employment in which he is engaged, or when ~~an employee he~~  
24 ceases ~~such his~~ employment and it is in fact, as determined  
25 by the medical panel, inadvisable for him on account of such

1 a nondisabling occupational disease, to continue in ~~the~~  
 2 employment and he suffers wage loss by reason of such ~~the~~  
 3 discharge, transfer, or such cessation, the board division  
 4 may allow compensation on account thereof as it may deem  
 5 considers just, not exceeding five---thousand---dollars  
 6 ~~{5,000}~~ \$10,000.

7 ~~5. No claim shall be maintained nor compensation paid~~  
 8 ~~unless the claim has been filed with the employer, the~~  
 9 ~~insurer, or [or] the board, in writing under oath within the~~  
 10 ~~time fixed by section 92-1312.~~

11 ~~8. (2) The compensation~~ Compensation shall be paid to  
 12 the beneficiary--and--dependents beneficiaries of every  
 13 employee covered by this act chapter in cases where death  
 14 results from an occupational disease arising out of his  
 15 employment, subject to the following conditions:

16 ~~1. (a) No~~ Except as provided for in subsection (1)(d)  
 17 of this section, compensation shall ~~not~~ may not be paid when the  
 18 last day of injurious exposure of the employee to the  
 19 hazards of the occupational diseases has occurred prior to  
 20 the effective date of this act except as in this section  
 21 paragraph--"A"--subparagraph 4 of this act provided July 1,  
 22 1999.

23 ~~2. (b) No compensation shall~~ may be paid for death from  
 24 silicosis unless during the eight 8 years immediately  
 25 preceding the disablement the deceased employee has been

1 exposed to harmful quantities of silicon dioxide dust for a  
 2 period of not less than one-thousand-{1,000} workshifts in  
 3 employment in this state.

4 ~~3. (c) No compensation shall~~ may be paid for death from  
 5 silicosis unless the death results within four--{4} years  
 6 from the last day upon which the employee actually worked  
 7 for the employer against whom compensation is claimed,  
 8 except in those cases where death results during a period of  
 9 continuous total disability from silicosis for which  
 10 compensation has been paid or awarded, or for which a claim,  
 11 compensable but for such death, is on file with the  
 12 commission division. In such cases compensation shall be  
 13 paid if death results within seven--{7} years from the last  
 14 day upon which the employee actually worked for the employer  
 15 against whom compensation is claimed.

16 ~~4. (d) No compensation shall~~ may be paid for death from  
 17 any occupational disease, other than silicosis or due to  
 18 ionizing radiation, unless death results within one--{1} year  
 19 from the last day upon which the employee actually worked  
 20 for the employer against whom compensation is claimed,  
 21 except in those cases where death results during a period of  
 22 continuous total disability from an occupational disease,  
 23 other than silicosis or ionizing radiation, for which  
 24 compensation has been paid or awarded, or for which a claim,  
 25 compensable but for such death, is on file with the board

1 ~~division.~~ In such cases compensation shall be paid if death  
 2 results within ~~three-}~~3} years from the last day upon which  
 3 the employee actually worked for the employer against whom  
 4 compensation is claimed.

5 ~~No claim shall be maintained nor compensation paid~~  
 6 ~~unless the claim has been filed with the employer, the~~  
 7 ~~insurer or the board, as the case may be, in writing within~~  
 8 ~~the time fixed by section 92-1312.~~

9 ~~By (3) Proof of the exposure to silicon dioxide dust~~  
 10 ~~for a period of not less than one--thousand--two--hundred~~  
 11 ~~{1,200} workshifts in employment in this state, with proof~~  
 12 ~~of total disability from silicosis, shall be is prima facie~~  
 13 ~~evidence of exposure to harmful quantities of such dust~~  
 14 ~~during all such period.\*~~

15 Section 3. There is a new R.C.M. section numbered  
 16 92-1312.1 that reads as follows:

17 92-1312.1 Time when claims must be presented. (1) When  
 18 a claimant seeks benefits under this chapter, his claims for  
 19 benefits must be presented in writing to the employer, the  
 20 employer's insurer, or the division within 1 year from the  
 21 date the claimant knew or should have known that his total  
 22 disability condition resulted from an occupational disease.  
 23 When a beneficiary seeks benefits under this chapter, his  
 24 claims for death benefits must be presented in writing to  
 25 the employer, the employer's insurer, or the division within

1 1 year from the date the beneficiaries knew or should have  
 2 known that the decedent's death was related to an  
 3 occupational disease.

4 (2) The division may, upon a reasonable showing by the  
 5 claimant or a decedent's beneficiaries that the claimant or  
 6 the beneficiaries could not have known that the claimant's  
 7 condition or the employee's death was related to an  
 8 occupational disease, waive the claim time requirement up to  
 9 an additional 2 years.

10 (3) Notwithstanding the provisions of subsections (1)  
 11 and (2) of this section, no claim to recover benefits under  
 12 this chapter may be maintained unless the claim is properly  
 13 filed within 3 years after the last day upon which the  
 14 claimant or the deceased employee actually worked for the  
 15 employer against whom compensation is claimed.

16 Section 4. Section 92-1314, R.C.M. 1947, is amended to  
 17 read as follows:

18 "92-1314. Medical Pulmonary specialist medical panel  
 19 ~~9 medical committee~~, and pulmonary specialists. (1) The  
 20 Montana medical association may, at least annually, certify  
 21 to the board division as "medical committee nominees" thirty  
 22 ~~(30) or more licensed physicians of the state of Montana who~~  
 23 ~~are particularly qualified in the diagnosis, care and~~  
 24 ~~treatment of occupational diseases, in addition thereto, and~~  
 25 ~~simultaneously therewith the Montana medical association may~~

1 certify--to--the--board as "pulmonary specialists nominees"  
 2 three (3) or more licensed physicians of the state who shall  
 3 have had at the time of certification at least five--(5)  
 4 years' practice in the diagnosis, care, and treatment of  
 5 diseases of the pulmonary tract and the interpretation of  
 6 \*ray x-ray films thereof and may also certify to the  
 7 division as occupational disease specialist nominees three  
 8 or more licensed physicians of the state who have at the  
 9 time of certification qualifications in the diagnosis, care,  
 10 and treatment of nonpulmonary occupational diseases. From  
 11 the two lists submitted as provided for in this section, the  
 12 division shall appoint two separate medical panels. One  
 13 panel is the pulmonary specialist medical panel and the  
 14 other is the occupational disease medical panel. The  
 15 division shall appoint from the list of pulmonary specialist  
 16 nominees three or more physicians to serve on the pulmonary  
 17 specialist medical panel. The division shall appoint from  
 18 the list of occupational disease specialist nominees three  
 19 or more physicians to serve on the occupational disease  
 20 specialist medical panel. From said list of physicians  
 21 certified as "medical committee nominees" the board shall  
 22 appoint thirty (30) physicians who shall serve as and be  
 23 hereinafter referred to as the "medical committee" and who  
 24 shall examine claims for occupational disease  
 25 disabilities other than silicosis from said list of

1 physicians so certified as "pulmonary specialist nominees"  
 2 the board shall appoint three (3) or more physicians who  
 3 shall serve as and be hereinafter referred to as "pulmonary  
 4 specialists."  
 5 (2) In the event that if the Montana medical  
 6 association fails to make the certification as hereinabove  
 7 provided, then in that event the board shall of its own  
 8 choice appoint thirty (30) licensed physicians in the state  
 9 of Montana who are particularly qualified in the diagnosis,  
 10 care and treatment of occupational diseases which said  
 11 physicians shall serve as and be hereinafter referred to as  
 12 the "medical committee" and submit the two lists of nominees  
 13 as provided for in this section, the division shall appoint  
 14 members to the medical panels by appointing to the pulmonary  
 15 specialist medical panel three (3) or more licensed  
 16 physicians in the state of Montana who have had at the time  
 17 of appointment at least five--(5) years' practice in the  
 18 diagnosis, care, and treatment of diseases of the pulmonary  
 19 tract and the interpretation of \*ray x-ray films thereof  
 20 which latter group of three (3) or more shall serve as and  
 21 be hereinafter referred to as "pulmonary specialists." The  
 22 "medical committee" together with the "pulmonary  
 23 specialists" shall be known as and hereinafter referred to  
 24 as the "medical panels" and by appointing to the  
 25 occupational disease medical panel three or more licensed

1 physicians of the state who have at the time of appointment  
 2 qualifications to diagnose, care for, and treat nonpulmonary  
 3 occupational diseases."

4 Section 5. There is a new R.C.M. section numbered  
 5 92-1314.1 that reads as follows:

6 92-1314.1. Procedure for medical examination. (1) In  
 7 order to determine the compensability of claims under this  
 8 chapter based on pulmonary conditions, the following  
 9 procedure shall be followed:

10 (a) The division shall direct the claimant to a  
 11 pulmonary specialist who is a member of the pulmonary  
 12 specialist medical panel for an examination. The pulmonary  
 13 specialist shall conduct an examination to determine whether  
 14 the claimant is totally disabled and is suffering from a  
 15 pulmonary occupational disease. The pulmonary specialist  
 16 shall submit a report of his findings to the division.

17 (b) Either the claimant or the insurer may, within 20  
 18 days after the receipt of the report by the first pulmonary  
 19 specialist, request that the claimant be examined by a  
 20 second pulmonary specialist who shall be a member of the  
 21 pulmonary specialist medical panel. If a second examination  
 22 is requested, the division shall direct the claimant to a  
 23 second pulmonary specialist and the pulmonary specialist  
 24 shall conduct an examination to determine whether he  
 25 believes the claimant is totally disabled and is suffering

1 from a pulmonary disease. The pulmonary specialist shall  
 2 submit a report of his findings to the division. When a  
 3 second examination has been requested, the reports of the  
 4 examinations shall be submitted to the pulmonary specialist  
 5 medical panel for its review. The panel shall issue its  
 6 report concerning the claimant's physical condition and  
 7 whether the claimant is suffering from an occupational  
 8 disease.

9 (c) If a second examination is not requested, the  
 10 division shall issue its order determining whether the  
 11 claimant is entitled to occupational disease benefits based  
 12 on the report of the first examining physician. If a second  
 13 examination is requested, the division shall issue its order  
 14 based on the report of the pulmonary specialist medical  
 15 panel.

16 (2) In order to determine the compensability of claims  
 17 under this chapter based on nonpulmonary conditions, the  
 18 following procedure shall be followed:

19 (a) The division shall direct the claimant to an  
 20 occupational disease specialist who is a member of the  
 21 occupational disease medical panel for an examination. The  
 22 specialist shall conduct an examination to determine whether  
 23 the claimant is totally disabled and is suffering from an  
 24 occupational disease. The specialist shall submit a report  
 25 of his findings to the division.

1 (b) Either the claimant or the insurer may, within 20  
 2 days after the receipt of the report by the first  
 3 specialist, request that the claimant be examined by a  
 4 second specialist. If a second examination is requested, the  
 5 division shall direct the claimant to a second specialist  
 6 who is a member of the occupational disease medical panel  
 7 and the specialist shall conduct an examination to determine  
 8 whether he believes the claimant is totally disabled and is  
 9 suffering from an occupational disease. The specialist shall  
 10 submit a report of his findings to the division. When a  
 11 second examination has been requested, the reports of the  
 12 examinations shall be submitted to the occupational disease  
 13 medical panel for its review. The panel shall issue its  
 14 report concerning the claimant's physical condition and  
 15 whether the claimant is suffering from an occupational  
 16 disease.

17 (c) If a second examination is not requested, the  
 18 division shall issue its order determining whether the  
 19 claimant is entitled to occupational disease benefits based  
 20 on the report of the first examining specialist. If a second  
 21 examination is requested, the division shall issue its order  
 22 based on the report of the occupational disease medical  
 23 panel.

24 (d) A report submitted to the division by the  
 25 appropriate medical panel and placed in the division's

1 records is prima facie evidence as to the matters contained  
 2 in the report.

3 (4) Upon the division's own motion or if a claimant or  
 4 an insurer requests that a hearing be held by the division  
 5 prior to the time the division issues its final  
 6 determination concerning the claimant's entitlement to  
 7 occupational disease benefits, the division shall hold a  
 8 hearing.

9 (5) At a hearing held before the division or the  
 10 workers' compensation judge, the report of the medical panel  
 11 and the two medical examinations conducted by members of the  
 12 medical panel are exclusive and final and no other medical  
 13 evidence or additional medical examinations are admissible.  
 14 However, the physicians to which the claimant has been  
 15 referred as provided for in this section may, in order to  
 16 assist them in reaching their conclusion, consult with the  
 17 claimant's attending physician.

18 (6) Within 20 days after the division has issued its  
 19 order of determination as to whether the claimant is  
 20 entitled to benefits under this chapter, a party may request  
 21 a rehearing. In order to perfect an appeal to the workers'  
 22 compensation judge, the appealing party must request a  
 23 rehearing before the division. The division may grant a  
 24 rehearing and, if a rehearing is granted, the division's  
 25 final determination shall not be issued until after the



1 rehearing. If the division does not grant a rehearing, the  
2 division's final determination is issued on the date the  
3 rehearing is denied.

4 Section 6. Section 92-1315, R.C.M. 1947, is amended to  
5 read as follows:

6 ~~"92-1315. Procedure for medical examination. Standards~~  
7 ~~for determining whether death or disability due to~~  
8 ~~pneumoconiosis. As in order to determine the validity of~~  
9 ~~claims made pursuant to the provisions of this act, the~~  
10 ~~following procedure and no other shall be followed in the~~  
11 ~~course of the medical examination of the claimant for~~  
12 ~~official report to said board, claimant, employer, or~~  
13 ~~insurer, as the case may be.~~

14 ~~1. Upon the filing of a claim by a claimant for~~  
15 ~~occupational disease disability, other than silicosis, or~~  
16 ~~pneumoconiosis, the board shall direct a member from said~~  
17 ~~"medical committee" to examine and determine the disability~~  
18 ~~of the claimant and submit a written report thereon to the~~  
19 ~~board.~~

20 ~~Upon the filing of a claim for compensation for~~  
21 ~~silicosis disability under this act, the board shall direct~~  
22 ~~an examination of and report to the board upon the claimant~~  
23 ~~by said "pulmonary specialists" or one of them, including~~  
24 ~~such x-ray and other pathological examination and tests as~~  
25 ~~in the opinion of such specialist or specialists may be~~

1 necessary for the purpose of determining diagnosis  
2 disability and the nature and type of medical treatment,  
3 hospitalization and other care required, if the claim is not  
4 controverted as to any medical fact, the examination and  
5 report of one of said specialists shall be deemed the  
6 examination and report of all "pulmonary specialists" if  
7 the claim is controverted as to any medical fact, the report  
8 shall be made by all of said specialists after a physical  
9 examination by at least two (2) of them. The findings and  
10 opinions of a majority of the number of said specialists  
11 then appointed shall constitute the findings and opinions of  
12 all of them. The contents of the report of said "pulmonary  
13 specialists" when placed in the record shall constitute  
14 prima facie evidence of fact as to the matter therein  
15 contained. The "pulmonary specialists" or any one (1) of  
16 them making the report shall be subject to examination upon  
17 demand of any interested parties.

18 The "pulmonary specialists" or any one (1) of them in  
19 order to assist in reaching a conclusion may require the  
20 attending physician or director of a hospital or a  
21 sanitarium or other place in which treatment or care is  
22 being given or has been given to attend at a convenient  
23 time and place to consult with said specialists, or any one  
24 of them, and to describe the nature and type of care and  
25 treatment and furnish any other evidence which said

~~1 specialist or specialists desire~~  
~~2 upon receiving the written report of such examining~~  
~~3 physician or physicians so appointed, the board shall~~  
~~4 forthwith determine whether or not the claimant shall~~  
~~5 receive the benefits pursuant to this act and it shall~~  
~~6 forward notice of its determination together with a true and~~  
~~7 correct copy of said medical report to the claimant and the~~  
~~8 employer or insurer as the case may be~~  
~~9 2v. If within twenty (20) days after receipt of such~~  
~~10 notice and medical report the claimant, employer or insurer~~  
~~11 as the case may be is dissatisfied with said determination~~  
~~12 by said board, they or any of them may demand a hearing~~  
~~13 before said board pursuant to the rehearing provisions of~~  
~~14 section 92-829. If, however, the board, claimant, employer~~  
~~15 or insurer or any of them is dissatisfied with the results~~  
~~16 of such first medical examination as indicated by said~~  
~~17 medical report, such dissatisfied party may upon thirty (30)~~  
~~18 days' notice in writing to all adversary parties and to the~~  
~~19 board require a re-examination by a member of said "medical~~  
~~20 panel"; provided, however, that if the benefits claimed are~~  
~~21 for a disability caused by silicosis, the physician so~~  
~~22 selected by the dissatisfied party must be one of the~~  
~~23 "pulmonary specialists". Thereupon, after receipt of the~~  
~~24 report of medical re-examination, the board shall give like~~  
~~25 notice of its determination, whether said determination~~

~~1 shall be the same as before or otherwise, together with a~~  
~~2 copy of said medical report, in the same manner as in the~~  
~~3 case of the first such examination and the party shall be~~  
~~4 entitled to a rehearing in the same manner as in the case of~~  
~~5 such first medical examination. The evidence of the two (2)~~  
~~6 medical examinations above described shall be final, and so~~  
~~7 far as the medical examination of the claimant is concerned~~  
~~8 no evidence of other or additional medical examinations~~  
~~9 shall be admissible before the board upon rehearing nor~~  
~~10 before any court upon the appeal, if any.~~  
~~11 Bv. The standards for determining death or total~~  
~~12 disability due to pneumoconiosis are as follows:~~  
~~13 is (1) total disability defined: A miner is under a~~  
~~14 total disability due to pneumoconiosis if: (a) He is~~  
~~15 suffering or suffered from a chronic dust disease of the~~  
~~16 lung which (1) when diagnosed by chest roentgenogram~~  
~~17 yields one or more large opacities (greater than one~~  
~~18 centimeter in diameter) and would be classified in category~~  
~~19 A, B, or C in the international classification of~~  
~~20 radiographs of the pneumoconioses by the international labor~~  
~~21 organization or (2) when diagnosed by biopsy or autopsy~~  
~~22 yields massive lesions in the lung, that is, shows the~~  
~~23 existence of progressive massive fibrosis or (3) when~~  
~~24 established by diagnosis by means other than those specified~~  
~~25 in subparagraphs (1) or (2) of this paragraph would be a~~

1 condition which could reasonably be expected to yield the  
 2 results described in subparagraph (1) or (2) of this  
 3 paragraph had diagnosis been made as therein prescribed.  
 4 Provided, however, that any diagnosis made under this clause  
 5 shall be in accordance with generally accepted medical  
 6 procedures for diagnosing pneumoconiosis.

7 (b)(1)(a) He ~~he~~ is unable to engage in any  
 8 substantial gainful activity by reason of pneumoconiosis  
 9 which can be expected to result in death or which has lasted  
 10 or can be expected to last for a continuous period of not  
 11 less than twelve (12) months; or

12 (2)(b) where the requirements of paragraph (a) of this  
 13 section are met, the finding that a miner is under a total  
 14 disability is established by the irrebuttable presumption  
 15 established in 92-1315.2(3) applies.

16 ~~2(2) Evaluating total disability:~~ (a) Total  
 17 disability may not be found for purposes of this part  
 18 section unless pneumoconiosis is the impairment involved.  
 19 Whether or not pneumoconiosis in a particular case  
 20 constitutes a disability as defined in ~~1-(b)~~ subsection (1)  
 21 of this section is determined from all the facts of that  
 22 case. Primary consideration is given to the severity of the  
 23 individual's pneumoconiosis. Medical Except where other  
 24 evidence rebutts a finding of disability (e.g., the  
 25 individual is actually engaging in substantial gainful

1 activity). medical considerations alone can, ~~except~~ where  
 2 other evidence rebuts a finding of "disability" even the  
 3 individual is actually engaging in substantial gainful  
 4 activity justify a finding that the individual is under a  
 5 disability where his impairment is one that meets the  
 6 duration requirement in ~~1-(b)~~ subsection (1)(a) of this  
 7 section and is listed in the appendix to this subpart  
 8 subsection. However, the presumption established in  
 9 92-1315.2(3) applies.

10 (b) Pneumoconiosis may be found disabling if it does  
 11 prevent the individual from engaging in any substantial  
 12 gainful activity. ~~Such an~~ the individual, ~~however,~~ shall may  
 13 be determined to be under a disability only if his  
 14 pneumoconiosis is the primary reason for his inability to  
 15 engage in substantial gainful activity. ~~in any such case it~~  
 16 It must also be established that the individual has a  
 17 respiratory impairment because of pneumoconiosis which is  
 18 demonstrated on the basis of an MVV and FEV1 which are equal  
 19 to or less than the values specified in the following table  
 20 or by a medically equivalent test:

	MVV(MRC) equal	and	FEV1 equal to
Height			
(Inches)	to or less than		or less than
	-----		
	L./Min.		L.

1	57 or less	52	1.4
2	58	53	1.4
3	59	54	1.4
4	60	55	1.5
5	61	56	1.5
6	62	57	1.5
7	63	58	1.5
8	64	59	1.6
9	65	60	1.6
10	66	61	1.6
11	67	62	1.7
12	68	63	1.7
13	69	64	1.8
14	70	65	1.8
15	71	66	1.8
16	72	67	1.9
17	73 or more	68	1.9

18 ~~3. [3] Evidence-of-pneumoconiosis~~ (a) A finding of the  
19 existence of pneumoconiosis may not be made in the absence  
20 of:

21 ~~{3}{111} \*~~ a chest roentgenogram showing the existence  
22 of pneumoconiosis classified as category 1, 2, 3, A, B, or  
23 C, according to the international labor organization (1958),  
24 international labor organization (1968), or union  
25 internationale contra cancer/Cincinnati (1968)

1 classifications of the pneumoconioses (if the chest  
2 roentgenogram is classified as category Z, it should be  
3 reclassified as category U or category 1 and only the latter  
4 accepted as evidence of pneumoconiosis); or

5 ~~{3}{1111} An~~ an autopsy showing the existence of  
6 pneumoconiosis; or

7 ~~{3}{1111} \*~~ a biopsy (other than a needle biopsy)  
8 showing the existence of pneumoconiosis. ~~Such~~ The biopsy  
9 ~~would is~~ not be expected to be performed for the sole  
10 purpose of diagnosing pneumoconiosis. Where a biopsy is  
11 performed for other purposes, however (e.g., in connection  
12 with a lung resection), the report thereof will be  
13 considered in determining the existence of pneumoconiosis.

14 (b) The roentgenogram, to conform to accepted medical  
15 standards, should represent a posterior-anterior view of the  
16 chest, taken at a distance of ~~six~~ ~~{6}~~ feet between the ~~X-ray~~  
17 ~~X-ray~~ tube and the ~~X-ray~~ ~~X-ray~~ film on a 14 by 17 inch ~~X-ray~~  
18 ~~X-ray~~ film.

19 (c) A report of autopsy or biopsy shall include a  
20 detailed gross (macroscopic) and microscopic description of  
21 the lungs or visualized portions of the lungs. If an  
22 operative procedure has been performed to obtain a portion  
23 of a lung, the evidence should include a copy of the  
24 operative note and the pathology report of the gross and  
25 microscopic examination of the surgical specimen. If an

1 autopsy has been performed, the evidence should include a  
2 complete copy of the autopsy report.

3 ~~4~~(4) ~~Determining medical equivalence~~ (a) An  
4 individual's impairment shall be determined to be medically  
5 the equivalent of an impairment listed in the appendix to  
6 this ~~subpart~~ subsection only if the medical findings with  
7 respect thereto are at least equivalent in severity and  
8 duration to the listed findings of the listed impairment.

9 (b) Any decision made under ~~2~~(a) subsections (2)(a)  
10 and ~~6~~(a) (b)(a) of this section as to whether an  
11 individual's impairment is medically the equivalent of an  
12 impairment listed in the appendix to this ~~subpart~~  
13 subsection shall be based on medical evidence demonstrated  
14 by medically acceptable clinical and laboratory diagnostic  
15 techniques, including a medical judgment furnished by one or  
16 more physicians designated by the ~~board~~ division relative  
17 to the question of medical equivalence.

18 (c) Any decision as to whether a medical test is  
19 medically equivalent to the test described in ~~2~~(b)  
20 subsection (2)(b) of this section shall be based on  
21 appropriate medical evidence, including a judgment furnished  
22 by one or more physicians designated by the ~~board~~ division  
23 relative to the question of the medical equivalence of ~~such~~  
24 the test.

25 ~~5~~(5) ~~Evidence of origin of pneumoconiosis~~ (a) If a

1 ~~miner was employed for ten (10) years or more in coal mines~~  
2 ~~and is suffering or has suffered from pneumoconiosis, it~~  
3 ~~will be presumed in the absence of evidence to the~~  
4 ~~contrary, that the pneumoconiosis arose out of such~~  
5 ~~employment.~~

6 ~~(b) In any other case, a~~ A miner suffering or who has  
7 suffered from pneumoconiosis must submit the evidence  
8 necessary to establish that the pneumoconiosis arose out of  
9 employment in the coal mines. However, the presumption  
10 established in 92-1312.2(1) applies.

11 ~~6~~(6) ~~Death due to pneumoconiosis~~ (a) A miner's death  
12 ~~will be determined to have been due to pneumoconiosis if the~~  
13 ~~miner suffered from a chronic dust disease of the lung which~~  
14 ~~meets the requirements of 1~~ (a) or

15 ~~(b) If a deceased miner was employed for ten (10)~~  
16 ~~years or more in coal mines and died from a respirable~~  
17 ~~disease, it will be presumed in the absence of evidence to~~  
18 ~~the contrary, that his death was due to pneumoconiosis. The~~  
19 claimant must submit the evidence necessary to establish  
20 that the miner's death was due to pneumoconiosis and that  
21 the pneumoconiosis arose out of employment in coal mines.  
22 Death will be found due to a respirable disease when death  
23 is ascribed to a chronic dust disease or to another chronic  
24 disease of the lung. Death will not be found due to a  
25 respirable disease in those cases in which the disease

1 reported does not suggest a reasonable possibility that  
 2 death was, in fact, due to pneumoconiosis; (e.g., cancer of  
 3 the lung, disease due to trauma, or pulmonary embolism) or  
 4 However, the presumptions established in subsections (2) and  
 5 (3) of 92-1315.2 apply.

6 ~~(c)--Under circumstances other than those in paragraphs~~  
 7 ~~(a) or (b) of this section, the claimant must submit the~~  
 8 ~~evidence necessary to establish that the miner's death was~~  
 9 ~~due to pneumoconiosis and that the pneumoconiosis arose out~~  
 10 ~~of employment in coal mines."~~

11 Section 7. There is a new R.C.M. section numbered  
 12 92-1315.2 that reads as follows:

13 92-1315.2. Presumptions in determining whether death  
 14 or disability due to pneumoconiosis. In the event of death  
 15 or disability due to pneumoconiosis, the following  
 16 presumptions apply:

17 (1) If a miner who is suffering or who has suffered  
 18 from pneumoconiosis was employed for 10 years or more in one  
 19 or more coal mines, there is a rebuttable presumption that  
 20 his pneumoconiosis arose out of that employment.

21 (2) If a miner was employed for 10 years or more in  
 22 one or more coal mines and died from a respiratory disease,  
 23 there is a rebuttable presumption that the death was due to  
 24 pneumoconiosis.

25 (3) There is an irrebuttable presumption that the

1 miner is totally disabled due to pneumoconiosis or that  
 2 death was due to pneumoconiosis, as the case may be, if he  
 3 is suffering or suffered from a chronic dust disease of the  
 4 lung which:

5 (a) when diagnosed by chest roentgenogram, yields one  
 6 or more large opacities (greater than one centimeter in  
 7 diameter) and would be classified in category A, B, or C in  
 8 the international classification of radiographs of the  
 9 pneumoconioses by the international labor organization;

10 (b) when diagnosed by biopsy or autopsy, yields  
 11 massive lesions in the lung; or

12 (c) when diagnosis is made by other means, would be a  
 13 condition which would reasonably be expected to yield  
 14 results described in (a) or (b) above if diagnosis had been  
 15 made in the manner prescribed in (a) or (b).

16 Section 8. Section 92-1316, R.C.M. 1947, is amended to  
 17 read as follows:

18 "92-1316. Where ~~sitiosis~~ pulmonary occupational  
 19 disease causes death. Where ~~sitiosis~~ a pulmonary  
 20 occupational disease causes death and a claim for death  
 21 benefits is filed, the "pulmonary specialists," or any one  
 22 of them, if the medical evidence be not controverted, shall  
 23 examine all available evidence pertaining to the claim and  
 24 shall make findings and thereupon report to the board  
 25 division. The report ~~shall constitute~~ is prima facie

1 evidence of fact as to the matters therein contained."

2 Section 9. Section 92-1317, R.C.M. 1947, is amended to  
3 read as follows:

4 \*92-1317. When occupational disease other than  
5 ~~sitiosis~~ a pulmonary disease causes death. When an  
6 occupational disease, other than ~~sitiosis~~ a pulmonary  
7 disease, causes death and a claim for death benefits is  
8 filed therefor, ~~a member of the "medical committee"~~ the  
9 division shall select at least two physicians who in the  
10 division's judgment could properly determine the condition  
11 regarding the decedent's death in relation to a possible  
12 occupational disease, and the physicians shall examine all  
13 available evidence pertaining to the claim and shall make  
14 findings and thereupon report to the board division. The  
15 report ~~shall constitute~~ is prima facie evidence of fact as  
16 to the matters therein contained."

17 Section 10. Section 92-1318, R.C.M. 1947, is amended  
18 to read as follows:

19 \*92-1318. Autopsy. Upon the filing of a claim for  
20 compensation for death caused by an occupational disease  
21 where an autopsy is necessary ~~accordingly and scientifically~~  
22 to ascertain and determine the cause of death, such an  
23 autopsy shall be ordered by the board which division. The  
24 autopsy shall be made under the supervision of the county  
25 coroner. The board division may designate a duly licensed

1 physician who is a specialist in such examinations to  
2 perform or attend ~~such the~~ autopsies, and to certify his  
3 findings thereon. ~~Such the~~ findings shall be examined by a  
4 ~~member of the medical panel, and shall be on file with the~~  
5 ~~board where it shall be a public record by the physicians~~  
6 ~~submitting reports under the provisions of 92-1316 and~~  
7 ~~92-1317 before the final reports under those sections are~~  
8 ~~submitted to the division."~~

9 Section 11. Section 92-1319, R.C.M. 1947, is amended  
10 to read as follows:

11 \*92-1319. Periodic medical examinations. ~~As (1) the~~  
12 ~~Upon the request of the division or the insurer, an~~  
13 employee entitled to compensation shall submit himself for  
14 ~~to a~~ medical examination by a member of the ~~"medical panel"~~  
15 from time to time by a physician designated by the division  
16 who is a member of the appropriate medical panel. The  
17 examination shall be at a place reasonably convenient for  
18 the ~~workman when requested by the board, the insurer or the~~  
19 ~~employer employee.~~

20 ~~As (2) The request~~ order directing the examination  
21 shall fix a time and place having regard to the convenience  
22 of the employee, his physical condition, and his ability to  
23 attend. The employee and any other party in interest may  
24 have a physician present at the examination if ~~such the~~  
25 physician is provided and paid for by the employee or other

1 party.

2 ~~By (3)~~ If the employee refuses to submit to the  
3 examination or obstructs the examination, his right to  
4 compensation ~~shall be~~ is suspended until the examination has  
5 been made, and no compensation ~~shall be~~ is payable during or  
6 for such ~~the~~ the period of suspension.

7 ~~By (4)~~ A physician who makes or is present at the  
8 examination may be required to testify as to the result  
9 thereof.

10 ~~By (5)~~ The board division may reduce or suspend the  
11 compensation of an employee who persists in unsanitary or  
12 injurious practices tending to imperil or retard his  
13 recovery, or who refuses to submit to such medical or  
14 surgical treatment as is reasonably essential to promote his  
15 recovery."

16 Section 12. Section 92-1320, R.C.M. 1947, is amended  
17 to read as follows:

18 "92-1320. Payment of medical examination and autopsy  
19 expenses. ~~Expense~~ The expense of the first medical  
20 examination as provided in ~~section 92-1315~~ 92-1314.1 shall  
21 be borne by the employer ~~if compensation is claimed under~~  
22 ~~plan one by the insurer if the claim is under plan two and~~  
23 ~~by the board if the claim is under plan three~~ insurer. The  
24 expense of ~~re-examination~~ reexamination shall be borne by  
25 the dissatisfied party requesting such ~~re-examination~~ the

1 reexamination. The expense of the periodic medical  
2 examinations, as provided in ~~section 92-1319~~, shall be borne  
3 by the party requesting ~~such the~~ periodic medical  
4 examination. The expense of the autopsy, as provided for in  
5 ~~section 92-1318~~, shall be borne by the party requesting ~~such~~  
6 the autopsy."

7 Section 13. Section 92-1323, R.C.M. 1947, is amended  
8 to read as follows:

9 "92-1323. Prohibiting lump-sum settlements. ~~(1)~~ No  
10 final and binding award made upon any claim pursuant to this  
11 act chapter may be converted into a lump-sum payment, in  
12 whole or in part, ~~except in case the claimant after having~~  
13 ~~filed a claim with the employer, the board or the insurer,~~  
14 ~~as the case may be, shall have~~ as provided in this section.  
15 If a claimant has entered into a contract of employment with  
16 an attorney for the recovery of ~~such claim~~ benefits under  
17 this chapter and the terms of which ~~the~~ employment contract  
18 ~~shall be deemed to be~~ are reasonable, compensation by said  
19 board ~~for such attorney's services in which case~~ the  
20 amount of such ~~the~~ attorney's compensation ~~fee~~ may be  
21 ordered by the board division to be paid by the employer  
22 insurer ~~or the board as the case may be~~ and thereafter  
23 deducted proportionately from weekly payments thereafter to  
24 be made to the claimant ~~pursuant to~~ under this ~~act~~ or said  
25 board chapter. ~~The division may at its option~~ require such



1 payments to be deducted each week in such an amount as it  
2 ~~deems~~ considers advisable from the payments thereafter to be  
3 made to the claimant pursuant to ~~under~~ this ~~act~~ chapter and  
4 paid to ~~said~~ the attorney as they are so deducted from the  
5 weekly payments to the claimant.

6 ~~(2) Whenever there are contested issues as to an~~  
7 ~~insurer's liability for a claim under this chapter,~~  
8 ~~including a claim based on 92-1311(1)(d), a claimant and an~~  
9 ~~insurer may enter into a full and final compromise~~  
10 ~~settlement of the claim. However, no such settlements are~~  
11 ~~binding on the parties until approved by the division. After~~  
12 ~~the division approves a full and final compromise~~  
13 ~~settlement, the claim is closed and the insurer's liability~~  
14 ~~for a settled claim is forever released."~~

15 Section 14. Section 92-1324, R.C.M. 1947, is amended  
16 to read as follows:

17 "92-1324. Burial expenses. In addition to and separate  
18 and apart from any other compensation or benefit provided  
19 for in this ~~act~~ chapter, there shall be paid in case of  
20 death of an employee, which death is the result of an  
21 occupational disease contracted in the course of employment,  
22 the reasonable burial expenses of the employee, not  
23 exceeding ~~five-hundred-dollars-(\$500.00)~~ the maximum amount  
24 provided for in 92-109."

25 Section 15. Section 92-1325, R.C.M. 1947, is amended

1 to read as follows:

2 "92-1325. Medical and hospital expenses. In addition  
3 to the compensation provided by this ~~act~~ chapter, the  
4 following shall be furnished:

5 (1) If an employee becomes totally disabled from an  
6 occupational disease, he ~~shall be~~ is entitled to receive,  
7 ~~without limitation as to length of time or dollar amount,~~  
8 reasonable medical services, hospitalization, medicines, and  
9 such other treatment as may be approved by the board  
10 ~~division not exceeding in amount the sum of twenty-five~~  
11 ~~hundred-dollars-(\$2,500.00), provided, however, that in such~~  
12 ~~cases of total disability where apportionment of such sum~~  
13 ~~does not meet such hospital expense, the board may allow an~~  
14 ~~additional amount for such additional hospital and medical~~  
15 ~~expenses as in special cases it may deem proper.~~

16 (2) Any ~~an~~ employee who suffers ~~any of the~~ from an  
17 occupational disease ~~disease listed in section as defined~~  
18 in 92-1304, but who is able to continue in his employment  
19 while being treated therefor, ~~shall be~~ is entitled to  
20 receive ~~such the~~ medical services, treatments, and medicines  
21 reasonably required, not exceeding the value of ~~one-thousand~~  
22 ~~dollars-(\$1,000.00)~~ \$2,500.

23 ~~The employer or insurer or the board shall not be~~  
24 ~~required to furnish such services if the employee refuses to~~  
25 ~~allow them to be furnished or if the employee is under~~

1 ~~hospital contract as provided in section 92-610.~~

2 ~~When such employee is under a hospital contract as~~  
 3 ~~above and when hospital and medical facilities or both are~~  
 4 ~~inadequate to the needs of a disabled employee in a~~  
 5 ~~particular case such disabled employee may any time be~~  
 6 ~~placed where adequate hospital facilities are obtainable~~  
 7 ~~and the cost thereof in whole or in part shall be a legal~~  
 8 ~~charge against the one so contracting to furnish hospital~~  
 9 ~~facilities and the amount of such charge and the necessity~~  
 10 ~~therefor shall be determined by the board.~~"

11 Section 16. Section 92-1330, R.C.M. 1947, is amended  
 12 to read as follows:

13 "92-1330. Agreement by employee to waive compensation  
 14 or to pay premium void -- no liability in certain cases. (1)  
 15 An agreement by an employee to waive his rights to  
 16 ~~compensation and except as otherwise provided in this act~~  
 17 ~~an agreement by an employee coverage under the Occupational~~  
 18 ~~Disease Act of Montana or to pay any portion of the premium~~  
 19 ~~paid by his employer shall be is void.~~

20 ~~\*(2) The AD employer may give, within two 2 weeks of~~  
 21 ~~the application the beginning of employment, a physical~~  
 22 ~~examinations examination to the applicants an applicant for~~  
 23 ~~employment. Where an applicant for employment, whether such~~  
 24 ~~applicant he has been formerly employed by the employer to~~  
 25 ~~whom application is made or not, though not actually~~

1 disabled, is found upon competent medical and ~~X-ray~~ X-ray  
 2 examination to be afflicted with an occupational disease,  
 3 such ~~the~~ employer shall ~~is~~ not be liable under this act  
 4 ~~chapter~~ for disability from the particular disease or  
 5 diseases with which the employee is found to be afflicted or  
 6 for any normal progression without aggravation of ~~said the~~  
 7 disease or diseases, if a report of ~~said the~~ medical  
 8 examination be ~~is~~ approved by the board division as  
 9 hereinafter provided in this section.

10 (3) The report of the medical examination of the  
 11 applicant for employment and ~~X-rays~~ X-rays, if any, shall be  
 12 delivered to the board division by the employer within five  
 13 ~~(5) 15~~ days after such ~~the~~ examination, ~~to such~~ with the  
 14 medical report and ~~X-rays~~ X-rays, if any, ~~there~~ shall be  
 15 attached a certificate by the examining physician certifying  
 16 that the medical report is the report of the physical  
 17 examination of the applicant for employment.

18 (4) The board division shall submit such ~~the~~ medical  
 19 report and ~~X-rays~~ X-rays, if any, to a physician of its  
 20 choice ~~from the medical panel~~, and such ~~the~~ physician shall  
 21 report to the board division his finding as to whether the  
 22 medical report is satisfactory. The board division shall  
 23 within ~~twenty--(20)~~ days after the receipt of such ~~the~~  
 24 medical report from the employer enter its order approving  
 25 or disapproving such ~~the~~ report and specifying the

1 particular disease or diseases found. Such ~~the~~ order shall  
 2 be in writing stating the reasons for such ~~the~~ approval or  
 3 disapproval. A copy of such ~~the~~ order shall be mailed to the  
 4 employer and ~~a copy of such order shall be mailed to~~ the  
 5 applicant for employment within ~~twenty-four (24)~~ hours after  
 6 the board division has approved or disapproved such ~~the~~  
 7 report.

8 (5) An applicant for employment may commence work  
 9 prior to the approval or disapproval of such ~~the~~ report by  
 10 the board ~~but~~ division. ~~However,~~ if the board ~~shall~~  
 11 ~~disapprove~~ such division disapproves the report, the  
 12 employer may discharge such ~~the~~ applicant for employment  
 13 without liability to such ~~applicant~~ him.

14 (6) ~~Provided, however, that if~~ If no physical  
 15 examination is given to the applicant for employment within  
 16 ~~said two (2) week~~ the 2-week period, then such ~~the~~ applicant  
 17 for employment ~~shall be~~ is fully eligible to for the  
 18 benefits of ~~this act~~ under this chapter.

19 ~~or Employers may give within one hundred eighty (180)~~  
 20 ~~days after becoming subject to this act physical~~  
 21 ~~examinations to any employees which said employer has in his~~  
 22 ~~employment. Where an employee though not actually disabled~~  
 23 ~~is found upon competent medical and X-ray examination to be~~  
 24 ~~afflicted with an occupational disease or diseases, such~~  
 25 ~~employer shall not be liable under this act for disability~~

1 ~~from the particular disease or diseases with which the~~  
 2 ~~employee is found to be afflicted or for any normal~~  
 3 ~~progression without aggravation of said disease or diseases~~  
 4 ~~if a report of said medical examination be approved by the~~  
 5 ~~board as hereinbefore provided in subsection 4 of this~~  
 6 ~~section~~

7 ~~Provided, however, that if no examination is given to~~  
 8 ~~the employee within said one hundred eighty (180) day period~~  
 9 ~~then such employee shall be fully eligible to the benefits~~  
 10 ~~of this act~~

11 ~~or All such reports shall become permanent records of~~  
 12 ~~the board~~

13 (7) The board division may ~~make adopt~~ reasonable rules  
 14 and ~~regulations~~ relative to the form, execution, and filing  
 15 of such reports submitted under this section not  
 16 inconsistent with the provisions of this act chapter.

17 Section 17. There is a new R.C.M. section numbered  
 18 92-1334.1 that reads as follows:

19 92-1334.1. Occupational disease coverage under  
 20 compensation plans. (1) Every employer enrolled under  
 21 compensation plan No. 1 (Title 92, chapter 9), every insurer  
 22 writing workers' compensation coverage under compensation  
 23 plan No. 2 (Title 92, chapter 10), and the state  
 24 compensation insurance fund under compensation plan No. 3  
 25 (Title 92, chapter 11), all provided for under the workers'

1 Compensation Act, are considered to also provide full  
 2 coverage for claims under the occupational disease act. Any  
 3 policy of insurance for workers' compensation coverage under  
 4 the Workers' Compensation Act written by a private insurance  
 5 carrier or the state compensation insurance fund is  
 6 considered to provide full occupational disease coverage  
 7 under the provisions of Title 92, chapter 13.

8 (2) Except as provided in this chapter, the division  
 9 shall apply the appropriate provisions of Title 92, chapters  
 10 9, 10, and 11, to the administration of the Occupational  
 11 Disease Act of Montana in the same manner as they are  
 12 applied to the administration of the Workers' Compensation  
 13 Act.

14 (3) Under compensation plan No. 3, any premiums and  
 15 other receipts held by the division for occupational disease  
 16 insurance coverage shall be transferred and become part of  
 17 the workers' compensation industrial insurance account, and  
 18 payments for occupational disease claims by the state fund  
 19 shall be paid out of the industrial insurance account.

20 Section 18. Section 92-1335, R.C.M. 1947, is amended  
 21 to read as follows:

22 \*92-1335. Hearing, findings, and awards. Upon  
 23 receiving a demand for hearing or rehearing by a party  
 24 dissatisfied by either the first or second determination of  
 25 compensability by the board as provided in section 92-1315,

1 ~~the board shall hold such hearing within ninety (90) days~~  
 2 ~~from the date of demand for hearing or rehearing. After the~~  
 3 ~~final hearing by the board, it shall within thirty (30)~~  
 4 ~~days make and file a finding upon all facts involved in the~~  
 5 ~~controversy, and its award, which shall state its~~  
 6 ~~determination as to the rights of the parties. Appeals from~~  
 7 ~~a final determination of the division shall be made to the~~  
 8 ~~workers' compensation judge. The judge, after a hearing held~~  
 9 ~~pursuant to 92-852, shall make a final determination~~  
 10 ~~concerning the claimant's claim. The judge may overrule the~~  
 11 ~~division only on the basis that the division's determination~~  
 12 ~~is:~~

13 (1) in violation of constitutional or statutory  
 14 provisions;

15 (2) in excess of the statutory authority of the  
 16 agency;

17 (3) made upon unlawful procedure;

18 (4) affected by other error of law;

19 (5) clearly erroneous in view of the reliable,  
 20 probative, and substantial evidence on the whole record; or

21 (6) arbitrary or capricious or characterized by abuse  
 22 of discretion or clearly unwarranted exercise of  
 23 discretion."

24 Section 19. Section 92-1337, R.C.M. 1947, is amended  
 25 to read as follows:

1 "92-1337. Where payment due to child under eighteen  
 2 years. Where payment is due to a child under ~~eighteen--(18)~~  
 3 years of age or to a person adjudged incompetent, the ~~same~~  
 4 ~~payments~~ shall be made to the parent or to the duly  
 5 appointed conservator or guardian, as the case may be, and  
 6 the ~~written receipt of such parent or guardian payments~~  
 7 ~~shall~~ acquit the employer, the insurer or board, as the case  
 8 ~~may be~~ of further liability. In other cases, payment shall  
 9 be made to the person entitled thereto or to his duly  
 10 authorized representative."

11 Section 20. Section 92-1339, R.C.M. 1947, is amended  
 12 to read as follows:

13 "92-1339. Common-law defenses not available. \*  
 14 Employers subject to and who fail to comply with the  
 15 provisions of ~~section--92-1334~~ 92-1307 shall are not be  
 16 entitled to the benefits of this act chapter during the  
 17 period of noncompliance and shall are not ~~avail himself~~ of  
 18 entitled to invoke the defenses:

19 ~~to~~(1) ~~that that~~ the employee was negligent, unless  
 20 ~~such the~~ negligence was willful;

21 ~~to~~(2) ~~that that~~ the disability was caused by the  
 22 negligence of a fellow employee; or

23 ~~to~~(3) ~~that that~~ the employee had assumed the risks  
 24 inherent, incident to, or arising out of his employment, or  
 25 arising from the failure of the employer to provide and

1 maintain a reasonably safe place to work, or reasonably safe  
 2 tools or appliances."

3 Section 21. Section 92-1340, R.C.M. 1947, is amended  
 4 to read as follows:

5 "92-1340. Penalties for violation. An employer subject  
 6 to this act chapter who fails to comply with ~~section-92-1334~~  
 7 ~~92-1307~~, or a person who violates any other provision of  
 8 this act, ~~does an act prohibited thereby, or fails or~~  
 9 ~~refuses to perform a duty imposed by this act within the~~  
 10 ~~time prescribed by law or by the board for which no penalty~~  
 11 ~~is specifically provided, or fails, neglects or refuses to~~  
 12 ~~obey an order of the board or a judgment of a court under~~  
 13 ~~the provisions of this act, chapter~~ is guilty of a  
 14 misdemeanor punishable by a fine of ~~not less than one~~  
 15 ~~hundred dollars--(\$100.00) nor more than six hundred dollars~~  
 16 ~~(\$600.00) for the first offense, and not less than two~~  
 17 ~~hundred dollars--(\$200.00) nor more than twelve hundred~~  
 18 ~~dollars--(\$1200.00) for each subsequent offense no more than~~  
 19 \$500."

20 Section 22. Section 92-1343, R.C.M. 1947, is amended  
 21 to read as follows:

22 "92-1343. Legal action by board division. Upon request  
 23 of the board division, the attorney general shall institute  
 24 and prosecute actions for the enforcement of the provisions  
 25 of this act chapter ~~or for the recovery of money due the~~

1 ~~state--occupational--disease--compensation--account--in--the~~  
 2 ~~agency--and~~ or for any penalty provided for in this act ~~and~~  
 3 ~~the chapter. The attorney general~~ shall prosecute or defend  
 4 all actions brought by or against the ~~board--or--the--members~~  
 5 ~~thereof~~ division in their ~~its~~ official capacity. The ~~board~~  
 6 ~~division~~ may compromise any action brought under this act  
 7 ~~chapter."~~

8 Section 23. Section 92-1346, R.C.M. 1947, is amended  
 9 to read as follows:

10 "92-1346. Claim forms prescribed by ~~board division.~~  
 11 Claims for compensation under this act ~~chapter~~ shall be  
 12 filed on forms prescribed and provided for by the ~~board~~  
 13 ~~division~~ and shall be filed in the same manner as claims for  
 14 compensation under the ~~workmen's workers'~~ Compensation Act  
 15 unless ~~in this act~~ otherwise provided ~~in this chapter."~~

16 Section 24. Section 92-1352, R.C.M. 1947, is amended  
 17 to read as follows:

18 "92-1352. Powers of ~~board division.~~ The ~~board division~~  
 19 is hereby vested with full power, authority, and  
 20 jurisdiction to do and perform any and all things, whether  
 21 herein specifically designated or in addition thereto, which  
 22 are necessary or convenient in the exercise of any power,  
 23 authority, or jurisdiction conferred upon it under this act  
 24 ~~chapter."~~

25 Section 25. Section 92-1358, R.C.M. 1947, is amended

1 to read as follows:

2 "92-1358. Books, records, and payrolls to be open to  
 3 inspection. The books, records, and payrolls of the  
 4 employer pertinent to the administration of this act  
 5 ~~chapter~~ shall always be open to inspection by the ~~board~~  
 6 ~~division~~ or any duly authorized employee thereof, for the  
 7 purpose of ascertaining the correctness of the payroll, the  
 8 number of ~~men persons~~ employed, and such other information  
 9 as may be necessary for the ~~board division~~ and its  
 10 management under this act ~~chapter~~. Refusal on the part of  
 11 the employer to submit ~~said the~~ books, records, and payrolls  
 12 for ~~such the~~ inspection shall ~~subject~~ subjects the offending  
 13 employer to a penalty of ~~one-hundred-dollars--(\$100.00)~~ for  
 14 each offense, to be collected by civil action in the name of  
 15 the state."

16 Section 26. Repealer. Sections 92-1303, 92-1306,  
 17 92-1309, 92-1312, 92-1313, 92-1328, 92-1334, 92-1336,  
 18 92-1344, 92-1349, and 92-1356, R.C.M. 1947, are repealed.

-End-