

SENATE BILL NO. 150

INTRODUCED BY MEHRENS, PETERSON, HEALY,
HAFFERMAN, R. SMITH, LOWE

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE SENATE

January 18, 1979	Introduced and referred to Committee on Labor and Employment Relations.
February 5, 1979	Committee recommend bill do pass. Report adopted.
February 6, 1979	Printed and placed on members' desks.
February 7, 1979	Motion pass consideration.
February 8, 1979	Motion pass consideration.
February 9, 1979	Second reading, do pass.
February 10, 1979	Considered correctly engrossed.
February 12, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 13, 1979	Introduced and referred to Committee on Labor and Employment Relations.
March 1, 1979	Committee recommend bill be concurred in. Report adopted.
March 2, 1979	Second reading, concurred in.
March 5, 1979	Third reading, concurred in.

IN THE SENATE

March 6, 1979	Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled.
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Senate BILL NO. *150*
INTRODUCED BY *Andrew Pearson Nealy Hoffman*
House Four
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE OCCUPATIONAL DISEASE ACT OF MONTANA; AMENDING SECTIONS 39-71-201, 39-72-102, 39-72-305, 39-72-402, 39-72-405, 39-72-406, 39-72-601, 39-72-602, 39-72-605, 39-72-606, 39-72-608, 39-72-610, 39-72-612, 39-72-703, 39-72-704, AND 39-72-711, MCA; AND REPEALING SECTIONS 39-72-205, 39-72-306 THROUGH 39-72-309, 39-72-501 THROUGH 39-72-508, 39-72-603, 39-72-604, 39-72-702, 39-72-710, AND 39-72-713, MCA."

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

Section 1. Section 39-72-102, MCA, is amended to read:

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

- (1) "Beneficiary" is as defined in 39-71-116(2).
- (2) "Child" is as defined in 39-71-116(4).
- (3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing any work for-remuneration-or--profit in the normal labor market. 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 39-71-116(5).
- (5) "Employee" is as defined in 39-71-118.
- (6) "Employer" is as defined in 39-71-117.
- (7) "Husband" is as defined in 39-71-116(7).
- (8) "Independent contractor" is as defined in 39-71-120.
- (9) "Insurer" is as defined in 39-71-116(8). ~~The term includes an employer who is self-insured under a compensation plan. Now it~~
- (10) "Invalid" is as defined in 39-71-116(9).
- (11) ~~The term "occupational~~ Occupational disease ~~shall~~ mean ~~means~~ all diseases arising out of or contracted from and in the course of employment.
- (12) "Order" is as defined in 39-71-116(10).
- (13) "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.
- (14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO2), characterized by small discrete nodules of fibrous

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

4 (15) "Wages" is as defined in 39-71-115(20).

5 (16) "Wife" is as defined in 39-71-116(21).

6 (17) "Year" is as defined in 39-71-116(4) and
7 39-71-116(22)."

8 Section 2. Section 39-72-305, MCA, is amended to read:

9 "39-72-305. Right to compensation exclusive remedy --
10 uninsured employers. (1) The right to recover compensation
11 pursuant to the provisions of this chapter for occupational
12 diseases sustained by an employee and arising out of and in
13 the course of his employment, whether resulting in death or
14 not, ~~shall be~~ is the exclusive remedy therefor against the
15 ~~an employer electing to be bound by and subject to this~~
16 ~~chapter except as to such employers as shall reject this~~
17 ~~chapter as provided herein who is properly insured under the~~
18 Workers' Compensation Act and the Occupational Disease Act
19 of Montana.

20 (2) The provisions of the Workers' Compensation Act
21 relating to uninsured employers and benefits due uninsured
22 claimants apply to and are incorporated as part of this
23 chapter."

24 Section 3. Section 39-72-402, MCA, is amended to read:

25 "39-72-402. Practice and procedure -- applicability of

1 Workers' Compensation Act. (1) The Except as otherwise
2 provided in this chapter, the practice and procedure
3 prescribed in the Workers' Compensation Act shall apply
4 applies to all proceedings under this chapter except as
5 hereinafter otherwise provided.

6 (2) Sections 39-71-304, 39-71-403, 39-71-406,
7 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 in the
8 Workers' Compensation Act specifically apply to and are
9 incorporated as part of this chapter."

10 Section 4. Section 39-72-405, MCA, is amended to read:

11 "39-72-405. General limitations on payment of
12 compensation to disabled employee -- exceptions. (1) Except
13 as provided for in this section, compensation may not be
14 paid when the last day of the injurious exposure of the
15 employee to the hazard of the occupational disease has
16 occurred prior to July 1, 1959.

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

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

10 ~~(4)~~(3) A silicotic employee who is discharged by his
 11 employer to escape liability for silicosis benefits under
 12 this chapter is eligible to receive compensation under this
 13 chapter when totally disabled if he has 700 actual
 14 workshifts since January 1, 1954, for that employer. When
 15 any employee in employment on or after January 1, 1959,
 16 because he has an occupational disease incurred in and
 17 caused by such employment which is not yet disabling, is
 18 discharged or transferred from the employment in which he is
 19 engaged or when he ceases his employment and it is in fact,
 20 as determined by the medical panel, inadvisable for him on
 21 account of a nondisabling occupational disease to continue
 22 in employment and he suffers wage loss by reason of the
 23 discharge, transfer, or cessation, the division may allow
 24 compensation on account thereof as it considers just, not
 25 exceeding \$10,000."

1 Section 5. Section 39-72-406, MCA, is amended to read:
 2 "39-72-406. General limitations on payment of death
 3 benefits -- exceptions. Compensation shall be paid to the
 4 beneficiaries of every employee covered by this chapter in
 5 cases where death results from an occupational disease
 6 arising out of his employment, subject to the following
 7 conditions:

8 (1) Except as provided for in 39-72-405~~(4)~~(3),
 9 compensation may not be paid when the last day of injurious
 10 exposure of the employee to the hazards of the occupational
 11 diseases occurred prior to July 1, 1959.

12 (2) No compensation may be paid for death from
 13 silicosis unless during the 8 years immediately preceding
 14 the disablement the deceased employee has been exposed to
 15 harmful quantities of silicon dioxide dust for a period of
 16 not less than 1,000 workshifts in employment in this state.

17 (3) No compensation may be paid for death from
 18 silicosis unless the death results within ~~4~~ 3 years from the
 19 last day upon which the employee actually worked for the
 20 employer against whom compensation is claimed, except in
 21 those cases where death results during a period of
 22 continuous total disability from silicosis 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
 25 division. In such cases, compensation shall be paid ~~to the~~

1 ~~beneficiaries~~ if death results ~~within 7 years from the last~~
2 ~~day upon which the employee actually worked for the employer~~
3 ~~against whom compensation is claimed~~ from the silicosis.

4 (4) No compensation may be paid for death from any
5 occupational disease, other than silicosis or due to
6 ionizing radiation, unless death results within ~~1 year~~ 3
7 years from the last day upon which the employee actually
8 worked for the employer against whom compensation is
9 claimed, except in those cases where death results during a
10 period of continuous total disability from an occupational
11 disease, other than silicosis or ionizing radiation, for
12 which compensation has been paid or awarded or for which a
13 claim, compensable but for such death, is on file with the
14 division. In such cases, compensation shall be paid to the
15 beneficiaries if death results ~~within 3 years from the last~~
16 ~~day upon which the employee actually worked for the employer~~
17 ~~against whom compensation is claimed~~ from the occupational
18 disease."

19 NEW SECTION. Section 6. Benefits for pneumoconiosis.
20 Pneumoconiosis is an occupational disease that is
21 compensable under this chapter. However, any benefits
22 granted a claimant under this chapter for pneumoconiosis
23 must be reduced, but not below zero, by an amount equal to
24 the benefits granted the claimant under any program under
25 federal law that pays benefits for a claimant suffering

1 disability from pneumoconiosis.

2 Section 7. Section 39-72-601, MCA, is amended to read:
3 "39-72-601. ~~Pulmonary specialist and occupational~~
4 ~~disease medical panels~~ Medical panel. (1) The Montana
5 medical association may, at least annually, certify to the
6 division as ~~pulmonary specialist~~ nominee ~~three~~ 10 or more
7 licensed physicians of the state ~~who shall to serve on the~~
8 ~~medical panel. At least three of the physicians must~~ have
9 had at the time of certification at least 5 years' practice
10 in the diagnosis, care, and treatment of ~~diseases of the~~
11 ~~pulmonary tract diseases~~ and the interpretation of x-ray
12 ~~films, thereof and may also certify to the division as~~
13 ~~occupational disease specialist nominees three or more~~
14 ~~licensed physicians of the state who have~~ At least three of
15 the physicians must have had at the time of certification
16 qualifications in the diagnosis, care, and treatment of
17 nonpulmonary occupational diseases.

18 (2) From the ~~two lists~~ list submitted as provided for
19 in this section, the division shall appoint ~~two separate~~
20 ~~medical panels. One panel is the pulmonary specialist~~
21 ~~medical panel and the other is the occupational disease~~
22 ~~medical panel. The division shall appoint from the list of~~
23 ~~pulmonary specialist nominees three~~ five or more physicians
24 to serve on the ~~pulmonary specialist~~ medical panel. ~~The~~
25 ~~division shall appoint from the list of occupational disease~~

~~specialist-nominees-three-or-more-physicians-to-serve-on-the occupational-disease-specialist-medical-panels~~

(3) If the Montana medical association fails to submit the ~~two-lists~~ list of nominees as provided for in this section, the division shall appoint ~~as members to of the medical panels-by-appointing--to--the--pulmonary--specialist medical-panel--three~~ panel five or more licensed physicians in the state ~~of Montana-who~~ Three of the panel members must have had at the time of appointment at least 5 years' practice in the diagnosis, care, and treatment of pulmonary diseases of the pulmonary tract and the interpretation of x-ray films thereof ~~--and-by-appointing-to-the-occupational disease-medical-panel-three-or-more-licensed--physicians--of the-state-who-have-at-the-time-of-appointment-qualifications to-diagnose--care-for--and-treat-nonpulmonary-occupational diseases.~~

(4) The panel members shall appoint one member of the panel to be the chairman.

Section 8. Section 39-72-602, MCA, is amended to read:

"39-72-602. Procedure Insurer may accept liability -- procedure for medical examination ---pulmonary--conditions when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims

under this chapter ~~based-on-pulmonary-conditions when an insurer has not accepted liability,~~ the following procedure shall ~~must~~ be followed:

~~(1)(a)~~ The division shall direct the claimant to a ~~pulmonary-specialist--who--is--a~~ member of the ~~pulmonary specialist~~ medical panel for an examination. The ~~pulmonary specialist~~ panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from ~~a--pulmonary~~ an occupational disease. The ~~pulmonary--specialist~~ panel member shall submit a report of his findings to the division.

~~(2)(b)~~ Either the claimant or the insurer may, within 20 days after the receipt of the report by the first ~~pulmonary-specialist~~ panel member, request that the claimant be examined by a second ~~pulmonary-specialist-who-shall-be--a member--of-the-pulmonary-specialist-medical~~ panel member. If a second examination is requested, the division shall direct the claimant to a second ~~pulmonary--specialist--and--the pulmonary--specialist~~ panel member who shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from ~~a--pulmonary~~ an occupational disease. The ~~pulmonary-specialist~~ panel member shall submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to the ~~pulmonary-specialist~~

1 ~~three members of the~~ medical panel for its review. ~~A medical~~
 2 ~~panel member or the panel may, in order to assist the panel~~
 3 ~~member or the panel in reaching a conclusion, consult with~~
 4 ~~the claimant's attending physician.~~ The three panel members
 5 shall issue its a report concerning the claimant's physical
 6 condition and whether the claimant is suffering from an
 7 occupational disease.

8 ~~(3)(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 three~~
 14 ~~members of the~~ medical panel.

15 ~~(d) For the purpose of reviewing the reports of the~~
 16 ~~examinations and issuing the report under subsection (2)(b),~~
 17 ~~the three members of the medical panel shall be the two~~
 18 ~~members of the panel who examined the claimant and the panel~~
 19 ~~chairman. If the panel chairman has examined the claimant,~~
 20 ~~the panel chairman shall appoint another member of the~~
 21 ~~medical panel to be the third member."~~

22 Section 9. Section 39-72-605, MCA, is amended to read:

23 "39-72-605. When nonpulmonary occupational disease
 24 causes death. When an occupational disease other than a
 25 ~~pulmonary disease causes is claimed to have caused~~ death and

1 a claim for death benefits is filed therefor, the division
 2 shall select at least two physicians who in the division's
 3 judgment could properly determine the condition regarding
 4 the decedent's death in relation to a possible occupational
 5 disease, and the physicians shall examine all available
 6 evidence pertaining to the claim and shall make findings and
 7 report to the division. The report is prima facie evidence
 8 of fact as to the matters therein contained."

9 Section 10. Section 39-72-606, MCA, is amended to
 10 read:

11 "39-72-606. Autopsy. Upon the filing of a claim for
 12 compensation for death caused by an occupational disease
 13 where an autopsy is necessary to determine the cause of
 14 death, an autopsy shall be ordered by the division. The
 15 autopsy shall be made under the supervision of the county
 16 coroner. The division may designate a duly licensed
 17 physician who is a specialist in such examinations to
 18 perform or attend the autopsies and to certify his findings
 19 thereon. The findings shall be examined by the physicians
 20 submitting reports a report under the---provisions---of
 21 39-72-604--and 39-72-605 before the final reports report
 22 under those sections are that section is submitted to the
 23 division."

24 Section 11. Section 39-72-608, MCA, is amended to
 25 read:

"39-72-608. Payment of medical examination and autopsy expenses. The expense of the first medical examination as provided in 39-72-602 ~~or--39-72-603~~ shall be borne by the insurer. The expense of a reexamination shall be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations, as provided in 39-72-607, shall be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, shall be borne by the party requesting the autopsy."

Section 12. Section 39-72-610, MCA, is amended to read:

"39-72-610. Report of and examinations conducted by medical panel ~~final--and--exclusive--medical--evidence--at~~ hearing. (1) At a hearing held before the division or the workers' compensation judge, there is a rebuttable presumption that the report of the medical panel and the ~~two~~ any ~~medical examinations--conducted~~ examination reports by members of the medical panel are ~~exclusive and final and no other--medical--evidence--or--additional--medical--examinations are admissible correct.~~ However, ~~the physicians to which the claimant has been referred as provided for in--39-72-602--or 39-72-603--may--in--order--to--assist--them--in--reaching--their conclusion, consult with the claimant's attending physician.~~ (2) The claimant or the insurer may present additional

medical information in order to rebut the medical examination report of a panel member or a panel report."

Section 13. Section 39-72-612, MCA, is amended to read:

"39-72-612. Rehearing and appeal to workers' compensation judge. (1) Within 20 days after the division has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a rehearing. In order to perfect an appeal to the workers' compensation judge, the appealing party must request a rehearing before the division. The division may grant a rehearing and, if a rehearing is granted, the division's final determination ~~shall~~ may not be issued until after the rehearing. If the division does not grant a rehearing, the division's final determination is issued on the date the rehearing is denied.

(2) Appeals from a final determination of the division shall be made to the workers' compensation judge within 30 days after the division has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination is:

(a) in violation of constitutional or statutory provisions;

1 (b) in excess of the statutory authority of the
2 agency;

3 (c) made upon unlawful procedure;

4 (d) affected by other error of law;

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

7 (f) arbitrary or capricious or characterized by abuse
8 of discretion or clearly unwarranted exercise of
9 discretion."

10 NEW SECTION. Section 14. Costs and attorney fees. (1)
11 If an insurer requests that a hearing be held before the
12 division and the claim is determined compensable by the
13 division after the hearing and the insurer does not appeal
14 the division's decision to the workers' compensation judge,
15 reasonable costs and attorney fees, as determined by the
16 division, shall be paid to the claimant's attorney by the
17 insurer.

18 (2) If an insurer appeals a decision of the division
19 to the workers' compensation judge or from the judge to the
20 supreme court and the claim is determined compensable,
21 reasonable costs and attorney fees, as determined by the
22 workers' compensation judge, shall be paid to the claimant's
23 attorney by the insurer for proceedings before the division,
24 the workers' compensation judge, and the supreme court.

25 Section 15. Section 39-72-703, MCA, is amended to

1 read:

2 "39-72-703. No compensation for partial disability. No
3 compensation as provided in 39-72-701 or ~~39-72-702~~ shall be
4 ~~is~~ payable to an employee who is partially disabled from an
5 occupational disease."

6 Section 16. Section 39-72-704, MCA, is amended to
7 read:

8 "39-72-704. Medical and hospital expenses. In addition
9 to the compensation provided by this chapter, ~~the following~~
10 ~~shall be furnished~~ an employee who becomes either totally
11 or partially disabled from an occupational disease is
12 entitled to receive for treatment of the occupational
13 disease, without limitation as to length of time or dollar
14 amount, reasonable medical services, hospitalization,
15 medicines, and other treatment approved by the division.

16 ~~{1}--if an employee becomes totally disabled from an~~
17 ~~occupational disease, he is entitled to receive, without~~
18 ~~limitation as to length of time or dollar amount, reasonable~~
19 ~~medical services, hospitalization, medicines, and such other~~
20 ~~treatment as may be approved by the division.~~

21 ~~{2}--An employee who suffers from an occupational~~
22 ~~disease as defined in 39-72-102(1) but who is able to~~
23 ~~continue in employment while being treated therefor is~~
24 ~~entitled to receive the medical services, treatments, and~~
25 ~~medicines reasonably required, not exceeding the value of~~

1 \$2,500."

2 Section 17. Section 39-72-711, MCA, is amended to
3 read:

4 "39-72-711. Lump-sum and compromise settlements. (1)
5 No final and binding award made upon any claim pursuant to
6 this chapter may be converted into a lump-sum payment, in
7 whole or in part, except as provided in this section or
8 39-72-712.

9 (2) Whenever there are contested issues as to an
10 insurer's liability for a claim under this chapter,
11 including a claim based on 39-72-405~~(4)~~(3), a claimant and
12 an insurer may enter into a full and final compromise
13 settlement of the claim. However, no such settlements are
14 binding on the parties until approved by the division. After
15 the division approves a full and final compromise
16 settlement, the claim is closed and the insurer's liability
17 for a settled claim is forever released."

18 Section 18. Section 39-71-201, MCA, is amended to
19 read:

20 "39-71-201. Administration fund. (1) A workers'
21 compensation administration fund is established out of which
22 all costs of administering the Workers' Compensation and
23 Occupational Disease Acts and the various occupational
24 safety acts the division must administer are to be paid upon
25 lawful appropriation. The following moneys collected by the

1 division shall be deposited in the state treasury to the
2 credit of the workers' compensation administrative fund and
3 shall be used for the administrative expenses of the
4 division:

5 (a) all fees and fines provided in 39-71-205~~v~~ and
6 39-71-304~~v~~ and 39-72-205;

7 (b) all fees paid for inspection of boilers and
8 issuance of licenses to operating engineers as required by
9 law;

10 (c) all fees paid from an assessment on each plan No.
11 1 employer, plan No. 2 insurer, and plan No. 3, the state
12 insurance fund. The assessments shall be levied against the
13 preceding calendar year's gross annual payroll of the plan
14 No. 1 employers and the gross annual direct premiums
15 collected in Montana on the policies of the plan No. 2
16 insurers, insuring employers covered under the chapter,
17 during the preceding calendar year. However, no assessment
18 of the plan No. 1 employer or plan No. 2 insurer shall be
19 less than \$200. The assessments shall be sufficient to fund
20 the direct costs identified to the three plans and an
21 equitable portion of the indirect costs based on the ratio
22 of the preceding fiscal year's indirect costs distributed to
23 the plans using proper accounting and cost allocation
24 procedures. Plan No. 3 shall be assessed an amount
25 sufficient to fund its direct costs and an equitable portion

1 of the indirect costs as referred to above. Other sources
2 of revenue, including unexpended funds from the preceding
3 fiscal year, shall be used to reduce the costs before
4 levying the assessments.

5 (2) The administration fund shall be debited with
6 expenses incurred by the division in the general
7 administration of the provisions of this chapter, including
8 the salaries of its members, officers, and employees and the
9 travel expenses of the members, officers, and employees, as
10 provided for in 2-18-501 through 2-18-503, as amended,
11 incurred while on the business of the division either within
12 or without the state.

13 (3) Disbursements from the administration money shall
14 be made after being approved by the division upon claim
15 therefor."

16 Section 19. Repealer. Sections 39-72-205, 39-72-306
17 through 39-72-309, 39-72-501 through 39-72-508, 39-72-603,
18 39-72-604, 39-72-702, 39-72-710, and 39-72-713, MCA, are
19 repealed.

20 Section 20. Codification. The code commissioner shall
21 codify section 6 of this act in Title 39, chapter 72, part
22 5, and section 14 of this act in Title 39, chapter 72, part
23 6, and the provisions of those parts apply, respectively, to
24 section 6 and section 14.

-End-

Approved by Committee on Labor & Employment Relations

1 INTRODUCED BY *Senate* BILL NO. *150*
2 *Richard Four* *Nealy Hoffman*
3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 OCCUPATIONAL DISEASE ACT OF MONTANA; AMENDING SECTIONS
7 39-71-201, 39-72-102, 39-72-305, 39-72-402, 39-72-405,
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11 THROUGH 39-72-309, 39-72-501 THROUGH 39-72-508, 39-72-603,
12 39-72-604, 39-72-702, 39-72-710, AND 39-72-713, MCA."

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- 20 (2) "Child" is as defined in 39-71-116(4).
- 21 (3) "Disablement" means the event of becoming
22 physically incapacitated by reason of an occupational
23 disease from performing any work ~~for remuneration or profit~~
24 in the normal labor market. Silicosis, when complicated by
25 active pulmonary tuberculosis, is presumed to be total

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

- 4 (4) "Division" is as defined in 39-71-116(5).
- 5 (5) "Employee" is as defined in 39-71-118.
- 6 (6) "Employer" is as defined in 39-71-117.
- 7 (7) "Husband" is as defined in 39-71-116(7).
- 8 (8) "Independent contractor" is as defined in
9 39-71-120.
- 10 (9) "Insurer" is as defined in 39-71-116(8). ~~The term~~
11 ~~includes an employer who is self-insured under compensation~~
12 ~~plan. Not to~~
- 13 (10) "Invalid" is as defined in 39-71-116(9).
- 14 (11) ~~The term "occupational disease"~~ Occupational disease ~~shall~~
15 ~~mean~~ means all diseases arising out of or contracted from
16 and in the course of employment.
- 17 (12) "Order" is as defined in 39-71-116(10).
- 18 (13) "Pneumoconiosis" means a chronic dust disease of
19 the lungs arising out of employment in coal mines and
20 includes anthracosis, coal workers' pneumoconiosis,
21 silicosis, or anthracosilicosis arising out of such
22 employment.
- 23 (14) "Silicosis" means a chronic disease of the lungs
24 caused by the prolonged inhalation of silicon dioxide
25 (SiO2), characterized by small discrete nodules of fibrous

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

4 (15) "Wages" is as defined in 39-71-116(20).

5 (16) "Wife" is as defined in 39-71-116(21).

6 (17) "Year" is as defined in 39-71-116(6) and
7 39-71-116(22)."

8 Section 2. Section 39-72-305, MCA, is amended to read:

9 "39-72-305. Right to compensation exclusive remedy ==
10 uninsured employers. (1) The right to recover compensation
11 pursuant to the provisions of this chapter for occupational
12 diseases sustained by an employee and arising out of and in
13 the course of his employment, whether resulting in death or
14 not, ~~shall be~~ is the exclusive remedy therefor against the
15 ~~an employer electing to be bound by and subject to this~~
16 ~~chapter except as to such employees as shall reject this~~
17 ~~chapter as provided herein who is properly insured under the~~
18 Workers' Compensation Act and the Occupational Disease Act
19 of Montana.

20 (2) The provisions of the Workers' Compensation Act
21 relating to uninsured employers and benefits due uninsured
22 claimants apply to and are incorporated as part of this
23 chapter."

24 Section 3. Section 39-72-402, MCA, is amended to read:

25 "39-72-402. Practice and procedure == applicability of

1 Workers' Compensation Act. (1) The Except as otherwise
2 provided in this chapter, the practice and procedure
3 prescribed in the Workers' Compensation Act ~~shall apply~~
4 applies to all proceedings under this chapter ~~except as~~
5 ~~hereinafter otherwise provided.~~

6 (2) Sections 39-71-304, 39-71-403, 39-71-406,
7 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 in the
8 Workers' Compensation Act specifically apply to and are
9 incorporated as part of this chapter."

10 Section 4. Section 39-72-405, MCA, is amended to read:

11 "39-72-405. General limitations on payment of
12 compensation to disabled employee -- exceptions. (1) Except
13 as provided for in this section, compensation may not be
14 paid when the last day of the injurious exposure of the
15 employee to the hazard of the occupational disease has
16 occurred prior to July 1, 1959.

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

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

10 ~~(4)~~(3) A silicotic employee who is discharged by his
 11 employer to escape liability for silicosis benefits under
 12 this chapter is eligible to receive compensation under this
 13 chapter when totally disabled if he has 700 actual
 14 workshifts since January 1, 1954, for that employer. When
 15 any employee in employment on or after January 1, 1959,
 16 because he has an occupational disease incurred in and
 17 caused by such employment which is not yet disabling, is
 18 discharged or transferred from the employment in which he is
 19 engaged or when he ceases his employment and it is in fact,
 20 as determined by the medical panel, inadvisable for him on
 21 account of a nondisabling occupational disease to continue
 22 in employment and he suffers wage loss by reason of the
 23 discharge, transfer, or cessation, the division may allow
 24 compensation on account thereof as it considers just, not
 25 exceeding \$10,000."

1 Section 5. Section 39-72-406, MCA, is amended to read:
 2 "39-72-406. General limitations on payment of death
 3 benefits -- exceptions. Compensation shall be paid to the
 4 beneficiaries of every employee covered by this chapter in
 5 cases where death results from an occupational disease
 6 arising out of his employment, subject to the following
 7 conditions:

8 (1) Except as provided for in 39-72-405~~(4)~~(3),
 9 compensation may not be paid when the last day of injurious
 10 exposure of the employee to the hazards of the occupational
 11 diseases occurred prior to July 1, 1959.

12 (2) No compensation may be paid for death from
 13 silicosis unless during the 8 years immediately preceding
 14 the disablement the deceased employee has been exposed to
 15 harmful quantities of silicon dioxide dust for a period of
 16 not less than 1,000 workshifts in employment in this state.

17 (3) No compensation may be paid for death from
 18 silicosis unless the death results within ~~4~~ 3 years from the
 19 last day upon which the employee actually worked for the
 20 employer against whom compensation is claimed, except in
 21 those cases where death results during a period of
 22 continuous total disability from silicosis 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
 25 division. In such cases, compensation shall be paid to the

1 ~~beneficiaries~~ if death results within ~~7~~ years from the ~~last~~
2 ~~day upon which the employee actually worked for the employer~~
3 ~~against whom compensation is claimed from the silicosis.~~

4 (4) No compensation may be paid for death from any
5 occupational disease, other than silicosis or due to
6 ionizing radiation, unless death results within ~~1~~ year ~~2~~
7 ~~years~~ from the last day upon which the employee actually
8 worked for the employer against whom compensation is
9 claimed, except in those cases where death results during a
10 period of continuous total disability from an occupational
11 disease, other than silicosis or ionizing radiation, for
12 which compensation has been paid or awarded or for which a
13 claim, compensable but for such death, is on file with the
14 division. In such cases, compensation shall be paid ~~to the~~
15 ~~beneficiaries~~ if death results within ~~3~~ years from the ~~last~~
16 ~~day upon which the employee actually worked for the employer~~
17 ~~against whom compensation is claimed from the occupational~~
18 ~~disease."~~

19 NEW SECTION. Section 6. Benefits for pneumoconiosis.
20 Pneumoconiosis is an occupational disease that is
21 compensable under this chapter. However, any benefits
22 granted a claimant under this chapter for pneumoconiosis
23 must be reduced, but not below zero, by an amount equal to
24 the benefits granted the claimant under any program under
25 federal law that pays benefits for a claimant suffering

1 disability from pneumoconiosis.

2 Section 7. Section 39-72-601, MCA, is amended to read:
3 "39-72-601. Pulmonary ~~specialist and occupational~~
4 ~~disease medical panels~~ Medical panel. (1) The Montana
5 medical association may, at least annually, certify to the
6 division as ~~pulmonary specialist~~ nominees three ~~10~~ or more
7 licensed physicians of the state who ~~shall to serve on the~~
8 medical panel. At least three of the physicians must have
9 had at the time of certification at least 5 years' practice
10 in the diagnosis, care, and treatment of ~~diseases of the~~
11 ~~pulmonary tract diseases~~ and the interpretation of x-ray
12 films, thereof ~~and may also certify to the division as~~
13 ~~occupational disease specialist nominees three or more~~
14 ~~licensed physicians of the state who have~~ At least three of
15 the physicians must have had at the time of certification
16 qualifications in the diagnosis, care, and treatment of
17 nonpulmonary occupational diseases.

18 (2) From the ~~two lists~~ list submitted as provided for
19 in this section, the division shall appoint ~~two separate~~
20 ~~medical panels. One panel is the pulmonary specialist~~
21 ~~medical panel and the other is the occupational disease~~
22 ~~medical panel. The division shall appoint from the list of~~
23 ~~pulmonary specialist nominees three~~ five or more physicians
24 to serve on the ~~pulmonary specialist~~ medical panel. The
25 ~~division shall appoint from the list of occupational disease~~

1 ~~specialist-nominees-three-or-more-physicians-to-serve-on-the~~
2 ~~occupational-disease-specialist-medical-panels~~

3 (3) If the Montana medical association fails to submit
4 the ~~two-lists~~ list of nominees as provided for in this
5 section, the division shall appoint ~~as~~ members ~~to of~~ the
6 medical panels ~~by-appointing--to--the--pulmonary--specialist~~
7 ~~medical-panel--three~~ panel five or more licensed physicians
8 in the state ~~of Montana-who~~ Three of the panel members must
9 have had at the time of appointment at least 5 years'
10 practice in the diagnosis, care, and treatment of pulmonary
11 ~~diseases-of-the-pulmonary-tract~~ and the interpretation of
12 x-ray films thereof ~~--and-by-appointing-to-the-occupational~~
13 ~~disease-medical-panel-three-or-more-licensed-physicians--of~~
14 ~~the-state-who-have-at-the-time-of-appointment-qualifications~~
15 ~~to--diagnose--care-for--and-treat-nonpulmonary-occupational~~
16 ~~diseases.~~

17 (4) The panel members shall appoint one member of the
18 panel to be the chairman."

19 Section 8. Section 39-72-602, MCA, is amended to read:

20 "39-72-602. Procedure Insurer may accept liability --
21 procedure for medical examination --pulmonary--conditions
22 when insurer has not accepted liability. (1) An insurer may
23 accept liability for a claim under this chapter based on
24 information submitted to it by a claimant.

25 (2) In order to determine the compensability of claims

1 under this chapter ~~based-on-pulmonary-conditions~~ when an
2 insurer has not accepted liability, the following procedure
3 ~~shall~~ must be followed:

4 ~~(1)(a)~~ (a) The division shall direct the claimant to a
5 ~~pulmonary-specialist-who-is--a~~ member of the pulmonary
6 ~~specialist~~ medical panel for an examination. The pulmonary
7 ~~specialist~~ panel member shall conduct an examination to
8 determine whether the claimant is totally disabled and is
9 ~~suffering from a--pulmonary~~ an occupational disease. The
10 ~~pulmonary--specialist~~ panel member shall submit a report of
11 his findings to the division.

12 ~~(2)(b)~~ (b) Either the claimant or the insurer may, within
13 20 days after the receipt of the report by the first
14 ~~pulmonary-specialist~~ panel member, request that the claimant
15 be examined by a second ~~pulmonary-specialist-who-shall-be--a~~
16 ~~member--of-the-pulmonary-specialist-medical-panel~~ member. If
17 a second examination is requested, the division shall direct
18 the claimant to a second ~~pulmonary--specialist--and--the~~
19 ~~pulmonary--specialist~~ panel member who shall conduct an
20 examination to determine whether he believes the claimant is
21 totally disabled and is suffering from ~~a--pulmonary~~ an
22 occupational disease. The pulmonary-specialist panel member
23 shall submit a report of his findings to the division. When
24 a second examination has been requested, the reports of the
25 examinations shall be submitted to the ~~pulmonary-specialist~~

1 ~~three members of the~~ medical panel for its review. ~~A medical~~
 2 ~~panel member or the panel may, in order to assist the panel~~
 3 ~~member or the panel in reaching a conclusion, consult with~~
 4 ~~the claimant's attending physician.~~ The three panel members
 5 shall issue its a report concerning the claimant's physical
 6 condition and whether the claimant is suffering from an
 7 occupational disease.

8 (3)(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 three~~
 14 ~~members of the~~ medical panel.

15 (d) ~~For the purpose of reviewing the reports of the~~
 16 ~~examinations and issuing the report under subsection (2)(b),~~
 17 ~~the three members of the medical panel shall be the two~~
 18 ~~members of the panel who examined the claimant and the panel~~
 19 ~~chairman. If the panel chairman has examined the claimant,~~
 20 ~~the panel chairman shall appoint another member of the~~
 21 ~~medical panel to be the third member."~~

22 Section 9. Section 39-72-605, MCA, is amended to read:

23 "39-72-605. When nonpulmonary occupational disease
 24 causes death. When an occupational disease other-than-a
 25 pulmonary-disease-causes is claimed to have caused death and

1 a claim for death benefits is filed therefor, the division
 2 shall select at least two physicians who in the division's
 3 judgment could properly determine the condition regarding
 4 the decedent's death in relation to a possible occupational
 5 disease, and the physicians shall examine all available
 6 evidence pertaining to the claim and shall make findings and
 7 report to the division. The report is prima facie evidence
 8 of fact as to the matters therein contained."

9 Section 10. Section 39-72-606, MCA, is amended to
 10 read:

11 "39-72-606. Autopsy. Upon the filing of a claim for
 12 compensation for death caused by an occupational disease
 13 where an autopsy is necessary to determine the cause of
 14 death, an autopsy shall be ordered by the division. The
 15 autopsy shall be made under the supervision of the county
 16 coroner. The division may designate a duly licensed
 17 physician who is a specialist in such examinations to
 18 perform or attend the autopsies and to certify his findings
 19 thereon. The findings shall be examined by the physicians
 20 submitting reports a report under the---provisions---of
 21 39-72-604--and 39-72-605 before the final reports report
 22 under those-sections-are that section is submitted to the
 23 division."

24 Section 11. Section 39-72-608, MCA, is amended to
 25 read:

1 "39-72-608. Payment of medical examination and autopsy
2 expenses. The expense of the first medical examination as
3 provided in 39-72-602 ~~or 39-72-603~~ shall be borne by the
4 insurer. The expense of a reexamination shall be borne by
5 the dissatisfied party requesting the reexamination. The
6 expense of the periodic medical examinations, as provided in
7 39-72-607, shall be borne by the party requesting the
8 periodic medical examination. The expense of the autopsy, as
9 provided for in 39-72-606, shall be borne by the party
10 requesting the autopsy."

11 Section 12. Section 39-72-610, MCA, is amended to
12 read:

13 "39-72-610. Report of and examinations conducted by
14 medical panel ~~final and exclusive medical evidence at~~
15 hearing. (1) At a hearing held before the division or the
16 workers' compensation judge, there is a rebuttable
17 presumption that the report of the medical panel and the two
18 any medical examinations ~~conducted~~ examination reports by
19 members of the medical panel are ~~exclusive and final and no~~
20 ~~other medical evidence or additional medical examinations~~
21 ~~are admissible~~ CORRECT. However, ~~the physicians to which the~~
22 ~~claimant has been referred as provided for in 39-72-602 or~~
23 ~~39-72-603 may in order to assist them in reaching their~~
24 ~~conclusion, consult with the claimant's attending physicians~~
25 (2) The claimant or the insurer may present additional

1 ~~medical information in order to rebut the medical~~
2 ~~examination report of a panel member or a panel report."~~

3 Section 13. Section 39-72-612, MCA, is amended to
4 read:

5 "39-72-612. Rehearing and appeal to workers'
6 compensation judge. (1) Within 20 days after the division
7 has issued its order of determination as to whether the
8 claimant is entitled to benefits under this chapter, a party
9 may request a rehearing. In order to perfect an appeal to
10 the workers' compensation judge, the appealing party must
11 request a rehearing before the division. The division may
12 grant a rehearing and, if a rehearing is granted, the
13 division's final determination ~~shall~~ may not be issued until
14 after the rehearing. If the division does not grant a
15 rehearing, the division's final determination is issued on
16 the date the rehearing is denied.

17 (2) Appeals from a final determination of the division
18 shall be made to the workers' compensation judge within 30
19 days after the division has issued its final determination.
20 The judge, after a hearing held pursuant to 39-71-2903 and
21 39-71-2904, shall make a final determination concerning the
22 claimant's claim. The judge may overrule the division only
23 on the basis that the division's determination is:

24 (a) in violation of constitutional or statutory
25 provisions;

1 (b) in excess of the statutory authority of the
2 agency;

3 (c) made upon unlawful procedure;

4 (d) affected by other error of law;

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

7 (f) arbitrary or capricious or characterized by abuse
8 of discretion or clearly unwarranted exercise of
9 discretion."

10 NEW SECTION. Section 14. Costs and attorney fees. (1)
11 If an insurer requests that a hearing be held before the
12 division and the claim is determined compensable by the
13 division after the hearing and the insurer does not appeal
14 the division's decision to the workers' compensation judge,
15 reasonable costs and attorney fees, as determined by the
16 division, shall be paid to the claimant's attorney by the
17 insurer.

18 (2) If an insurer appeals a decision of the division
19 to the workers' compensation judge or from the judge to the
20 supreme court and the claim is determined compensable,
21 reasonable costs and attorney fees, as determined by the
22 workers' compensation judge, shall be paid to the claimant's
23 attorney by the insurer for proceedings before the division,
24 the workers' compensation judge, and the supreme court.

25 Section 15. Section 39-72-703, MCA, is amended to

1 read:

2 "39-72-703. No compensation for partial disability. No
3 compensation as provided in 39-72-701 or 39-72-702 shall be
4 is payable to an employee who is partially disabled from an
5 occupational disease."

6 Section 16. Section 39-72-704, MCA, is amended to
7 read:

8 "39-72-704. Medical and hospital expenses. In addition
9 to the compensation provided by this chapter, the following
10 shall be furnished an employee who becomes either totally
11 or partially disabled from an occupational disease is
12 entitled to receive for treatment of the occupational
13 disease, without limitation as to length of time or dollar
14 amount, reasonable medical services, hospitalization,
15 medicines, and other treatment approved by the division.

16 ~~(1) If an employee becomes totally disabled from an~~
17 ~~occupational disease, he is entitled to receive without~~
18 ~~limitation as to length of time or dollar amount, reasonable~~
19 ~~medical services, hospitalization, medicines, and such other~~
20 ~~treatment as may be approved by the division.~~

21 ~~(2) An employee who suffers from an occupational~~
22 ~~disease as defined in 39-72-102(1) but who is able to~~
23 ~~continue in employment while being treated therefor is~~
24 ~~entitled to receive the medical services, treatments, and~~
25 ~~medicines reasonably required, not exceeding the value of~~

1 \$2,500."

2 Section 17. Section 39-72-711, MCA, is amended to
3 read:

4 "39-72-711. Lump-sum and compromise settlements. (1)
5 No final and binding award made upon any claim pursuant to
6 this chapter may be converted into a lump-sum payment, in
7 whole or in part, except as provided in this section or
8 39-72-712.

9 (2) Whenever there are contested issues as to an
10 insurer's liability for a claim under this chapter,
11 including a claim based on 39-72-405~~(4)~~(3), a claimant and
12 an insurer may enter into a full and final compromise
13 settlement of the claim. However, no such settlements are
14 binding on the parties until approved by the division. After
15 the division approves a full and final compromise
16 settlement, the claim is closed and the insurer's liability
17 for a settled claim is forever released."

18 Section 18. Section 39-71-201, MCA, is amended to
19 read:

20 "39-71-201. Administration fund. (1) A workers'
21 compensation administration fund is established out of which
22 all costs of administering the Workers' Compensation and
23 Occupational Disease Acts and the various occupational
24 safety acts the division must administer are to be paid upon
25 lawful appropriation. The following moneys collected by the

1 division shall be deposited in the state treasury to the
2 credit of the workers' compensation administrative fund and
3 shall be used for the administrative expenses of the
4 division:

5 (a) all fees and fines provided in 39-71-205, and
6 39-71-304 ~~and 39-72-205~~;

7 (b) all fees paid for inspection of boilers and
8 issuance of licenses to operating engineers as required by
9 law;

10 (c) all fees paid from an assessment on each plan No.
11 1 employer, plan No. 2 insurer, and plan No. 3, the state
12 insurance fund. The assessments shall be levied against the
13 preceding calendar year's gross annual payroll of the plan
14 No. 1 employers and the gross annual direct premiums
15 collected in Montana on the policies of the plan No. 2
16 insurers, insuring employers covered under the chapter,
17 during the preceding calendar year. However, no assessment
18 of the plan No. 1 employer or plan No. 2 insurer shall be
19 less than \$200. The assessments shall be sufficient to fund
20 the direct costs identified to the three plans and an
21 equitable portion of the indirect costs based on the ratio
22 of the preceding fiscal year's indirect costs distributed to
23 the plans using proper accounting and cost allocation
24 procedures. Plan No. 3 shall be assessed an amount
25 sufficient to fund its direct costs and an equitable portion

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1 of the indirect costs as referred to above. Other sources
2 of revenue, including unexpended funds from the preceding
3 fiscal year, shall be used to reduce the costs before
4 levying the assessments.

5 (2) The administration fund shall be debited with
6 expenses incurred by the division in the general
7 administration of the provisions of this chapter, including
8 the salaries of its members, officers, and employees and the
9 travel expenses of the members, officers, and employees, as
10 provided for in 2-18-501 through 2-18-503, as amended,
11 incurred while on the business of the division either within
12 or without the state.

13 (3) Disbursements from the administration money shall
14 be made after being approved by the division upon claim
15 therefor."

16 Section 19. Repealer. Sections 39-72-205, 39-72-306
17 through 39-72-309, 39-72-501 through 39-72-508, 39-72-603,
18 39-72-604, 39-72-702, 39-72-710, and 39-72-713, MCA, are
19 repealed.

20 Section 20. Codification. The code commissioner shall
21 codify section 6 of this act in Title 39, chapter 72, part
22 5, and section 14 of this act in Title 39, chapter 72, part
23 6, and the provisions of those parts apply, respectively, to
24 section 6 and section 14.

-End-

1 *Senate* BILL NO. *150*
 2 INTRODUCED BY *Indira Pascoe Nealy Hoffman*
 3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 6 OCCUPATIONAL DISEASE ACT OF MONTANA; AMENDING SECTIONS
 7 39-71-201, 39-72-102, 39-72-305, 39-72-402, 39-72-405,
 8 39-72-406, 39-72-601, 39-72-602, 39-72-605, 39-72-606,
 9 39-72-608, 39-72-610, 39-72-612, 39-72-703, 39-72-704, AND
 10 39-72-711, MCA; AND REPEALING SECTIONS 39-72-205, 39-72-306
 11 THROUGH 39-72-309, 39-72-501 THROUGH 39-72-508, 39-72-603,
 12 39-72-604, 39-72-702, 39-72-710, AND 39-72-713, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 39-72-102, MCA, is amended to read:
 16 "39-72-102. Definitions. As used in this chapter,
 17 unless the context requires otherwise, the following
 18 definitions apply:

- 19 (1) "Beneficiary" is as defined in 39-71-116(2).
- 20 (2) "Child" is as defined in 39-71-116(4).
- 21 (3) "Disablement" means the event of becoming
 22 physically incapacitated by reason of an occupational
 23 disease from performing any work for remuneration or profit
 24 in the normal labor market. Silicosis, when complicated by
 25 active pulmonary tuberculosis, is presumed to be total

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

- 4 (4) "Division" is as defined in 39-71-116(5).
- 5 (5) "Employee" is as defined in 39-71-118.
- 6 (6) "Employer" is as defined in 39-71-117.
- 7 (7) "Husband" is as defined in 39-71-116(7).
- 8 (8) "Independent contractor" is as defined in
 9 39-71-120.
- 10 (9) "Insurer" is as defined in 39-71-116(8). ~~The term~~
 11 ~~includes an employer who is self-insured under compensation~~
 12 ~~plan No. 1.~~
- 13 (10) "Invalid" is as defined in 39-71-116(9).
- 14 (11) ~~The term "occupational disease"~~ Occupational disease" shall
 15 mean means all diseases arising out of or contracted from
 16 and in the course of employment.
- 17 (12) "Order" is as defined in 39-71-116(10).
- 18 (13) "Pneumoconiosis" means a chronic dust disease of
 19 the lungs arising out of employment in coal mines and
 20 includes anthracosis, coal workers' pneumoconiosis,
 21 silicosis, or anthracosilicosis arising out of such
 22 employment.
- 23 (14) "Silicosis" means a chronic disease of the lungs
 24 caused by the prolonged inhalation of silicon dioxide
 25 (SiO2), characterized by small discrete nodules of fibrous

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

4 (15) "Wages" is as defined in 39-71-116(20).

5 (16) "Wife" is as defined in 39-71-116(21).

6 (17) "Year" is as defined in 39-71-116(6) and
7 39-71-116(22)."

8 Section 2. Section 39-72-305, MCA, is amended to read:

9 "39-72-305. Right to compensation exclusive remedy ==
10 ~~uninsured employers.~~ (1) The right to recover compensation
11 pursuant to the provisions of this chapter for occupational
12 diseases sustained by an employee and arising out of and in
13 the course of his employment, whether resulting in death or
14 not, ~~shall be~~ is the exclusive remedy therefor against the
15 ~~an employer electing to be bound by and subject to this~~
16 ~~chapter--except--as--to--such--employees--as--shall--reject--this~~
17 ~~chapter--as--provided--herein~~ who is properly insured under the
18 Workers' Compensation Act and the Occupational Disease Act
19 of Montana.

20 (2) The provisions of the Workers' Compensation Act
21 relating to uninsured employers and benefits due uninsured
22 claimants apply to and are incorporated as part of this
23 chapter."

24 Section 3. Section 39-72-402, MCA, is amended to read:

25 "39-72-402. Practice and procedure == applicability of

1 ~~Workers' Compensation Act. (1) The Except as otherwise~~
2 ~~provided in this chapter, the practice and procedure~~
3 ~~prescribed in the Workers' Compensation Act shall apply~~
4 ~~applies to all proceedings under this chapter, except as~~
5 ~~hereinafter otherwise provided.~~

6 (2) ~~Sections 39-71-304, 39-71-403, 39-71-406,~~
7 ~~39-71-409, 39-71-411 through 39-71-413, and 39-71-742 in the~~
8 ~~Workers' Compensation Act specifically apply to and are~~
9 ~~incorporated as part of this chapter."~~

10 Section 4. Section 39-72-405, MCA, is amended to read:

11 "39-72-405. General limitations on payment of
12 compensation to disabled employee -- exceptions. (1) Except
13 as provided for in this section, compensation may not be
14 paid when the last day of the injurious exposure of the
15 employee to the hazard of the occupational disease has
16 occurred prior to July 1, 1959.

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

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

10 ~~(4)~~(3) A silicotic employee who is discharged by his
 11 employer to escape liability for silicosis benefits under
 12 this chapter is eligible to receive compensation under this
 13 chapter when totally disabled if he has 700 actual
 14 workshifts since January 1, 1954, for that employer. When
 15 any employee in employment on or after January 1, 1959,
 16 because he has an occupational disease incurred in and
 17 caused by such employment which is not yet disabling, is
 18 discharged or transferred from the employment in which he is
 19 engaged or when he ceases his employment and it is in fact,
 20 as determined by the medical panel, inadvisable for him on
 21 account of a nondisabling occupational disease to continue
 22 in employment and he suffers wage loss by reason of the
 23 discharge, transfer, or cessation, the division may allow
 24 compensation on account thereof as it considers just, not
 25 exceeding \$10,000."

1 Section 5. Section 39-72-406, MCA, is amended to read:
 2 "39-72-406. General limitations on payment of death
 3 benefits -- exceptions. Compensation shall be paid to the
 4 beneficiaries of every employee covered by this chapter in
 5 cases where death results from an occupational disease
 6 arising out of his employment, subject to the following
 7 conditions:

8 (1) Except as provided for in 39-72-405~~(4)~~(3),
 9 compensation may not be paid when the last day of injurious
 10 exposure of the employee to the hazards of the occupational
 11 diseases occurred prior to July 1, 1959.

12 (2) No compensation may be paid for death from
 13 silicosis unless during the 8 years immediately preceding
 14 the disablement the deceased employee has been exposed to
 15 harmful quantities of silicon dioxide dust for a period of
 16 not less than 1,000 workshifts in employment in this state.

17 (3) No compensation may be paid for death from
 18 silicosis unless the death results within ~~4~~ 3 years from the
 19 last day upon which the employee actually worked for the
 20 employer against whom compensation is claimed, except in
 21 those cases where death results during a period of
 22 continuous total disability from silicosis 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
 25 division. In such cases, compensation shall be paid to the

1 ~~beneficiaries~~ if death results ~~within 7 years from the test~~
2 ~~day upon which the employee actually worked for the employer~~
3 ~~against whom compensation is claimed~~ from the silicosis.

4 (4) No compensation may be paid for death from any
5 occupational disease, other than silicosis or due to
6 ionizing radiation, unless death results within ~~2-year~~ 3
7 years from the last day upon which the employee actually
8 worked for the employer against whom compensation is
9 claimed, except in those cases where death results during a
10 period of continuous total disability from an occupational
11 disease, other than silicosis or ionizing radiation, for
12 which compensation has been paid or awarded or for which a
13 claim, compensable but for such death, is on file with the
14 division. In such cases, compensation shall be paid to the
15 beneficiaries if death results ~~within 3 years from the test~~
16 ~~day upon which the employee actually worked for the employer~~
17 ~~against whom compensation is claimed~~ from the occupational
18 disease."

19 NEW SECTION. Section 6. Benefits for pneumoconiosis.
20 Pneumoconiosis is an occupational disease that is
21 compensable under this chapter. However, any benefits
22 granted a claimant under this chapter for pneumoconiosis
23 must be reduced, but not below zero, by an amount equal to
24 the benefits granted the claimant under any program under
25 federal law that pays benefits for a claimant suffering

1 disability from pneumoconiosis.

2 Section 7. Section 39-72-601, MCA, is amended to read:
3 "39-72-601. Pulmonary ~~specialist and occupational~~
4 ~~disease medical panels~~ Medical panel. (1) The Montana
5 medical association may, at least annually, certify to the
6 division as ~~pulmonary specialist~~ nominees three 10 or more
7 licensed physicians of the state ~~who shall to serve on the~~
8 medical panel. At least three of the physicians must have
9 had at the time of certification at least 5 years' practice
10 in the diagnosis, care, and treatment of ~~diseases of the~~
11 pulmonary tract diseases and the interpretation of x-ray
12 ~~films, thereof and may also certify to the division as~~
13 ~~occupational disease specialist nominees three or more~~
14 ~~licensed physicians of the state who have~~ At least three of
15 the physicians must have had at the time of certification
16 qualifications in the diagnosis, care, and treatment of
17 nonpulmonary occupational diseases.

18 (2) From the ~~two lists list~~ submitted as provided fo
19 in this section, the division shall appoint ~~two separate~~
20 ~~medical panels. One panel is the pulmonary specialist~~
21 ~~medical panel and the other is the occupational disease~~
22 ~~medical panel. The division shall appoint from the list of~~
23 ~~pulmonary specialist nominees three five~~ or more physicians
24 to serve on the ~~pulmonary specialist~~ medical panel. ~~The~~
25 ~~division shall appoint from the list of occupational disease~~

1 ~~specialist nominees three or more physicians to serve on the~~
2 ~~occupational disease specialist medical panels~~

3 (3) If the Montana medical association fails to submit
4 the ~~two lists~~ list of nominees as provided for in this
5 section, the division shall appoint ~~as~~ members to ~~of~~ the
6 medical panels ~~by appointing to the pulmonary specialist~~
7 ~~medical panel three~~ panel five or more licensed physicians
8 in the state ~~of Montana who three of the panel members must~~
9 have had at the time of appointment at least 5 years'
10 practice in the diagnosis, care, and treatment of pulmonary
11 ~~diseases of the pulmonary tract and the interpretation of~~
12 ~~x-ray films thereof and by appointing to the occupational~~
13 ~~disease medical panel three or more licensed physicians of~~
14 ~~the state who have at the time of appointment qualifications~~
15 ~~to diagnose, care for, and treat nonpulmonary occupational~~
16 ~~diseases.~~

17 (4) The panel members shall appoint one member of the
18 panel to be the chairman."

19 Section 8. Section 39-72-602, MCA, is amended to read:

20 "39-72-602. Procedure Insurer may accept liability --
21 procedure for medical examination -- pulmonary conditions
22 when insurer has not accepted liability. (1) An insurer may
23 accept liability for a claim under this chapter based on
24 information submitted to it by a claimant.

25 (2) In order to determine the compensability of claims

1 under this chapter ~~based on pulmonary conditions when an~~
2 insurer has not accepted liability, the following procedure
3 ~~shall~~ must be followed:

4 ~~(1)(a)~~ The division shall direct the claimant to a
5 ~~pulmonary specialist who is a~~ member of the pulmonary
6 ~~specialist~~ medical panel for an examination. The ~~pulmonary~~
7 ~~specialist~~ panel member shall conduct an examination to
8 determine whether the claimant is totally disabled and is
9 suffering from a ~~pulmonary~~ an occupational disease. The
10 ~~pulmonary specialist~~ panel member shall submit a report of
11 his findings to the division.

12 ~~(2)(b)~~ Either the claimant or the insurer may, within
13 20 days after the receipt of the report by the first
14 ~~pulmonary specialist~~ panel member, request that the claimant
15 be examined by a second pulmonary specialist ~~who shall be a~~
16 ~~member of the pulmonary specialist medical panel member.~~ If
17 a second examination is requested, the division shall direct
18 the claimant to a second ~~pulmonary specialist and the~~
19 ~~pulmonary specialist~~ panel member ~~who~~ shall conduct an
20 examination to determine whether he believes the claimant is
21 totally disabled and is suffering from a ~~pulmonary~~ an
22 ~~occupational~~ disease. The ~~pulmonary specialist~~ panel member
23 shall submit a report of his findings to the division. When
24 a second examination has been requested, the reports of the
25 examinations shall be submitted to the ~~pulmonary specialist~~

1 ~~three members of the~~ medical panel for its review. ~~A medical~~
 2 ~~panel member or the panel may, in order to assist the panel~~
 3 ~~member or the panel in reaching a conclusion, consult with~~
 4 ~~the claimant's attending physician.~~ The three panel members
 5 shall issue its a report concerning the claimant's physical
 6 condition and whether the claimant is suffering from an
 7 occupational disease.

8 ~~(3)(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~~ ~~three~~
 14 ~~members of the~~ medical panel.

15 ~~(d)~~ For the purpose of reviewing the reports of the
 16 examinations and issuing the report under subsection (2)(b),
 17 the three members of the medical panel shall be the two
 18 members of the panel who examined the claimant and the panel
 19 chairman. If the panel chairman has examined the claimant,
 20 the panel chairman shall appoint another member of the
 21 medical panel to be the third member."

22 Section 9. Section 39-72-605, MCA, is amended to read:

23 "39-72-605. When nonpulmonary occupational disease
 24 causes death. When an occupational disease other-than-a
 25 ~~pulmonary-disease-causes~~ ~~is claimed to have caused~~ death and

1 a claim for death benefits is filed therefor, the division
 2 shall select at least two physicians who in the division's
 3 judgment could properly determine the condition regarding
 4 the decedent's death in relation to a possible occupational
 5 disease, and the physicians shall examine all available
 6 evidence pertaining to the claim and shall make findings and
 7 report to the division. The report is prima facie evidence
 8 of fact as to the matters therein contained."

9 Section 10. Section 39-72-606, MCA, is amended to
 10 read:

11 "39-72-606. Autopsy. Upon the filing of a claim for
 12 compensation for death caused by an occupational disease
 13 where an autopsy is necessary to determine the cause of
 14 death, an autopsy shall be ordered by the division. The
 15 autopsy shall be made under the supervision of the county
 16 coroner. The division may designate a duly licensed
 17 physician who is a specialist in such examinations to
 18 perform or attend the autopsies and to certify his findings
 19 thereon. The findings shall be examined by the physicians
 20 submitting reports a report under the--provisions--of
 21 39-72-604--and 39-72-605 before the final reports report
 22 under those sections--are that section is submitted to the
 23 division."

24 Section 11. Section 39-72-608, MCA, is amended to
 25 read:

1 "39-72-608. Payment of medical examination and autopsy
 2 expenses. The expense of the first medical examination as
 3 provided in 39-72-602 ~~or 39-72-603~~ shall be borne by the
 4 insurer. The expense of a reexamination shall be borne by
 5 the dissatisfied party requesting the reexamination. The
 6 expense of the periodic medical examinations, as provided in
 7 39-72-607, shall be borne by the party requesting the
 8 periodic medical examination. The expense of the autopsy, as
 9 provided for in 39-72-606, shall be borne by the party
 10 requesting the autopsy."

11 Section 12. Section 39-72-610, MCA, is amended to
 12 read:

13 "39-72-610. Report of and examinations conducted by
 14 medical panel ~~final and exclusive medical evidence at~~
 15 ~~hearing. (1) At a hearing held before the division or the~~
 16 ~~workers' compensation judge, there is a rebuttable~~
 17 ~~presumption that the report of the medical panel and the two~~
 18 ~~any medical examinations conducted examination reports by~~
 19 ~~members of the medical panel are exclusive and final and no~~
 20 ~~other medical evidence or additional medical examinations~~
 21 ~~are admissible correct. However, the physicians to which the~~
 22 ~~claimant has been referred as provided for in 39-72-602 or~~
 23 ~~39-72-603 may, in order to assist them in reaching their~~
 24 ~~conclusion, consult with the claimant's attending physician~~
 25 (2) The claimant or the insurer may present additional

1 medical information in order to rebut the medical
 2 examination report of a panel member or a panel report."

3 Section 13. Section 39-72-612, MCA, is amended to
 4 read:

5 "39-72-612. Rehearing and appeal to workers'
 6 compensation judge. (1) Within 20 days after the division
 7 has issued its order of determination as to whether the
 8 claimant is entitled to benefits under this chapter, a party
 9 may request a rehearing. In order to perfect an appeal to
 10 the workers' compensation judge, the appealing party must
 11 request a rehearing before the division. The division may
 12 grant a rehearing and, if a rehearing is granted, the
 13 division's final determination ~~shall~~ may not be issued until
 14 after the rehearing. If the division does not grant a
 15 rehearing, the division's final determination is issued on
 16 the date the rehearing is denied.

17 (2) Appeals from a final determination of the division
 18 shall be made to the workers' compensation judge within 30
 19 days after the division has issued its final determination.
 20 The judge, after a hearing held pursuant to 39-71-2903 and
 21 39-71-2904, shall make a final determination concerning the
 22 claimant's claim. The judge may overrule the division only
 23 on the basis that the division's determination is:

24 (a) in violation of constitutional or statutory
 25 provisions;

1 (b) in excess of the statutory authority of the
2 agency;

3 (c) made upon unlawful procedure;

4 (d) affected by other error of law;

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

7 (f) arbitrary or capricious or characterized by abuse
8 of discretion or clearly unwarranted exercise of
9 discretion."

10 NEW SECTION. Section 14. Costs and attorney fees. (1)
11 If an insurer requests that a hearing be held before the
12 division and the claim is determined compensable by the
13 division after the hearing and the insurer does not appeal
14 the division's decision to the workers' compensation judge,
15 reasonable costs and attorney fees, as determined by the
16 division, shall be paid to the claimant's attorney by the
17 insurer.

18 (2) If an insurer appeals a decision of the division
19 to the workers' compensation judge or from the judge to the
20 supreme court and the claim is determined compensable,
21 reasonable costs and attorney fees, as determined by the
22 workers' compensation judge, shall be paid to the claimant's
23 attorney by the insurer for proceedings before the division,
24 the workers' compensation judge, and the supreme court.

25 Section 15. Section 39-72-703, MCA, is amended to

1 read:

2 "39-72-703. No compensation for partial disability. No
3 compensation as provided in 39-72-701 or 39-72-702 shall be
4 is payable to an employee who is partially disabled from an
5 occupational disease."

6 Section 16. Section 39-72-704, MCA, is amended to
7 read:

8 "39-72-704. Medical and hospital expenses. In addition
9 to the compensation provided by this chapter, the following
10 shall be furnished an employee who becomes either totally
11 or partially disabled from an occupational disease is
12 entitled to receive for treatment of the occupational
13 disease, without limitation as to length of time or dollar
14 amount, reasonable medical services, hospitalization,
15 medicines, and other treatment approved by the division.

16 ~~(1) If an employee becomes totally disabled from an~~
17 ~~occupational disease, he is entitled to receive, without~~
18 ~~limitation as to length of time or dollar amount, reasonable~~
19 ~~medical services, hospitalization, medicines, and such other~~
20 ~~treatment as may be approved by the division.~~

21 ~~(2) An employee who suffers from an occupational~~
22 ~~disease as defined in 39-72-102(1) but who is able to~~
23 ~~continue in employment while being treated therefor is~~
24 ~~entitled to receive the medical services, treatments, and~~
25 ~~medicines reasonably required, not exceeding the value of~~

1 \$2v588w"

2 Section 17. Section 39-72-711, MCA, is amended to
3 read:

4 "39-72-711. Lump-sum and compromise settlements. (1)
5 No final and binding award made upon any claim pursuant to
6 this chapter may be converted into a lump-sum payment, in
7 whole or in part, except as provided in this section or
8 39-72-712.

9 (2) Whenever there are contested issues as to an
10 insurer's liability for a claim under this chapter,
11 including a claim based on 39-72-405(4)(3), a claimant and
12 an insurer may enter into a full and final compromise
13 settlement of the claim. However, no such settlements are
14 binding on the parties until approved by the division. After
15 the division approves a full and final compromise
16 settlement, the claim is closed and the insurer's liability
17 for a settled claim is forever released."

18 Section 18. Section 39-71-201, MCA, is amended to
19 read:

20 "39-71-201. Administration fund. (1) A workers'
21 compensation administration fund is established out of which
22 all costs of administering the Workers' Compensation and
23 Occupational Disease Acts and the various occupational
24 safety acts the division must administer are to be paid upon
25 lawful appropriation. The following moneys collected by the

1 division shall be deposited in the state treasury to the
2 credit of the workers' compensation administrative fund and
3 shall be used for the administrative expenses of the
4 division:

5 (a) all fees and fines provided in 39-71-205v and
6 39-71-304v--end-39-72-205;

7 (b) all fees paid for inspection of boilers and
8 issuance of licenses to operating engineers as required by
9 law;

10 (c) all fees paid from an assessment on each plan No.
11 1 employer, plan No. 2 insurer, and plan No. 3, the state
12 insurance fund. The assessments shall be levied against the
13 preceding calendar year's gross annual payroll of the plan
14 No. 1 employers and the gross annual direct premiums
15 collected in Montana on the policies of the plan No. 2
16 insurers, insuring employers covered under the chapter,
17 during the preceding calendar year. However, no assessment
18 of the plan No. 1 employer or plan No. 2 insurer shall be
19 less than \$200. The assessments shall be sufficient to fund
20 the direct costs identified to the three plans and an
21 equitable portion of the indirect costs based on the ratio
22 of the preceding fiscal year's indirect costs distributed to
23 the plans using proper accounting and cost allocation
24 procedures. Plan No. 3 shall be assessed an amount
25 sufficient to fund its direct costs and an equitable portion

1 of the indirect costs as referred to above. Other sources
2 of revenue, including unexpended funds from the preceding
3 fiscal year, shall be used to reduce the costs before
4 levying the assessments.

5 (2) The administration fund shall be debited with
6 expenses incurred by the division in the general
7 administration of the provisions of this chapter, including
8 the salaries of its members, officers, and employees and the
9 travel expenses of the members, officers, and employees, as
10 provided for in 2-18-501 through 2-18-503, as amended,
11 incurred while on the business of the division either within
12 or without the state.

13 (3) Disbursements from the administration money shall
14 be made after being approved by the division upon claim
15 therefor."

16 Section 19. Repealer. Sections 39-72-205, 39-72-306
17 through 39-72-309, 39-72-501 through 39-72-508, 39-72-603,
18 39-72-604, 39-72-702, 39-72-710, and 39-72-713, NCA, are
19 repealed.

20 Section 20. Codification. The code commissioner shall
21 codify section 6 of this act in Title 39, chapter 72, part
22 5, and section 14 of this act in Title 39, chapter 72, part
23 6, and the provisions of those parts apply, respectively, to
24 section 6 and section 14.

-End-

SENATE BILL NO. 150

INTRODUCED BY MEHRENS, PETERSON, HEALY,

HAFFERMAN, R. SMITH, LOWE

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE OCCUPATIONAL DISEASE ACT OF MONTANA; AMENDING SECTIONS 39-71-201, 39-72-102, 39-72-305, 39-72-402, 39-72-403, 39-72-406, 39-72-601, 39-72-602, 39-72-605, 39-72-606, 39-72-608, 39-72-610, 39-72-612, 39-72-703, 39-72-704, AND 39-72-711, MCA; AND REPEALING SECTIONS 39-72-205, 39-72-306 THROUGH 39-72-309, 39-72-501 THROUGH 39-72-508, 39-72-603, 39-72-604, 39-72-702, 39-72-710, AND 39-72-713, MCA."

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

Section 1. Section 39-72-102, MCA, is amended to read:

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

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

(2) "Child" is as defined in 39-71-116(4).

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing any work for remuneration or profit in the normal labor market. 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 39-71-116(5).

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

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

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

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

(9) "Insurer" is as defined in 39-71-116(8). The term ~~includes an employer who is self-insured under compensation~~ ~~plan~~ ~~not~~.

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

(11) The term "~~occupational~~ Occupational disease" shall mean ~~mean~~ all diseases arising out of or contracted from and in the course of employment.

(12) "Order" is as defined in 39-71-116(10).

(13) "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.

(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide

1 (SiO2), characterized by small discrete nodules of fibrous
2 tissue similarly disseminated throughout both lungs causing
3 the characteristic x-ray pattern and by other variable
4 clinical manifestations.

5 (15) "Wages" is as defined in 39-71-116(20).

6 (16) "Wife" is as defined in 39-71-116(21).

7 (17) "Year" is as defined in 39-71-116(6) and
8 39-71-116(22)."

9 Section 2. Section 39-72-305, MCA, is amended to read:

10 "39-72-305. Right to compensation exclusive remedy ==
11 uninsured employers. (1) The right to recover compensation
12 pursuant to the provisions of this chapter for occupational
13 diseases sustained by an employee and arising out of and in
14 the course of his employment, whether resulting in death or
15 not, ~~shall--be~~ is the exclusive remedy therefor against the
16 ~~an employer electing to be bound--by--and--subject--to--this~~
17 ~~chapter--except--as--to--such--employees--as--shall--reject--this~~
18 ~~chapter--as--provided--herein~~ who is properly insured under the
19 Workers' Compensation Act and the Occupational Disease Act
20 of Montana.

21 (2) The provisions of the Workers' Compensation Act
22 relating to uninsured employers and benefits due uninsured
23 claimants apply to and are incorporated as part of this
24 chapter."

25 Section 3. Section 39-72-402, MCA, is amended to read:

1 "39-72-402. Practice and procedure == applicability of
2 Workers' Compensation Act. (1) The Except as otherwise
3 provided in this chapter, the practice and procedure
4 prescribed in the Workers' Compensation Act shall--apply
5 applies to all proceedings under this chapter--except as
6 hereinafter otherwise provided.

7 (2) Sections 39-71-304, 39-71-403, 39-71-406,
8 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 in the
9 Workers' Compensation Act specifically apply to and are
10 incorporated as part of this chapter."

11 Section 4. Section 39-72-405, MCA, is amended to read:

12 "39-72-405. General limitations on payment of
13 compensation to disabled employee -- exceptions. (1) Except
14 as provided for in this section, compensation may not be
15 paid when the last day of the injurious exposure of the
16 employee to the hazard of the occupational disease has
17 occurred prior to July 1, 1959.

18 (2) ~~No compensation may be paid for a disease other~~
19 ~~than--silicosis--or--due--to--ionizing--radiation--unless--total~~
20 ~~disability--results--within--128--days--from--the--last--day--upon~~
21 ~~which--the--employee--actually--worked--for--the--employer--against~~
22 ~~whom--compensation--is--claimed.~~ However, ~~the--division--upon~~
23 ~~good--cause--shown--may--waive--this--limitation--in--the--interest~~
24 ~~of--justice--but--in--any--case--the--period--may--not--be--extended~~
25 ~~to--more--than--1--year--from--the--date--of--last--employment--by--the~~

1 employere

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

11 †4†{3} A silicotic employee who is discharged by his
12 employer to escape liability for silicosis benefits under
13 this chapter is eligible to receive compensation under this
14 chapter when totally disabled if he has 700 actual
15 workshifts since January 1, 1954, for that employer. When
16 any employee in employment on or after January 1, 1959,
17 because he has an occupational disease incurred in and
18 caused by such employment which is not yet disabling, is
19 discharged or transferred from the employment in which he is
20 engaged or when he ceases his employment and it is in fact,
21 as determined by the medical panel, inadvisable for him on
22 account of a nondisabling occupational disease to continue
23 in employment and he suffers wage loss by reason of the
24 discharge, transfer, or cessation, the division may allow
25 compensation on account thereof as it considers just, not

1 exceeding \$10,000."

2 Section 5. Section 39-72-406, MCA, is amended to read:
3 "39-72-406. General limitations on payment of death
4 benefits -- exceptions. Compensation shall be paid to the
5 beneficiaries of every employee covered by this chapter in
6 cases where death results from an occupational disease
7 arising out of his employment, subject to the following
8 conditions:

9 (1) Except as provided for in 39-72-405†4†{3},
10 compensation may not be paid when the last day of injurious
11 exposure of the employee to the hazards of the occupational
12 diseases occurred prior to July 1, 1959.

13 (2) No compensation may be paid for death from
14 silicosis unless during the 8 years immediately preceding
15 the disablement the deceased employee has been exposed to
16 harmful quantities of silicon dioxide dust for a period of
17 not less than 1,000 workshifts in employment in this state.

18 (3) No compensation may be paid for death from
19 silicosis unless the death results within 4 3 years from the
20 last day upon which the employee actually worked for the
21 employer against whom compensation is claimed, except in
22 those cases where death results during a period of
23 continuous total disability from silicosis 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

1 division. In such cases, compensation shall be paid to the
 2 beneficiaries if death results ~~within 7 years from the test~~
 3 ~~day upon which the employee actually worked for the employer~~
 4 ~~against whom compensation is claimed~~ from the silicosis.

5 (4) No compensation may be paid for death from any
 6 occupational disease, other than silicosis or due to
 7 ionizing radiation, unless death results within ~~1 year 3~~
 8 ~~years~~ from the last day upon which the employee actually
 9 worked for the employer against whom compensation is
 10 claimed, except in those cases where death results during a
 11 period of continuous total disability from an occupational
 12 disease, other than silicosis or ionizing radiation, for
 13 which compensation has been paid or awarded or for which a
 14 claim, compensable but for such death, is on file with the
 15 division. In such cases, compensation shall be paid to the
 16 beneficiaries if death results ~~within 3 years from the test~~
 17 ~~day upon which the employee actually worked for the employer~~
 18 ~~against whom compensation is claimed~~ from the occupational
 19 disease."

20 NEW SECTION. Section 6. Benefits for pneumoconiosis.
 21 Pneumoconiosis is an occupational disease that is
 22 compensable under this chapter. However, any benefits
 23 granted a claimant under this chapter for pneumoconiosis
 24 must be reduced, but not below zero, by an amount equal to
 25 the benefits granted the claimant under any program under

1 federal law that pays benefits for a claimant suffering
 2 disability from pneumoconiosis.

3 Section 7. Section 39-72-601, MCA, is amended to read:

4 "39-72-601. ~~Pulmonary--specialist--and--occupational~~
 5 ~~disease--medical--panels~~ Medical panel. (1) The Montana
 6 medical association may, at least annually, certify to the
 7 division as ~~pulmonary-specialist~~ nominees three 10 or more
 8 licensed physicians of the state who ~~shall~~ to serve on the
 9 medical panel. At least three of the physicians must have
 10 had at the time of certification at least 5 years' practice
 11 in the diagnosis, care, and treatment of ~~diseases--of--the~~
 12 ~~pulmonary tract diseases~~ and the interpretation of x-ray
 13 films, thereof ~~and may also certify to the division as~~
 14 ~~occupational--disease--specialist--nominees--three--or--more~~
 15 ~~licensed physicians of the state who have~~ At least three of
 16 the physicians must have had at the time of certification
 17 qualifications in the diagnosis, care, and treatment of
 18 nonpulmonary occupational diseases.

19 (2) From the ~~two-lists~~ list submitted as provided for
 20 in this section, the division shall appoint ~~two--separate~~
 21 ~~medical--panels--One--panel--is--the--pulmonary--specialist~~
 22 ~~medical--panel--and--the--other--is--the--occupational--disease~~
 23 ~~medical--panels--The--division--shall--appoint--from--the--list--of~~
 24 ~~pulmonary-specialist-nominees--three~~ five or more physicians
 25 to serve on the ~~pulmonary--specialist~~ medical panel. The

~~division shall appoint from the list of occupational disease specialist nominees three or more physicians to serve on the occupational disease specialist medical panels~~

(3) If the Montana medical association fails to submit the two lists list of nominees as provided for in this section, the division shall appoint ~~as~~ members to of the medical panels by appointing to the pulmonary specialist medical panel three panel five or more licensed physicians in the state of Montana who three of the panel members must have had at the time of appointment at least 5 years' practice in the diagnosis, care, and treatment of pulmonary diseases of the pulmonary tract and the interpretation of x-ray films thereof and by appointing to the occupational disease medical panel three or more licensed physicians of the state who have at the time of appointment qualifications to diagnose, care for, and treat nonpulmonary occupational diseases.

(4) The panel members shall appoint one member of the panel to be the chairman."

Section 8. Section 39-72-602, MCA, is amended to read:

"39-72-602. Procedure insurer may accept liability procedure for medical examination ~~---pulmonary---conditions when insurer has not accepted liability.~~ (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter based on pulmonary conditions when an insurer has not accepted liability, the following procedure shall must be followed:

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

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first pulmonary specialist panel member, request that the claimant be examined by a second pulmonary specialist who shall be a member of the pulmonary specialist medical panel member. If a second examination is requested, the division shall direct the claimant to a second pulmonary specialist and the pulmonary specialist panel member who shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from a pulmonary an occupational disease. The pulmonary specialist panel member shall submit a report of his findings to the division. When a second examination has been requested, the reports of the

1 examinations shall be submitted to the ~~pulmonary specialist~~
 2 ~~three members of the~~ medical panel for its review. ~~A medical~~
 3 ~~panel member or the panel may, in order to assist the panel~~
 4 ~~member or the panel in reaching a conclusion, consult with~~
 5 ~~the claimant's attending physician.~~ The three panel members
 6 shall issue ~~its~~ a report concerning the claimant's physical
 7 condition and whether the claimant is suffering from an
 8 occupational 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~~ ~~three~~
 15 ~~members of the~~ medical panel.

16 ~~(d) For the purpose of reviewing the reports of the~~
 17 ~~examinations and issuing the report under subsection (2)(b),~~
 18 ~~the three members of the medical panel shall be the two~~
 19 ~~members of the panel who examined the claimant and the panel~~
 20 ~~chairman. If the panel chairman has examined the claimant,~~
 21 ~~the panel chairman shall appoint another member of the~~
 22 ~~medical panel to be the third member."~~

23 Section 9. Section 39-72-605, MCA, is amended to read:
 24 "39-72-605. When ~~nonpulmonary~~ occupational disease
 25 causes death. When an occupational disease other-than-a

1 ~~pulmonary-disease-causes~~ is claimed to have caused death and
 2 a claim for death benefits is filed therefor, the division
 3 shall select at least two physicians who in the division's
 4 judgment could properly determine the condition regarding
 5 the decedent's death in relation to a possible occupational
 6 disease, and the physicians shall examine all available
 7 evidence pertaining to the claim and shall make findings and
 8 report to the division. The report is prima facie evidence
 9 of fact as to the matters therein contained."

10 Section 10. Section 39-72-606, MCA, is amended to
 11 read:

12 "39-72-606. Autopsy. Upon the filing of a claim for
 13 compensation for death caused by an occupational disease
 14 where an autopsy is necessary to determine the cause of
 15 death, an autopsy shall be ordered by the division. The
 16 autopsy shall be made under the supervision of the county
 17 coroner. The division may designate a duly licensed
 18 physician who is a specialist in such examinations to
 19 perform or attend the autopsies and to certify his findings
 20 thereon. The findings shall be examined by the physicians
 21 submitting reports a report under the---provisions---of
 22 39-72-604--and 39-72-605 before the final reports ~~report~~
 23 ~~under those sections are~~ that section is submitted to the
 24 division."

25 Section 11. Section 39-72-608, MCA, is amended to

1 read:

2 "39-72-608. Payment of medical examination and autopsy
3 expenses. The expense of the first medical examination as
4 provided in 39-72-602 ~~or 39-72-603~~ shall be borne by the
5 insurer. The expense of a reexamination shall be borne by
6 the dissatisfied party requesting the reexamination. The
7 expense of the periodic medical examinations, as provided in
8 39-72-607, shall be borne by the party requesting the
9 periodic medical examination. The expense of the autopsy, as
10 provided for in 39-72-606, shall be borne by the party
11 requesting the autopsy."

12 Section 12. Section 39-72-610, MCA, is amended to
13 read:

14 "39-72-610. Report of and examinations conducted by
15 medical panel ~~final--and--exclusive--medical--evidence--at~~
16 hearing. (1) At a hearing held before the division or the
17 workers' compensation judge, there is a rebuttable
18 presumption that the report of the medical panel and the ~~two~~
19 ~~any~~ medical examinations ~~conducted~~ examination reports by
20 members of the medical panel are ~~exclusive and final and no~~
21 ~~other--medical--evidence--or--additional--medical--examinations~~
22 ~~are--admissible correct.~~ However, the physicians to which the
23 claimant has been referred as provided for in 39-72-602 or
24 39-72-603 may, in order to assist them in reaching their
25 conclusion, consult with the claimant's attending physicians

1 (2) The claimant or the insurer may present additional
2 medical information in order to rebut the medical
3 examination report of a panel member or a panel report."

4 Section 13. Section 39-72-612, MCA, is amended to
5 read:

6 "39-72-612. Rehearing and appeal to workers'
7 compensation judge. (1) Within 20 days after the division
8 has issued its order of determination as to whether the
9 claimant is entitled to benefits under this chapter, a party
10 may request a rehearing. In order to perfect an appeal to
11 the workers' compensation judge, the appealing party must
12 request a rehearing before the division. The division may
13 grant a rehearing and, if a rehearing is granted, the
14 division's final determination ~~shall~~ may not be issued until
15 after the rehearing. If the division does not grant a
16 rehearing, the division's final determination is issued on
17 the date the rehearing is denied.

18 (2) Appeals from a final determination of the division
19 shall be made to the workers' compensation judge within 30
20 days after the division has issued its final determination.
21 The judge, after a hearing held pursuant to 39-71-2903 and
22 39-71-2904, shall make a final determination concerning the
23 claimant's claim. The judge may overrule the division only
24 on the basis that the division's determination is:

25 (a) in violation of constitutional or statutory

1 provisions;

2 (b) in excess of the statutory authority of the

3 agency;

4 (c) made upon unlawful procedure;

5 (d) affected by other error of law;

6 (e) clearly erroneous in view of the reliable,

7 probative, and substantial evidence on the whole record; or

8 (f) arbitrary or capricious or characterized by abuse

9 of discretion or clearly unwarranted exercise of

10 discretion."

11 NEW SECTION. Section 14. Costs and attorney fees. (1)

12 If an insurer requests that a hearing be held before the

13 division and the claim is determined compensable by the

14 division after the hearing and the insurer does not appeal

15 the division's decision to the workers' compensation judge,

16 reasonable costs and attorney fees, as determined by the

17 division, shall be paid to the claimant's attorney by the

18 insurer.

19 (2) If an insurer appeals a decision of the division

20 to the workers' compensation judge or from the judge to the

21 supreme court and the claim is determined compensable,

22 reasonable costs and attorney fees, as determined by the

23 workers' compensation judge, shall be paid to the claimant's

24 attorney by the insurer for proceedings before the division,

25 the workers' compensation judge, and the supreme court.

1 Section 15. Section 39-72-703, MCA, is amended to

2 read:

3 "39-72-703. No compensation for partial disability. No

4 compensation as provided in 39-72-701 or ~~39-72-702~~ shall be

5 ~~is~~ payable to an employee who is partially disabled from an

6 occupational disease."

7 Section 16. Section 39-72-704, MCA, is amended to

8 read:

9 "39-72-704. Medical and hospital expenses. In addition

10 to the compensation provided by this chapter, the ~~following~~

11 ~~shall be furnished~~ an employee who becomes either totally

12 or partially disabled from an occupational disease is

13 entitled to receive for treatment of the occupational

14 disease, without limitation as to length of time or dollar

15 amount, reasonable medical services, hospitalization,

16 medicines, and other treatment approved by the division.

17 ~~(1) If an employee becomes totally disabled from an~~

18 ~~occupational disease, he is entitled to receive, without~~

19 ~~limitation as to length of time or dollar amount, reasonable~~

20 ~~medical services, hospitalization, medicines, and such other~~

21 ~~treatment as may be approved by the division.~~

22 ~~(2) An employee who suffers from an occupational~~

23 ~~disease as defined in 39-72-102(1) but who is able to~~

24 ~~continue in employment while being treated therefor is~~

25 ~~entitled to receive the medical services, treatments, and~~

1 ~~medicines-reasonably-required-not-exceeding-the-value-of~~
2 ~~\$2,500."~~

3 Section 17. Section 39-72-711, MCA, is amended to
4 read:

5 "39-72-711. Lump-sum and compromise settlements. (1)
6 No final and binding award made upon any claim pursuant to
7 this chapter may be converted into a lump-sum payment, in
8 whole or in part, except as provided in this section or
9 39-72-712.

10 (2) Whenever there are contested issues as to an
11 insurer's liability for a claim under this chapter,
12 including a claim based on ~~39-72-405(4)(3)~~, a claimant and
13 an insurer may enter into a full and final compromise
14 settlement of the claim. However, no such settlements are
15 binding on the parties until approved by the division. After
16 the division approves a full and final compromise
17 settlement, the claim is closed and the insurer's liability
18 for a settled claim is forever released."

19 Section 18. Section 39-71-201, MCA, is amended to
20 read:

21 "39-71-201. Administration fund. (1) A workers'
22 compensation administration fund is established out of which
23 all costs of administering the Workers' Compensation and
24 Occupational Disease Acts and the various occupational
25 safety acts the division must administer are to be paid upon

1 lawful appropriation. The following moneys collected by the
2 division shall be deposited in the state treasury to the
3 credit of the workers' compensation administrative fund and
4 shall be used for the administrative expenses of the
5 division:

6 (a) all fees and fines provided in 39-71-205, ~~and~~
7 ~~39-71-304, and 39-72-205;~~

8 (b) all fees paid for inspection of boilers and
9 issuance of licenses to operating engineers as required by
10 law;

11 (c) all fees paid from an assessment on each plan No.
12 1 employer, plan No. 2 insurer, and plan No. 3, the state
13 insurance fund. The assessments shall be levied against the
14 preceding calendar year's gross annual payroll of the plan
15 No. 1 employers and the gross annual direct premiums
16 collected in Montana on the policies of the plan No. 2
17 insurers, insuring employers covered under the chapter,
18 during the preceding calendar year. However, no assessment
19 of the plan No. 1 employer or plan No. 2 insurer shall be
20 less than \$200. The assessments shall be sufficient to fund
21 the direct costs identified to the three plans and an
22 equitable portion of the indirect costs based on the ratio
23 of the preceding fiscal year's indirect costs distributed to
24 the plans using proper accounting and cost allocation
25 procedures. Plan No. 3 shall be assessed an amount

1 sufficient to fund its direct costs and an equitable portion
2 of the indirect costs as referred to above. Other sources
3 of revenue, including unexpended funds from the preceding
4 fiscal year, shall be used to reduce the costs before
5 levying the assessments.

-End-

6 (2) The administration fund shall be debited with
7 expenses incurred by the division in the general
8 administration of the provisions of this chapter, including
9 the salaries of its members, officers, and employees and the
10 travel expenses of the members, officers, and employees, as
11 provided for in 2-18-501 through 2-18-503, as amended,
12 incurred while on the business of the division either within
13 or without the state.

14 (3) Disbursements from the administration money shall
15 be made after being approved by the division upon claim
16 therefor."

17 Section 19. Repealer. Sections 39-72-205, 39-72-306
18 through 39-72-309, 39-72-501 through 39-72-508, 39-72-603,
19 39-72-604, 39-72-702, 39-72-710, and 39-72-713, MCA, are
20 repealed.

21 Section 20. Codification. The code commissioner shall
22 codify section 6 of this act in Title 39, chapter 72, part
23 5, and section 14 of this act in Title 39, chapter 72, part
24 6, and the provisions of those parts apply, respectively, to
25 section 6 and section 14.