

HOUSE BILL NO. 348

INTRODUCED BY MARKS

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

IN THE HOUSE

JANUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR.
JANUARY 23, 1989	FIRST READING.
FEBRUARY 1, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 2, 1989	PRINTING REPORT.
FEBRUARY 3, 1989	SECOND READING, DO PASS.
FEBRUARY 4, 1989	ENGROSSING REPORT.
FEBRUARY 6, 1989	THIRD READING, PASSED. AYES, 93; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 7, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 4, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 6, 1989	SECOND READING, CONCURRED IN.
MARCH 8, 1989	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE.

MARCH 9, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 348  
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 3 BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 6 LAWS RELATING TO OCCUPATIONAL DISEASE TO CLARIFY THE MEDICAL  
 7 PANEL EXAMINATION AND HEARING PROCESSES; AND AMENDING  
 8 SECTIONS 39-72-601, 39-72-608, 39-72-612, AND 39-72-706,  
 9 MCA."  
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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 39-72-601, MCA, is amended to read:

13 "39-72-601. Medical panel. (1) ~~The Montana medical~~  
 14 ~~association may, at least annually, certify to the division~~  
 15 ~~as nominees 10 or more licensed physicians of the state to~~  
 16 ~~serve on the medical panel. At least three of the~~  
 17 ~~physicians must have had at the time of certification at~~  
 18 ~~least 5 years' practice in the diagnosis, care, and~~  
 19 ~~treatment of pulmonary diseases and the interpretation of~~  
 20 ~~x-ray films. At least three of the physicians must have had~~  
 21 ~~at the time of certification qualifications in the~~  
 22 ~~diagnosis, care, and treatment of nonpulmonary occupational~~  
 23 ~~diseases.~~

24 (2) ~~From the list submitted as provided for in this~~  
 25 ~~section, the division shall appoint five or more physicians~~

1 to serve on the medical panel:

2 (3) ~~If the Montana medical association fails to submit~~  
 3 ~~the list of nominees as provided for in this section, the~~  
 4 ~~division shall appoint as members of the medical panel five~~  
 5 ~~or more licensed physicians in the state. Three of the~~  
 6 ~~panel members must have had at the time of appointment at~~  
 7 ~~least 5 years' practice in the diagnosis, care, and~~  
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 9 ~~x-ray films.~~

10 (1) The division shall develop a list of physicians to  
 11 serve on the occupational disease medical panel. The list  
 12 may include physicians nominated by the board of medical  
 13 examiners. A physician on the panel must be certified by his  
 14 specialty board or be eligible for certification in the  
 15 specialty area appropriate to the claimant's condition in  
 16 relation to this chapter.

17 (4) (2) The panel members shall appoint, as required,  
 18 one member of the panel to be the chairman."

19 **Section 2.** Section 39-72-608, MCA, is amended to read:

20 "39-72-608. Payment of medical examination, report,  
 21 and autopsy expenses. The expense of the first medical  
 22 examination and panel report as provided in 39-72-602 shall  
 23 must be borne by the insurer. The expense of a reexamination  
 24 and panel report shall must be borne by the dissatisfied  
 25 party requesting the reexamination. The expense of the

1 periodic medical examinations and reports, as provided in  
 2 39-72-607, ~~shall~~ must be borne by the party requesting the  
 3 periodic medical examination. The expense of the autopsy, as  
 4 provided for in 39-72-606, ~~shall~~ must be borne by the party  
 5 requesting the autopsy."

6 **Section 3.** Section 39-72-612, MCA, is amended to read:

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

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

1 division only on the basis that the division's determination  
 2 is:

3 (a) in violation of constitutional or statutory  
 4 provisions;

5 (b) in excess of the statutory authority of the  
 6 agency;

7 (c) made upon unlawful procedure;

8 (d) affected by other error of law;

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

11 (f) arbitrary or capricious or characterized by abuse  
 12 of discretion or clearly unwarranted exercise of  
 13 discretion."

14 **Section 4.** Section 39-72-706, MCA, is amended to read:

15 "39-72-706. **Aggravation.** (1) ~~Where~~ If an occupational  
 16 disease is aggravated by any other disease or infirmity not  
 17 itself compensable or ~~where~~ if disability or death from any  
 18 other cause not itself compensable is aggravated, prolonged,  
 19 accelerated, or in any wise way contributed to by an  
 20 occupational disease, the compensation and medical benefits  
 21 payable under this chapter ~~shall~~ must be reduced and limited  
 22 to such proportion only of the compensation and medical  
 23 benefits that would be payable if the occupational disease  
 24 were the sole cause of the disability or death as such  
 25 occupational disease as a causative factor bears to all the

1 causes of such disability or death.

2 (2) ~~Where~~ If compensation is reduced a proportionate  
3 amount as in subsection (1) ~~above~~ and the worker receives  
4 disability social security benefits, the offset entitlement  
5 granted to the insurer ~~shall~~ must be reduced in the same  
6 proportionate amount as the compensation as long as the  
7 worker continues to receive disability social security  
8 benefits."

9 NEW SECTION. **Section 5.** Extension of authority. Any  
10 existing authority to make rules on the subject of the  
11 provisions of [this act] is extended to the provisions of  
12 [this act].

-End-

APPROVED BY COMMITTEE  
ON LABOR & EMPLOYMENT  
RELATIONS

HOUSE BILL NO. 348

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BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO OCCUPATIONAL DISEASE TO CLARIFY THE MEDICAL PANEL EXAMINATION AND HEARING PROCESSES; AND AMENDING SECTIONS 39-72-601, 39-72-608, 39-72-612, AND 39-72-706, MCA; AND PROVIDING AN EFFECTIVE DATE AND SOME RETROACTIVE APPLICATION."

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

**Section 1.** Section 39-72-601, MCA, is amended to read:

"39-72-601. Medical panel. ~~{1}~~--The--Montana-medical-association-may, at least annually, certify to the--division as--nominees--10-or-more-licensed-physicians-of-the-state-to serve--on--the--medical--panel.---At--least--three--of---the physicians--must--have--had--at-the-time-of-certification-at least--5--years+--practice--in--the--diagnosis,--care,--and treatment--of--pulmonary--diseases-and-the-interpretation-of x-ray-films.---At-least-three-of-the-physicians-must-have-had at--the--time--of--certification--qualifications---in---the diagnosis,--care,--and-treatment-of-nonpulmonary-occupational diseases.

~~{2}~~--From-the-list-submitted-as-provided--for--in--this

~~section,--the-division-shall-appoint-five-or-more-physicians to-serve-on-the-medical-panel.~~

~~{3}--if-the-Montana-medical-association-fails-to-submit the-list-of-nominees-as-provided-for-in--this--section,--the division--shall-appoint-as-members-of-the-medical-panel-five or-more-licensed-physicians-in--the--state.---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-and-the-interpretation-of x-ray-films.~~

(1) The division shall develop a list of physicians to serve on the occupational disease medical panel. The list may include physicians nominated by the board of medical examiners. A physician on the panel must be certified by his specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

{4}{2} THE DIVISION SHALL SELECT A PANEL PHYSICIAN TO EXAMINE A CLAIMANT AS REQUIRED. The panel-members DIVISION shall appoint, as required, one member of the panel to be the chairman."

**Section 2.** Section 39-72-608, MCA, is amended to read:

"39-72-608. Payment of medical examination, report, and autopsy expenses. The expense of the first medical examination and panel report as provided in 39-72-602 shall

1 must be borne by the insurer. The expense of a reexamination  
 2 and panel report shall must be borne by the dissatisfied  
 3 party requesting the reexamination. The expense of the  
 4 periodic medical examinations and reports, as provided in  
 5 39-72-607, shall must be borne by the party requesting the  
 6 periodic medical examination. The expense of the autopsy, as  
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 12 has issued its order of determination as to whether the  
 13 claimant is entitled to benefits under this chapter, a party  
 14 may request a rehearing hearing. In order to perfect an  
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17 **Section 4.** Section 39-72-706, MCA, is amended to read:

18 "39-72-706. **Aggravation.** (1) Where If an occupational  
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 20 itself compensable or where if disability or death from any  
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12 NEW SECTION. Section 5. Extension of authority. Any  
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14 provisions of [this act] is extended to the provisions of  
15 [this act].

16 NEW SECTION. SECTION 6. EFFECTIVE DATE -- RETROACTIVE  
17 APPLICABILITY. (1) [THIS ACT] IS EFFECTIVE JULY 1, 1989.

18 (2) [THIS ACT] APPLIES RETROACTIVELY, WITHIN THE  
19 MEANING OF 1-2-109, TO ALL OCCUPATIONAL DISEASE CLAIMS  
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(2) From the list submitted as provided for in this

section, the division shall appoint five or more physicians to serve on the medical panel.

(3) If the Montana medical association fails to submit the list of nominees as provided for in this section, the division shall appoint as members of the medical panel five or more licensed physicians in the state. 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 and the interpretation of x-ray films.

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benefits that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death.

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