

1 SENATE BILL NO. 164

2 INTRODUCED BY W. MCNUTT

3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROVISIONS OF THE UNEMPLOYMENT
6 INSURANCE LAW, THE WORKERS' COMPENSATION ACT, THE OCCUPATIONAL DISEASE ACT, AND
7 SILICOSIS BENEFITS LAW; CLARIFYING THE BURDEN OF PROOF IN WORKERS' COMPENSATION
8 INSURANCE COVERAGE DISPUTES WITH THE DEPARTMENT OF LABOR AND INDUSTRY; RESTORING
9 THE EXEMPTION FROM ATTACHMENT OF UNEMPLOYMENT INSURANCE, WORKERS' COMPENSATION,
10 OCCUPATIONAL DISEASE, AND SILICOSIS BENEFITS; REQUIRING WORKERS' COMPENSATION CLAIMS
11 TO BE ADJUSTED BY AN IN-STATE ADJUSTER; CLARIFYING WORKERS' COMPENSATION INSURANCE
12 COVERAGE REQUIREMENTS FOR TRUCK DRIVERS; REVISING THE WORKERS' COMPENSATION
13 ASSESSMENT METHODOLOGY; RESTORING DISTRICT COURT JURISDICTION IN CASES INVOLVING
14 THE FAILURE OF AN EMPLOYER TO PRODUCE BOOKS AND RECORDS; REQUIRING INSURERS TO FILE
15 REPORTS OF MISCELLANEOUS CLAIM EXPENSES; SPECIFYING THE APPEAL PROCEDURE FOR CASES
16 APPEALED FROM THE INDEPENDENT CONTRACTOR CENTRAL UNIT AND PROVIDING AN APPEAL TIME;
17 CLARIFYING THAT THE WORKERS' COMPENSATION ASSESSMENT IS COMPUTED WITHOUT
18 CONSIDERATION OF A DEDUCTIBLE; CLARIFYING THAT AN APPEAL OF A DEPARTMENT ORDER TO
19 PAY INTERIM BENEFITS IS A NEW PROCEEDING IN THE WORKERS' COMPENSATION COURT;
20 IDENTIFYING THE CURRENT STANDARD FOR MEASURING OCCUPATIONAL DEAFNESS; CLARIFYING
21 THE TIME FOR CERTIFYING A CURRENT EMPLOYEE AS BEING VOCATIONALLY DISABLED; REVISING
22 THE SUBSEQUENT INJURY FUND ASSESSMENT METHODOLOGY; ALLOWING ADDITIONAL
23 ORGANIZATIONS TO BE DESIGNATED AS AUTHORIZED TO REPORT NOTICE OF COVERAGE; REQUIRING
24 THE STATE FUND TO PROVIDE NOTICE OF CANCELLATION TO THE DEPARTMENT 20 DAYS PRIOR TO
25 CANCELLATION; PROVIDING AN ADJUSTMENT IN SILICOSIS BENEFITS THAT IS CONSISTENT WITH
26 THE APPROPRIATION LEVEL; AMENDING SECTIONS 30-9-129, 39-71-107, 39-71-117, 39-71-201,
27 39-71-304, 39-71-306, 39-71-415, 39-71-435, 39-71-610, 39-71-805, 39-71-906, 39-71-915,
28 39-71-2204, 39-71-2205, 39-71-2337, 39-71-2339, 39-72-606, 39-72-608, 39-73-103, 39-73-107,
29 AND 39-73-109, MCA; REPEALING SECTION 39-72-605, MCA; AND PROVIDING AN EFFECTIVE DATE
30 AND A RETROACTIVE APPLICABILITY DATE."

1

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

3

4 NEW SECTION. **Section 1. Burden of proof -- insurance coverage.** (1) In a proceeding brought by
5 the department or an employer to resolve the issue of the existence of workers' compensation insurance
6 coverage for that employer, the initial burden of proof is on the department to demonstrate that:

7 (a) the employer is required to have workers' compensation insurance coverage; and

8 (b) either:

9 (i) that the database of the recognized agent providing proof of coverage indicates that no
10 coverage is reported by an insurer to cover the employer's Montana operations; or11 (ii) that the department confirms with the insurer that reported coverage for the employer that the
12 policy previously covering the employer's Montana operations has been canceled by that insurer.13 (2) The burden then shifts to the employer to demonstrate that the employer is not required either
14 to have workers' compensation insurance coverage or to produce a valid workers' compensation insurance
15 policy covering the employer's Montana operations during the period of time in question. A valid workers'
16 compensation insurance policy is one acknowledged by the insurer to be valid or adjudged to be valid by
17 a court of competent jurisdiction.

18

19 **Section 2.** Section 30-9-129, MCA, is amended to read:20 **"30-9-129. (Effective July 1, 2001) Scope.** (1) Except as otherwise provided in subsections (3)
21 and (4), this chapter applies to:22 (a) any transaction, regardless of its form, that creates a security interest in personal property or
23 fixtures by contract;

24 (b) an agricultural lien;

25 (c) a sale of an account, chattel paper, payment intangible, or promissory note;

26 (d) a consignment;

27 (e) a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5), to the
28 extent provided in 30-9-130; and

29 (f) a security interest arising under 30-4-208 or 30-5-118.

30 (2) The application of this chapter to a security interest in a secured obligation is not affected by

1 the fact that the obligation is itself secured by a transaction or interest to which this chapter does not
2 apply.

3 (3) This chapter does not apply to the extent that:

4 (a) a statute, regulation, or treaty of the United States preempts this chapter;

5 (b) another statute of this state expressly governs the creation, perfection, priority, or enforcement
6 of a security interest created by this state or a governmental unit of this state;

7 (c) a statute of another state, a foreign country, or a governmental unit of another state or a
8 foreign country, other than a statute generally applicable to security interests, expressly governs creation,
9 perfection, priority, or enforcement of a security interest created by the state, country, or governmental
10 unit; or

11 (d) the rights of a transferee beneficiary or nominated person under a letter of credit are
12 independent and superior under 30-5-134.

13 (4) This chapter does not apply to:

14 (a) a landlord's lien, other than an agricultural lien;

15 (b) a lien, other than an agricultural lien, given by statute or other rule of law for services or
16 materials, but 30-9-353 applies with respect to priority of the lien;

17 (c) an assignment of a claim for wages, salary, or other compensation of an employee;

18 (d) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale
19 of the business out of which they arose;

20 (e) an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for
21 the purpose of collection only;

22 (f) an assignment of a right to payment under a contract to an assignee that is also obliged to
23 perform under the contract;

24 (g) an assignment of a single account, payment intangible, or promissory note to an assignee in
25 full or partial satisfaction of a preexisting indebtedness;

26 (h) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than
27 an assignment by or to a health care provider of a health-care-insurance receivable and any subsequent
28 assignment of the right to payment, but 30-9-335 and 30-9-342 apply with respect to proceeds and
29 priorities in proceeds;

30 (i) an assignment of a right represented by a judgment, other than a judgment taken on a right to

1 payment that was collateral;

2 (j) a right of recoupment or setoff, but:

3 (i) 30-9-360 applies with respect to the effectiveness of rights of recoupment or setoff against
4 deposit accounts; and

5 (ii) 30-9-444 applies with respect to defenses or claims of an account debtor;

6 (k) the creation or transfer of an interest in or lien on real property, including a lease or rents
7 ~~thereunder~~ under the interest in real property, except to the extent that provision is made for:

8 (i) liens on real property in 30-9-213 and 30-9-328;

9 (ii) fixtures in 30-9-354;

10 (iii) fixture filings in 30-9-521, 30-9-522, 30-9-532, 30-9-536, and 30-9-539; and

11 (iv) security agreements covering personal and real property in 30-9-604;

12 (l) an assignment of a claim arising in tort, other than a commercial tort claim, but 30-9-335 and
13 30-9-342 apply with respect to proceeds and priorities in proceeds; ~~or~~

14 (m) an assignment of a deposit account in a consumer transaction, except that 30-9-335 and
15 30-9-342 apply with respect to proceeds and priorities in proceeds; or

16 (n) an assignment of payments made to or on behalf of claimants pursuant to Title 39, chapter
17 51, 71, 72, or 73."

18

19 **Section 3.** Section 39-71-107, MCA, is amended to read:

20 **"39-71-107. Insurers to act promptly on claims -- in-state adjusters.** (1) Pursuant to the public
21 policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service
22 to injured workers, to employers, and to providers who are the customers of the workers' compensation
23 system.

24 (2) All workers' compensation and occupational disease claims filed pursuant to the Workers'
25 Compensation Act and the Occupational Disease Act of Montana must be adjusted by a person in
26 Montana. For a claim to be considered as adjusted by a person in Montana, the person adjusting the claim
27 is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the
28 claim, have authority to settle the claim, maintain an office located in Montana, and adjust Montana claims
29 from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in
30 Montana.

1 (3) An insurer shall maintain the documents related to each claim filed with the insurer under the
2 Workers' Compensation Act and the Occupational Disease Act of Montana at the Montana office of the
3 person adjusting the claim in Montana until the claim is settled. The documents may be either original
4 documents or duplicates of the original documents and must be maintained in a manner that allows the
5 documents to be retrieved from that office and copied at the request of the claimant or the department.
6 Settled claim files stored outside of the adjuster's office must be made available within 48 hours of a
7 request for the file. Electronic or optically imaged documents are permitted.

8 ~~(2)~~(4) An insurer shall provide to the claimant:

9 (a) a written statement of the reasons that a claim is being denied at the time of denial;

10 (b) whenever benefits requested by a claimant are denied, a written explanation of how the
11 claimant may appeal an insurer's decision; and

12 (c) a written explanation of the amount of wage loss benefits being paid to the claimant, along
13 with an explanation of the calculation used to compute those benefits. The explanation must be sent
14 within 7 days of the initial payment of the benefit.

15 ~~(3)~~(5) An insurer shall:

16 (a) begin making payments that are due on a claim within 14 days of acceptance of the claim,
17 unless the insurer promptly notifies the claimant that the insurer needs additional information in order to
18 begin paying benefits and specifies the information needed; and

19 (b) pay settlements within 30 days of the date the department issues an order approving the
20 settlement.

21 ~~(4)~~(6) An insurer may not make payments pursuant to 39-71-608 or any other reservation of
22 rights for more than 90 days without:

23 (a) written consent of the claimant; or

24 (b) approval of the department.

25 ~~(5)~~(7) The department may adopt rules to implement this section.

26 (8) For purposes of this section, "settled claim" means a department-approved or court-ordered
27 compromise of benefits between a claimant and an insurer or a claim that was paid in full. The term does
28 not include a claim in which there has been only a lump-sum advance of benefits."

29

30 **Section 4.** Section 39-71-117, MCA, is amended to read:

1 **"39-71-117. Employer defined.** (1) "Employer" means:

2 (a) the state and each county, city and county, city school district, and irrigation district; all other
3 districts established by law; all public corporations and quasi-public corporations and public agencies; each
4 person; each prime contractor; each firm, voluntary association, limited liability company, limited liability
5 partnership, and private corporation, including any public service corporation and including an independent
6 contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral
7 or written; and the legal representative of any deceased employer or the receiver or trustee of the
8 deceased employer;

9 (b) any association, corporation, limited liability company, limited liability partnership, or
10 organization that seeks permission and meets the requirements set by the department by rule for a group
11 of individual employers to operate as self-insured under plan No. 1 of this chapter; and

12 (c) any nonprofit association, limited liability company, limited liability partnership, or corporation
13 or other entity funded in whole or in part by federal, state, or local government funds that places
14 community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or
15 associations or federal, state, or local government entities.

16 (2) A temporary service contractor is the employer of a temporary worker for premium and loss
17 experience purposes.

18 (3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses
19 the services of a worker furnished by another person, association, contractor, firm, limited liability
20 company, limited liability partnership, or corporation, other than a temporary service contractor, is
21 presumed to be the employer for workers' compensation premium and loss experience purposes for work
22 performed by the worker. The presumption may be rebutted by substantial credible evidence of the
23 following:

24 (a) the person, association, contractor, firm, limited liability company, limited liability partnership,
25 or corporation, other than a temporary service contractor, furnishing the services of a worker to another
26 retains control over all aspects of the work performed by the worker, both at the inception of employment
27 and during all phases of the work; and

28 (b) the person, association, contractor, firm, limited liability company, limited liability partnership,
29 or corporation, other than a temporary service contractor, furnishing the services of a worker to another
30 has obtained workers' compensation insurance for the worker in Montana both at the inception of

1 employment and during all phases of the work performed.

2 (4) An interstate or intrastate common or contract motor carrier ~~doing business that maintains a~~
3 place of business in this state ~~who and~~ uses ~~drivers~~ an employee or worker in this state is considered the
4 employer of that employee, is liable for workers' compensation premiums, and is subject to loss experience
5 rating in this state unless:

6 (a) the ~~driver~~ worker in this state is certified as an independent contractor as provided in
7 39-71-401(3); or

8 (b) the person, association, contractor, firm, limited liability company, limited liability partnership,
9 or corporation furnishing ~~drivers~~ employees or workers in this state to a motor carrier has obtained
10 Montana workers' compensation insurance on the ~~drivers~~ employees or workers in Montana both at the
11 inception of employment and during all phases of the work performed."

12

13 **Section 5.** Section 39-71-201, MCA, is amended to read:

14 **"39-71-201. Administration fund.** (1) A workers' compensation administration fund is established
15 out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the
16 statutory occupational safety acts the department is required to administer, with the exception of the
17 subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid
18 upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of
19 the workers' compensation ~~administrative~~ administration fund:

20 (a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308,
21 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

22 (b) all fees paid by an assessment ~~on each plan No. 1 employer, plan No. 2 insurer, and plan No.~~
23 ~~3, the state fund of 3% of paid losses, PLUS administrative fines, and interest provided by this section. The~~
24 ~~assessments must be 3% of the following~~

25 (2) For the purposes of this section, paid losses include the following benefits paid during the
26 preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational
27 Disease Act of Montana without regard to the application of any deductible whether the employer or the
28 insurer pays the losses:

29 ~~(i)~~(a) total compensation benefits paid; and

30 ~~(ii)~~(b) except for medical benefits in excess of \$200,000 ~~per~~ for each occurrence that are exempt

1 from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including
 2 hospital treatment and prescription drugs.

3 ~~(2)~~(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and
 4 plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information
 5 required by the department a report of paid losses pursuant to subsection ~~(1)(b)~~ (2).

6 ~~(3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than \$500.~~
 7 ~~If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No.~~
 8 ~~2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2~~
 9 ~~insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1 employers~~
 10 ~~and plan No. 2 insurers.~~

11 ~~(4) Payment of the assessment required by this section must be submitted by the employer or~~
 12 ~~insurer under plan No. 1, plan No. 2, or plan No. 3 in:~~

13 ~~———(a) one installment made on or before July 1; or~~

14 ~~———(b) two equal installments made on or before July 1 and December 31 of each year. If an employer~~
 15 ~~or insurer fails to pay the assessment required under this section, the department may impose a fine of~~
 16 ~~\$100 plus interest on the delinquent amount at the annual interest rate of 12%.~~

17 ~~(5) (a) Beginning July 1, 2000, each plan No. 2 insurer providing workers' compensation insurance~~
 18 ~~and plan No. 3, the state fund, shall collect from the insurer's policyholders an amount equal to the~~
 19 ~~insurer's assessment through a surcharge based on premium. When collected, assessments may not~~
 20 ~~constitute an element of loss for the purpose of establishing rates for workers' compensation insurance~~
 21 ~~but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.~~

22 ~~———(b) The total of this assessment must be stated as a separate cost on an insured employer's policy~~
 23 ~~or on a separate document submitted to the insured employer and must be identified as "workers'~~
 24 ~~compensation regulatory assessment surcharge". Each assessment surcharge must be shown as a~~
 25 ~~percentage of the total workers' compensation policyholder premium.~~

26 ~~———(c) The portion of the plan No. 2 assessment identified as a premium surcharge for an individual~~
 27 ~~plan No. 2 insured employer must be calculated as a percentage to be applied to premium. The percentage~~
 28 ~~applied must be determined by the amount of the plan No. 2 assessment, as determined in subsection~~
 29 ~~(1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 2 insured~~
 30 ~~employers during the preceding calendar year.~~

~~1 (d) The portion of the plan No. 3 assessment identified as a premium surcharge for an individual
2 plan No. 3 insured employer must be calculated as a percentage to be applied to premium. The percentage
3 applied must be determined by the amount of the plan No. 3 assessment, as determined in subsection
4 (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 3 insured
5 employers during the preceding fiscal year.~~

~~6 (e) On or before March 31, 2000, and each March 31 thereafter, the department, in consultation
7 with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and
8 plan No. 3, the state fund, of the insurer assessment identified as the premium surcharge percentage to
9 be effective for policies written or renewed annually on and after July 1 of that year.~~

~~10 (f) The assessment provided for in subsection (1)(b), which will be identified as a premium
11 surcharge, must be collected at the same time and in the same manner that the premium for the coverage
12 is collected. This premium surcharge must be excluded from the definition of premiums for all purposes,
13 including computation of insurance producers' commissions or premium taxes, except that an insurer may
14 cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be
15 in accordance with the procedures applicable to the nonpayment of premium.~~

16 (4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or
17 compensation plan No. 3, the state fund, shall pay a proportionate share of all costs of administering and
18 regulating the Workers' Compensation Act and the Occupational Disease Act of Montana and the statutory
19 occupational safety acts that the department is required to administer, with the exception of the
20 subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund. In addition,
21 compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid
22 losses for claims arising before July 1, 1990.

23 (5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund
24 administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding
25 calendar year by or on behalf of the plan No. 1 employer or \$500, whichever is greater. Any entity, other
26 than the department, that assumes the obligations of an employer enrolled under compensation plan No.
27 1 is considered to be the employer for the purposes of this section.

28 (b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund
29 administrative and regulatory costs. The assessment is equal to 3% of the paid losses paid in the preceding
30 calendar year by or on behalf of the employer for claims arising out of the time when the employer was

1 enrolled under compensation plan No. 1.

2 (c) Payment of the assessment provided for by this subsection (5) must be paid by the employer
3 in:

4 (i) one installment due on July 1; or

5 (ii) two equal installments due on July 1 and December 31 of each year.

6 (d) If an employer fails to timely pay to the department the assessment under this section, the
7 department may impose on the employer an administrative fine of \$500 plus interest on the delinquent
8 amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the
9 workers' compensation administration fund.

10 (6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative
11 and regulatory costs attributable to claims arising before July 1, 1990. The assessment is equal to 3%
12 of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required
13 by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for
14 administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

15 (b) Payment of the assessment must be paid in:

16 (i) one installment due on July 1; or

17 (ii) two equal installments due on July 1 and December 31 of each year.

18 (c) If the state fund fails to timely pay to the department the assessment under this section, the
19 department may impose on the state fund an administrative fine of \$500 plus interest on the delinquent
20 amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the
21 workers' compensation administration fund.

22 (7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall
23 pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be
24 collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures.
25 The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate
26 document submitted to the insured employer and must be identified as "workers' compensation regulatory
27 assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all
28 purposes, including computation of insurance producers' commissions or premium taxes. However, an
29 insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When
30 collected, assessments may not constitute an element of loss for the purpose of establishing rates for

1 workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost
2 imposed upon insured employers.

3 (b) The amount to be funded by the premium surcharge is equal to 3% of the paid losses paid in
4 the preceding calendar year by or on behalf of all plan No. 2 insurers and 3% of paid losses for claims
5 arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided
6 by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers
7 enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium
8 surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be
9 calculated annually by the department by not later than April 30. The resulting rate, expressed as a
10 percentage, is levied against the premium paid by each employer enrolled under compensation plan No.
11 2 or plan No. 3 in the next fiscal year.

12 (c) On or before April 30, 2001, and on each succeeding April 30, the department, in consultation
13 with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and
14 plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or
15 renewed annually on and after July 1 of that year.

16 (d) The premium surcharge must be paid whenever the employer pays a premium to the insurer.
17 Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer
18 shall pay to the department all money collected as a premium surcharge within 20 days of the end of the
19 calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the
20 premium surcharge collected under this section, the department may impose on the insurer an
21 administrative fine of \$500 plus interest on the delinquent amount at the annual interest rate of 12%.
22 Administrative fines and interest must be deposited in the workers' compensation administration fund.

23 (e) If an employer fails to remit to an insurer the total amount due for the premium and premium
24 surcharge, the amount received by the insurer must be applied to the premium surcharge first and the
25 remaining amount applied to the premium due.

26 (f) The amount actually collected as a premium surcharge in a given year must be compared to
27 the 3% of paid losses paid in the preceding year. Any amount collected in excess of the 3% must be
28 deducted from the amount to be collected as a premium surcharge in the following year. The amount
29 collected that is less than the 3% must be added to the amount to be collected as a premium surcharge
30 in the following year.

1 (8) On or before April 30, 2001, and on each succeeding April 30, upon a determination by the
 2 department, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year
 3 but that will not collect any premium for coverage in the following fiscal year shall pay an assessment
 4 equal to 3% of paid losses paid in the preceding calendar year, subject to a minimum assessment of \$500,
 5 that is due on July 1.

6 (9) An employer that makes a first-time application for permission to enroll under compensation
 7 plan No. 1 shall pay an assessment of \$500 within 15 days of being granted permission by the department
 8 to enroll under compensation plan No. 1.

9 (10) The department shall deposit all funds received pursuant to this section in the state treasury,
 10 as provided in this section.

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

16 ~~(7)~~(12) Disbursements from the administration money must be made after being approved by the
 17 department upon claim for disbursement.

18 (13) The department may assess and collect the workers' compensation regulatory assessment
 19 surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the
 20 coverage requirements of the Workers' Compensation Act and the Occupational Disease Act of Montana.
 21 Any amounts collected by the department pursuant to this subsection must be deposited in the workers'
 22 compensation administration fund."

23

24 **Section 6.** Section 39-71-304, MCA, is amended to read:

25 **"39-71-304. Books, records, and payrolls to be open to inspection -- penalty for refusal --**
 26 **subpoenas.** (1) The books, records, and payrolls of an employer pertinent to the administration of this
 27 chapter must always be open to inspection by the department or any authorized employee of the
 28 department for the purpose of ascertaining the correctness of the payroll, the number of workers
 29 employed, and other information that may be necessary for the department and its management under this
 30 chapter. Refusal on the part of an employer to submit the books, records, and payrolls for inspection will

1 subject the offending employer to a penalty not exceeding \$500 for each offense, to be collected through
2 a ~~workers' compensation court~~ civil action in the name of the state and paid into the state treasury.

3 (2) In addition to the remedy provided in subsection (1), the department may issue subpoenas and
4 compel testimony for the production of evidence, including books, records, papers, documents, and other
5 objects ~~as~~ that may be necessary and proper in regard to any investigation or proceeding under this
6 chapter. In the case of disobedience of a subpoena issued and served or the refusal of a witness to testify
7 as to any matter for which the witness may be interrogated in a proceeding before the department, the
8 department may apply to ~~the workers' compensation~~ a district court for an order to compel compliance
9 with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court."

10

11 **Section 7.** Section 39-71-306, MCA, is amended to read:

12 **"39-71-306. Insurers to file summary reports of benefits paid for injuries, miscellaneous expenses,**
13 **and statements of medical expenditures. (1) ~~Every~~ Each insurer shall, on or before the 15th day after each**
14 **state government fiscal quarter ends, file with the department:**

15 ~~(1)(a)~~ (a) summary reports of benefits for all compensation payments made during the previous state
16 fiscal quarter to injured workers or their beneficiaries or dependents; ~~and~~

17 ~~(2)(b)~~ (b) statements showing the amounts expended during the previous state fiscal quarter for all
18 medical services for injured workers; and

19 (c) statements showing all miscellaneous amounts, other than compensation and medical
20 expenditures, paid during the previous state fiscal quarter to or on behalf of injured workers or their
21 beneficiaries or dependents and not otherwise reported as an expenditure for the workers' compensation
22 administration assessment provided for in 39-71-201.

23 (2) An insurer that fails to file the summary report after a 5-day grace period after the date on
24 which the report is due may be assessed a penalty in an amount of not less than \$250 or more than
25 \$1,000 to be deposited in the workers' compensation administration fund."

26

27 **Section 8.** Section 39-71-415, MCA, is amended to read:

28 **"39-71-415. Procedure for resolving disputes regarding independent contractor status. (1) If an**
29 **individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or**
30 **an employee, as defined in this chapter, any party may, after mediation pursuant to department rules,**

1 petition the workers' compensation court for resolution of the dispute.

2 (2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of
3 whether the claimant is an independent contractor or employee, as defined in this chapter, and after
4 mediating pursuant to department rule, either party may petition the workers' compensation judge for
5 resolution of the dispute in accordance with 39-71-2905.

6 (3) A dispute between an employer and the department involving the issue of whether a worker
7 is an independent contractor or an employee, but not involving workers' compensation benefits, must be
8 brought before the independent contractor central unit of the department for resolution. A decision of the
9 independent contractor central unit is final unless a party dissatisfied with the decision appeals by filing
10 a petition for mediation within 10 days of service of the decision. A party may petition the workers'
11 compensation court for resolution of the dispute within 45 days of the mailing of the mediator's report.
12 An appeal from the independent contractor central unit to the workers' compensation court brought
13 pursuant to this part is a new proceeding.

14 ~~(3)~~(4) Notwithstanding the provisions of subsection (1), an individual may apply to the department
15 for an exemption from the Workers' Compensation Act in accordance with 39-71-401."

16

17 **Section 9.** Section 39-71-435, MCA, is amended to read:

18 **"39-71-435. Workers' compensation and employers' liability insurance -- optional deductibles.** (1)

19 An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the
20 policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the
21 policy consistent with the standards contained in subsection (3).

22 (2) The advisory organization designated under 33-16-1023 may develop and file a deductible plan
23 or plans on behalf of its members consistent with the standards contained in subsection (3).

24 (3) The commissioner of insurance shall approve a deductible plan that is in accordance with the
25 following standards:

26 (a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the
27 deductible.

28 (b) Premium reductions reflect the type and level of the deductible, consistent with accepted
29 actuarial standards.

30 (c) Premium reductions for deductibles are determined before application of any experience

1 modification, premium surcharge, or premium discount.

2 (d) Recognition is given to policyholder characteristics, including but not limited to size, financial
3 capabilities, nature of activities, and number of employees.

4 (e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for
5 compensable claims.

6 (f) The insurer pays all of the deductible amount applicable to a compensable claim to the person
7 or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable
8 deductible amount.

9 (g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the
10 policy as nonpayment of premium.

11 (h) Losses subject to the deductible must be reported and recorded as losses for purposes of
12 calculating rates for a policyholder on the same basis as losses under policies providing first dollar
13 coverage.

14 (4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the designated
15 advisory organization or adopt an optional deductible plan that meets the requirements of this section.

16 (5) For purposes of 39-71-201 and 39-71-915, liability for assessments must be ascertained
17 ~~based on premiums collected, in the case of policies written under plan No. 2, or on the assessment levied,~~
18 ~~in the case of policies written under plan No. 3, for which the policyholder would have been obligated~~
19 ~~without the deductible~~ without regard to application of any deductible, whether the employer or the insurer
20 pays the losses. For all other taxes and assessments based on premium, the amount of premium or
21 assessment must be determined after application of the deductible."
22

23 **Section 10.** Section 39-71-610, MCA, is amended to read:

24 **"39-71-610. Termination of benefits by insurer -- department order to pay disputed benefits prior**
25 **to hearing or mediation -- limitation on order -- right of reimbursement.** If an insurer terminates biweekly
26 compensation benefits and the termination of compensation benefits is disputed by the claimant, the
27 department may, upon written request, order an insurer to pay additional biweekly compensation benefits
28 prior to a hearing before the workers' compensation court or prior to mediation, but ~~in no event may~~ the
29 biweekly compensation benefits may not be ordered to be paid under this section for a period exceeding
30 49 days or for any period subsequent to the date of the hearing or mediation. A party may appeal this

1 order to the workers' compensation court. A proceeding in the workers' compensation court brought
 2 pursuant to this section is a new proceeding and is not subject to mediation. If after a hearing before the
 3 workers' compensation court it is held that the insurer was not liable for the compensation payments
 4 ordered by the department, the insurer has the right to be reimbursed for the payments by the claimant."
 5

6 **Section 11.** Section 39-71-805, MCA, is amended to read:

7 **"39-71-805. Determining percent of hearing loss.** (1) The percent of hearing loss, for purposes
 8 of the determination of compensation claims for occupational deafness, ~~shall~~ must be calculated as the
 9 average in decibels of the thresholds of hearing for the frequencies of 500, 1,000, and 2,000 cycles ~~per~~
 10 a second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities
 11 in this field, ~~shall~~ must be used for measuring hearing loss. If the losses of hearing average 25 decibels
 12 or less in the three frequencies, as measured under ~~ISO Standard 1964~~ American national standards
 13 institute ANSI/S3.6, 1996, ~~such the~~ losses of hearing ~~shall~~ may not then constitute any compensable
 14 hearing disability. If the losses of hearing average 92 decibels or more in the three frequencies, as
 15 measured under ~~ISO Standard 1964~~ ANSI/S3.6, 1996, then ~~the same shall~~ those losses constitute ~~and~~
 16 ~~be~~ total or 100% compensable hearing loss.

17 (2) In measuring hearing impairment, the lowest measured losses in each of the three frequencies
 18 ~~shall~~ must be added together and divided by three to determine the average decibel loss. For every decibel
 19 of loss exceeding 25 decibels, an allowance of 1 1/2% ~~shall~~ must be made, up to the maximum of 100%,
 20 which is reached at 92 decibels.

21 (3) In determining the binaural percentage of loss, the percentage of impairment in the better ear
 22 ~~shall~~ must be multiplied by five. The resulting figure ~~shall~~ must be added to the percentage of impairment
 23 in the poorer ear and the sum of the two divided by six. The final percentage ~~shall~~ must be representative
 24 of the binaural hearing impairment.

25 (4) Before determining the percentage of hearing impairment, in order to allow for the average
 26 amount of hearing loss from nonoccupational causes found in the population at any given age, ~~there shall~~
 27 ~~be deducted from the total average decibel loss~~ one-half decibel for each year of the employee's age over
 28 40 at the time of last exposure to industrial noise must be deducted from the total average decibel loss.

29 (5) ~~No consideration shall~~ Consideration may not be given to the question of whether or not the
 30 ability of an employee to understand speech is improved by the use of a hearing aid."

1

2 **Section 12.** Section 39-71-906, MCA, is amended to read:

3 **"39-71-906. Employer hiring or retaining certified person with a disability to file information with**
 4 **department -- effect of failure to file.** Upon commencement of employment or retention in employment of
 5 a certified person with a disability, the employer shall submit to the department, on forms furnished by the
 6 department, all pertinent information requested by the department. The department shall acknowledge
 7 receipt of the information. Failure to file the required information with the department within 60 days after
 8 the first day of the person's employment or ~~retention in employment~~ within 60 days of a current
 9 employee's certification as an individual with a disability precludes the employer from the protection and
 10 benefits of this part unless the information is filed before an injury for which benefits are payable under
 11 this part."

12

13 **Section 13.** Section 39-71-915, MCA, is amended to read:

14 **"39-71-915. Assessment of ~~insurers~~ insurer -- employers -- definition -- collection.** (1) As used
 15 in this section, "paid losses" means the following benefits paid during the preceding calendar year for
 16 injuries covered by the Montana Workers' Compensation Act and the Occupational Disease Act of Montana
 17 without regard to the application of any deductible, regardless of whether the employer or the insurer pays
 18 the losses:

19 (a) total compensation benefits paid; and

20 (b) except for medical benefits in excess of \$200,000 ~~per~~ for each occurrence that are exempt
 21 from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including
 22 hospital treatment and prescription drugs.

23 (2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured
 24 by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and
 25 each employer insured by plan No. 3, the state fund. The assessment amount is the total amount of paid
 26 losses reimbursed from the fund in the preceding calendar year and the expenses of administration less
 27 other income. The total assessment amount to be collected must be allocated among plan No. 1
 28 employers, plan No. 2 ~~insurers~~ employers, and plan No. 3, the state fund, and plan No. 3 employers, based
 29 on a proportionate share of paid losses for the calendar year preceding the year in which the assessment
 30 is collected. The board of investments shall invest the money of the fund, and the investment income must

1 be deposited in the fund.

2 (3) On or before ~~March 31~~ April 30 each year, the department shall notify each plan No. 1
3 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed ~~against the~~
4 ~~employer, plan No. 2 insurer, or the state fund~~ for ~~that calendar~~ the ensuing fiscal year. The amount to
5 be assessed against the state fund must separately identify the amount attributed to claims arising before
6 July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or
7 before ~~March 31~~ April 30 each year, the department, in consultation with the advisory organization
8 designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge
9 rate to be effective for policies written or renewed on and after July 1 in that year.

10 (4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer
11 is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal
12 to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid
13 losses of all plan No. 1 employers during the preceding calendar year.

14 ~~(5) The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan~~
15 ~~No. 2 insured employer is a proportionate amount of total plan No. 2 paid losses during the preceding~~
16 ~~calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 insured~~
17 ~~employer bore to the total paid losses of all plan No. 2 insurers during the preceding calendar year.~~

18 ~~(6) The portion of the state fund assessment subject to premium surcharge for a state fund~~
19 ~~insured employer is a proportionate amount of total state fund paid losses during the preceding calendar~~
20 ~~year that is equal to the percentage that the total paid losses of the individual state fund insured employer~~
21 ~~bore to the total paid losses of state fund insured employers during the preceding calendar year.~~

22 (5) The portion of the assessment attributable to state fund claims arising before July 1, 1990,
23 is the proportionate amount that is equal to the percentage that total paid losses for those claims during
24 the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As
25 required by 39-71-2352, the state fund may not pass along to insured employers the cost of the
26 subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

27 (6) The remaining portion of the assessment must be paid by way of a surcharge on PREMIUMS PAID
28 BY employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or
29 renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining
30 portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2

1 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided
 2 by subsection (9).

3 ~~(7) Payment of assessments due must be made to the department semiannually on June 30 and~~
 4 ~~December 31 of the year following the calendar year on which the assessment is based.~~

5 ~~(8)(7)~~ Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the
 6 state fund, shall collect from its policyholders the assessment premium surcharge provided for in
 7 subsection ~~(2)~~ (6). When collected, ~~assessments~~ the assessment premium surcharge may not constitute
 8 an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the
 9 purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this
 10 assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on
 11 a separate document submitted by the insured employer and must be identified as "workers' compensation
 12 subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage
 13 of the total workers' compensation policyholder premium. This assessment premium surcharge must be
 14 collected at the same time and in the same manner that the premium for the coverage is collected. The
 15 assessment premium surcharge must be excluded from the definition of premiums for all purposes,
 16 including computation of insurance producers' commissions or premium taxes, except that an insurer may
 17 cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation
 18 must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails
 19 to remit to an insurer the total amount due for the premium and assessment premium surcharge, the
 20 amount received by the insurer must be applied to the assessment premium surcharge first and the
 21 remaining amount applied to the premium due.

22 ~~(9)(8)~~ (a) All assessments paid to the department must be deposited in the fund.

23 (b) Each plan No. 1 employer shall pay its assessment by July 1.

24 (c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all
 25 assessment premium surcharges collected during a calendar quarter by not later than 20 days following
 26 the end of the quarter.

27 (d) The state fund shall pay the portion of the assessment attributable to claims arising before July
 28 1, 1990, by July 1.

29 (e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay
 30 to the department the assessment OR ASSESSMENT premium surcharge or assessment under this section,

1 the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state
 2 fund, an administrative fine of \$100 plus interest on the delinquent amount at the annual interest rate of
 3 12%. Administrative fines and interest must be deposited in the fund.

4 (9) The amount of the assessment premium surcharge actually collected pursuant to subsection
 5 (7) must be compared each year to the amount assessed and upon which the premium surcharge was
 6 calculated. The amount undercollected or overcollected in any given year must be used as an adjustment
 7 to the numerator provided for by subsection (6) for the following year's assessment premium surcharge."

8

9 **Section 14.** Section 39-71-2204, MCA, is amended to read:

10 **"39-71-2204. Insurer to submit notice of coverage within thirty days -- penalty for failure.** (1) The
 11 insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit
 12 to the department the notice of coverage stating the effective date of the policy insuring the employer and
 13 other information that may be required by the department.

14 (2) The department ~~may~~:

15 (a) MAY recognize the advisory organization designated under 33-16-1023 or recognize other
 16 organizations as an agent agents for authorized workers' compensation insurers in Montana; and

17 (b) SHALL, under terms and conditions acceptable to the department, accept notice of coverage
 18 received from the ~~advisory organization designated under 33-16-1023~~ recognized agent AGENTS RECOGNIZED
 19 UNDER SUBSECTION (2)(A) as the insurer's notice of coverage.

20 (3) The department may, in its discretion, assess a penalty of no more than \$200 against an
 21 insurer that as a general business practice does not comply with the 30-day notice requirement set forth
 22 in subsection (1)."

23

24 **Section 15.** Section 39-71-2205, MCA, is amended to read:

25 **"39-71-2205. Policy in effect until canceled or replaced -- twenty-day notification of cancellation**
 26 **required -- penalty.** (1) The policy remains in effect until canceled, and cancellation may take effect only
 27 by written notice to the named insured and to the department at least 20 days prior to the date of
 28 cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers'
 29 compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from
 30 canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

1 (2) The department ~~may~~:

2 (a) MAY recognize the advisory organization designated under 33-16-1023 or recognize other
3 organizations as an agent agents for authorized workers' compensation insurers in Montana; and

4 (b) SHALL, under terms and conditions acceptable to the department, accept notice of cancellation
5 received from the advisory organization designated under 33-16-1023 recognized agent AGENTS RECOGNIZED
6 UNDER SUBSECTION (2)(A) as the insurer's notice of cancellation.

7 (3) (a) The department may assess a penalty of up to \$200 against an insurer that does not
8 comply with the notice requirement in subsection (1).

9 (b) An insurer may contest the penalty assessment in a hearing conducted according to
10 department rules."

11

12 **Section 16.** Section 39-71-2337, MCA, is amended to read:

13 **"39-71-2337. State fund to submit notice of coverage within thirty days -- penalty for failure.** (1)

14 The state fund shall, within 30 days after the issuance of an insurance policy, submit to the department
15 the notice of coverage stating the effective date of the policy insuring the employer and other information
16 the department requires.

17 (2) The department ~~may~~:

18 (a) MAY recognize the advisory organization designated under 33-16-1023 or recognize other
19 organizations as agents for the state fund; and

20 (b) SHALL, under terms and conditions acceptable to the department, accept notice of coverage
21 received from the recognized agent AGENTS RECOGNIZED UNDER SUBSECTION (2)(A) as the state fund's notice
22 of coverage.

23 ~~(2)(3)~~ (3) The department may assess a penalty of no more than \$200 against the state fund if, as
24 a general business practice, the state fund does not comply with the 30-day notice requirement."

25

26 **Section 17.** Section 39-71-2339, MCA, is amended to read:

27 **"39-71-2339. Cancellation of coverage -- twenty days' notice required.** (1) The state fund may

28 cancel an employer's coverage under this part for failure to report payroll or pay the premiums due or for
29 another cause provided in the insurance policy. Cancellation may take effect only by written notice to the
30 named insured and the department at least 20 days prior to the date of cancellation or, in cases of

1 nonreporting of payroll or nonpayment of a premium, by failure of the employer to submit payroll reports
 2 or pay a premium within 20 days after the due date. The state fund shall notify the department of the
 3 names and effective dates of all policies canceled. However, the policy terminates on the effective date
 4 of a replacement or succeeding insurance policy issued to the insured. This section does not prevent the
 5 state fund from canceling an insurance policy before a replacement policy is issued to the insured. After
 6 the cancellation date, the employer has the same status as an employer who is not enrolled under the
 7 Workers' Compensation Act unless a replacement or succeeding insurance policy has been issued.

8 (2) The department may:

9 (a) MAY recognize the advisory organization designated under 33-16-1023 or recognize other
 10 organizations as agents for the state fund; and

11 (b) SHALL, under terms and conditions acceptable to the department, accept notice of cancellation
 12 received from the ~~recognized agent~~ AGENTS RECOGNIZED UNDER SUBSECTION (2)(A) as the state fund's notice
 13 of cancellation.

14 (3) (a) The department may assess a penalty of up to \$200 against the state fund if it does not
 15 comply with the notice requirement in subsection (1).

16 (b) The state fund may contest the penalty assessment in a hearing conducted according to
 17 department rules."

18

19 **Section 18.** Section 39-72-606, MCA, is amended to read:

20 **"39-72-606. Autopsy.** Upon the filing of a claim for compensation for death caused by an
 21 occupational disease if an autopsy is necessary to determine the cause of death, an autopsy ~~shall~~ must
 22 be ordered by the department. The autopsy ~~shall~~ must be made under the supervision of the county
 23 coroner or a medical examiner. The department may designate a ~~fully~~ licensed physician who is a specialist
 24 in ~~such these~~ examinations to perform or attend the autopsies and to certify ~~his findings thereon~~ on the
 25 autopsies. The findings ~~shall~~ must be examined by the ~~physicians evaluator~~ submitting a report under
 26 ~~39-72-605~~ 39-72-602 before the final report under that section is submitted to the department."

27

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

29 **"39-72-608. Payment of medical examination, report, and autopsy expenses.** The expense of the
 30 medical examination and report, as provided in 39-72-602, must be paid by the insurer. The expense of

1 the periodic medical examinations and reports, as provided in 39-72-607, must be paid by the party
 2 requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606,
 3 must be paid by the party requesting the autopsy. ~~The expense of any examinations and reports, as~~
 4 ~~provided in 39-72-605, must be paid by the party requesting the examination."~~

5

6 **Section 20.** Section 39-73-103, MCA, is amended to read:

7 **"39-73-103. Conformity with acts of federal government.** If ~~and when~~ the government of the
 8 United States makes grants to states in aid of and allowing payments to persons having silicosis, ~~as herein~~
 9 ~~defined,~~ the department of labor and industry is ~~hereby~~ authorized to administer ~~in the state of Montana~~
 10 ~~such the~~ grants-in-aid and payments in addition to grants made by this chapter. The total payments to any
 11 individual under this chapter ~~shall~~ may not exceed ~~\$200~~ ~~\$225~~ \$250 ~~per a~~ month, exclusive of any grants
 12 made by congress."

13

14 **Section 21.** Section 39-73-107, MCA, is amended to read:

15 **"39-73-107. Amount of payments.** Subject to the provisions of this chapter and the deductions
 16 ~~herein provided in this chapter,~~ any person who has silicosis, ~~as defined in this chapter,~~ and who has,
 17 subject to the regulations and standards of the department of labor and industry, been determined by the
 18 department to be entitled payment under this chapter for silicosis ~~shall~~ must be granted a payment by the
 19 department of ~~\$200~~ ~~\$225~~ \$250 ~~per a~~ month, subject to ~~such any additional~~ appropriations ~~as may from~~
 20 ~~time to time be made.~~ If ~~he~~ the person is receiving payments under ~~The the~~ Occupational Disease Act of
 21 Montana, as provided by chapter 72 of this title, ~~which that~~ are less in the aggregate than \$200, then ~~he~~
 22 the person is entitled to a payment under this chapter of the difference between the amount received
 23 under ~~The the~~ Occupational Disease Act of Montana, as provided by chapter 72 of this title, and ~~\$200~~
 24 ~~\$225~~ \$250 ~~per a~~ month. The legislature shall authorize ~~such~~ additional appropriations ~~as that~~ may be
 25 necessary to make the increased monthly payments provided ~~herein in this section.~~"

26

27 **Section 22.** Section 39-73-109, MCA, is amended to read:

28 **"39-73-109. Payment of benefits to surviving spouse.** (1) Upon the death of a person receiving
 29 payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as ~~such the~~ spouse
 30 remains unmarried, is entitled to receive the payments granted the deceased spouse.

1 (2) A person who otherwise is qualified to receive payments under subsection (1) ~~of this section~~
2 but whose spouse died prior to March 14, 1974, is ~~hereby made~~ eligible to begin receiving ~~one-half of~~
3 ~~those payments; provided, however, \$125~~ \$150 a month. However, a person is not eligible for these
4 payments if ~~such~~ the spouse's taxable income is \$6,800 or more ~~per a~~ year."

5

6 NEW SECTION. Section 23. Repealer. Section 39-72-605, MCA, is repealed.

7

8 NEW SECTION. Section 24. Codification instruction. [Section 1] is intended to be codified as an
9 integral part of Title 39, chapter 71, part 5, and the provisions of Title 39, chapter 71, part 5, apply to
10 [section 1].

11

12 NEW SECTION. Section 25. Severability. If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
14 applications, the part remains in effect in all valid applications that are severable from the invalid
15 applications.

16

17 NEW SECTION. Section 26. Effective date -- retroactive applicability. (1) [This act] is effective
18 July 1, 2001.

19 (2) [Sections 5(7)(c) and (8) and 13(3)] apply retroactively, within the meaning of 1-2-109, to
20 assessments and assessment premium surcharges calculated by the department of labor and industry
21 before March 30, 2001.

22

- END -