

SENATE BILL NO. 311

INTRODUCED BY V. COCCHIARELLA

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A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING FROM THE PROXIMATE CAUSATION STANDARD FOR OCCUPATIONAL DISEASES THE PROVISION REQUIRING THE DISEASE TO BE INCIDENTAL TO THE CHARACTER OF THE BUSINESS AND NOT INDEPENDENT OF THE RELATION OF EMPLOYER AND EMPLOYEE; REQUIRING THAT A TREATING PHYSICIAN, UPON MAKING A POSITIVE DETERMINATION REGARDING PROXIMATE CAUSE, INCLUDE A DETERMINATION BY PERCENTAGE OF THE AMOUNT OF THE OCCUPATIONAL DISEASE THAT WAS ATTRIBUTABLE TO WORK; AMENDING SECTION 39-72-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 39-72-408, MCA, is amended to read:

"39-72-408. Proximate causation -- determination by treating physician. (1) Occupational diseases ~~shall be deemed~~ are considered to arise out of the employment ~~only~~ if:

(1)~~(a)~~ there is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(2)~~(b)~~ the disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(3)~~(c)~~ the disease can be fairly traced to the employment as the proximate cause;

(4)~~(d)~~ the disease ~~does not come~~ comes from a hazard to which ~~workmen~~ workers would not have been equally exposed outside of the employment;

(5) ~~the disease is incidental to the character of the business and not independent of the relation of employer and employee.~~

(2) If the treating physician makes a positive determination pursuant to the factors provided in subsection (1), the treating physician shall also determine by percentage the amount of the occupational disease that was attributable to work rather than to activities or other conditions unrelated to the employment."

