

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 23, 1977

The meeting of this committee was called to order on the above date by Senator Turnage, Chairman, at 9:40 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All members of the committee were present except Senators Roberts and Murray who were excused.

WITNESSES PRESENT:

Dave Cogley - attorney, office of Code Commissioner
Bob Pyfer - " " " " "
Greg Morgan - " , Montana Bar Association

CONSIDERATION OF HOUSE BILL 14:

Dave Cogley from the office of the Code Commissioner, Legislative Council, explained that this recodification bill gave the power to solemnize marriages to the justices of peace.

DISPOSITION OF HOUSE BILL 14:

Senator Towe moved that H.B. 14 BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 27:

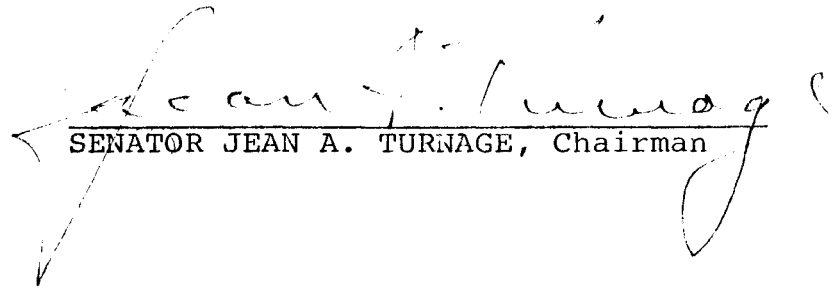
Bob Pyfer from the office of the Code Commissioner, Legislative Council, appeared on this bill.

DISPOSITION OF SENATE BILL 402 (Cont'd from 2/22/77):

At this time the committee returned to the amending of S.B. 402. Sen. Towe moved the adoption of the amendments through page 10, lines 5 and 6, and the motion for each amendment carried unanimously. Senator Warden moved the adoption of all amendments subsequent to page 10, lines 5 and 6, including those proposed by Greg Morgan, Montana Bar Assn., and Gerald Neeley, Montana Medical Assn., and each of these motions carried unanimously also. Senator Warden then moved to amend the title by adding "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE", and adding a new section for this. This motion also carried unanimously. Senator Towe had been excused at 11:00 a.m. to attend the State Administration meeting as he is chairman of that committee.

Senator Warden then moved that S.B. 402 as amended DO PASS. The motion carried unanimously with Senator Towe approving the amendments made by Senator Warden and casting an affirmative vote on this motion. (For all amendments to S.B. 402, see Exhibit 1)

There being no further business at this time, the committee adjourned at 11:45 a.m.


SENATOR JEAN A. TURNAGE, Chairman

JUDICIARY COMMITTEE

Date _____

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[illegible]

(Attach #1)

Respectfully report as follows: That.....SENATE..... Bill No. 432.....
the introduced bill, be amended as follows:

1. Amend title, line 6.

Following: "CLAIMS"

Insert: "; PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Amend page 1, ~~ix~~ section 3, line 21 through line 1 on page 2.

Following: "means"

Strike: lines 21 through line 1 on page 2 in their entirety

Insert: "a physician licensed to practice medicine in Montana or a
hospital, hospital-related facility, or long-term care facility."

3. Amend page 2, section 3, line 2.

Following: "any"

Strike: "cause of action"

Insert: "claim or potential claim"

4. Amend page 2, section 3, line 4.

Following: "other"

Strike: "claimed"

~~REPEATED~~ Insert: "alleged"

5. Amend page 2, section 3, line 6.

Following: "in"

Strike: "injury"

~~REPEATED~~ Insert: "damage"

6. Amend page 2, section 3, line 7.
Following: line 6
Strike: "cause of action"
Insert: "potential claim"
7. Amend page 2, section 3, line 8.
Following: "to"
Strike: "actions based on"
Insert: "allegations of"
8. Amend page 2, section 3, line 9.
Following: line 9
Insert: "(3) 'panel' means the Montana medical malpractice panel provided for in (section 4)."
9. Amend page 2, section 4, line 11.
Following: "created."
Insert: "The panel is attached to the Montana supreme court for administrative purposes only, except that 82A-108(2) does not apply."
10. Amend page 2, section 4, line 12.
Following: "claims"
Insert: "or potential claims"
11. Amend page 2, section 4, line 13.
Following: "by"
Strike: "the"
Insert: "this"
12. Amend page 2, section 4, line 19.
Following: "under"
Strike: "the"
Insert: "this"
13. Amend page 2, section 4, line 20.
Following: "(4)"
Strike: "Attorneys"
Insert: "claimants"
14. Amend page 2, section 4, line 25.
Following: "be"
Strike: "an attorney"
15. Amend page 3, section 4, line 1.
Following: "by"
Strike: "and serving at the pleasure of"
16. Amend page 3, section 4, line 2.
Following: "court"
Insert: "from a list of three people submitted by the health care provider."
Following: "."
Insert: "The director shall serve at the pleasure of the chief justice."

17. Amend page 3, section 4, lines 3 and 4.

Following: line 2

Strike: "(6)"

Following: "salary"

Strike: lines 3 and 4 in their entirety

Insert: "and term of office shall be fixed and he may be removed in the same manner."

18. Amend page 3, section 5, line 8.

Following: "the"

Strike: "director"

Insert: "Montana supreme court"

19. Amend page 3, section 5, line 9.

Following: "panel"

Strike: "and its assistants"

Insert: ", the director, and his staff"

20. Amend page 3, section 5, line 10.

Following: "to"

Strike: "receive their actual and necessary"

Insert: "travel"

Following: "expenses"

Insert: "incurred"

21. Amend page 3, section 5, line 11.

Following: "while"

Strike: ~~xxxxxxx~~ "traveling"

Following: "panel"

Insert: ", as provided in 59-538, 59-539, and 59-801"

22. Amend page 3, section 5, line 14.

Following: "The"

Strike: "director may administer"

Insert: "panel may provide for the administration of"

Following: ", "

Strike: "receive"

Insert: "the receipt of"

23. Amend page 3, section 5, line 15.

Following: ~~xxxxxxx~~ "filed,"

Strike: "promulgate"

Insert: "the promulgation of"

Following: "required"

Strike: "hereunder"

Insert: "by this act"

Following: "hereunder,"

Strike: "issue"

Insert: "the issuance of"

24. Amend page 3, section 5, line 17.

Following: line 16

Strike: "perform"

Insert: "the performance of"

25. Amend page 3, section 5, lines 22 and 23.

Following: "offices"

Strike: "in the city of Helena"

Following: "which"

Strike: "the"

Insert: "its"

Following: "records"

Strike: "are"

Insert: "shall be"

Amend page 3, section 5, lines 24 and 25.

XXX Following: "transacted."

Strike: lines 24 and 25 in their entirety.

27. Amend page 4, section 5, lines 1 through 4.

Following: "hearings"

Strike: "shall be conducted in the county where the medical injury or medical liability allegedly occurred but may, within the sound discretion of the hearing panel,"

Insert: "may"

28. Amend page 4, section 5, line 4.

Following: "any"

Strike: "other"

Following: "county"

Strike: "if"

Following: "considers"

Strike: "it"

29. Amend page 4, section 5, line 5.

Following: "."

Strike: "It is the duty of the"

Insert: "The"

30. Amend page 4, section 5, line 6.

Following: "authority"

Strike: "to"

Insert: "shall"

31. Amend page 4, section 5, lines 9 through line 8 on page 6.

Following: line 8

Strike: sections 6 and 7 in their entirety

Insert: "Section 6. Funding of act. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this act. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers. The amount of the assessment shall be set by the director, who shall allocate a projected cost among health care providers on a per capita basis. The director may provide a different allocation upon approval by the supreme court. Surplus funds, if any, over and

above the amount required for the annual administration of the act shall be retained by the director and used to finance the administration of this act in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this act.

(3) The annual surcharge is due and payable on the same date as license fees payable to the state of Montana are due."

Renumber: all subsequent sections

32. Amend page 6, section 8, line 11.

Following: line 10

Strike: "qualified"

Following: "before"

Insert: "an"

33. Amend page 6, section 8, line 16.

Following: "constitute"

Strike: "professional negligence and"

Insert: "a malpractice claim, the"

Following: "dates"

Insert: "the conduct occurred,"

34. Amend page 6, section 8, line 18.

Following: "claimant"

Insert: "and all witnesses"

35. Amend page 6, section 8, lines 18 and 19.

Following: "claimant."

Strike: "Additional elements of the malpractice claim must be included in an amended application"

Insert: "Any amendments to the application must be"

36. Amend page 6, section 8, line 23.

Following: "to the"

Strike: "incident"

Insert: "claim"

37. Amend page 6, section 8, line 24.

Following: "any"

Strike: "claim of"

38. Amend page 7, section 9, line 8.

Following: ~~XXXXXXXXXXXX~~ "to"

Strike: "Montana law"

Insert: "the Montana Rules of Civil Procedure"

39. Amend page 7, section 9, line 12.

Following: "and"

Strike: "in addition"

40. Amend page 7, section 9, line 13.

Following: "panel to"

Strike: "obtain access to"

Insert: "inspect"

41. Amend page 7, section 9, line 15.

Following: line 14

Strike: "the matter giving rise to"

42. Amend page 7, section 9, line 16.

Following: "purposes of"

Strike: "its consideration of the matter"

Insert: "such inspection"

43. Amend page 7, section 9, line 17.

Following: "any"

Strike: "claim or"

44. Amend page 7, section 9, line 19.

Following: "purpose"

Strike: "or in any other context, in or out of court"

45. Amend page 7, section 9, line 25.

Following: "provider"

Strike: "who has"

Insert: "whose"

Following: "malpractice"

Strike: "and"

46. Amend page 8, section 9, lines 5 and 6.

Following: "claimant"

Strike: "and assist in preparation of the claim"

Following: "upon"

Strike: "his"

47. Amend page 8, section 10, line 11.

Following: ", "

Strike: "who"

Insert: "which"

48. Amend page 8, section 10, line 22.

Following: "(3)"

Strike: "In cases where"

Insert: "Whenever"

49. Amend page 8, section 10, line 24.

Following: "separate panel"

Insert: ", "

Following: "or"

Insert: "at the discretion of the panel initially appointed or by stipulation of the parties,"

Following: "review"

Insert: "all"

50. Amend page 8, section 10, lines 25 through line 1 on page 9.

Following: line 24

Strike: "claim"

Insert: "claims"

Following: "defendant"

Strike: lines 25 through line 1 on page 9 in their entirety

Insert: "."

51. Amend page 9, section 10, line 10.

Following: "named"

Strike: "as"

Following: "respondent"

Strike: ", "

Insert: "as"

52. Amend page 9, section 10, lines 12 through 14.

Following: line 11

Strike: Lines 12 through 14 in their entirety

ReNUMBER: all subsequent subsections

53. Amend page 10, section 10, line 4.

Following: "filed"

Strike: "within"

Insert: "at least"

54. Amend page 10, section 10, lines 5 and 6.

Following: "hearing"

Strike: "or within 5 days of the discovery of the alleged partiality"

55. Amend page 10, section 11, line 8.

Following: "director"

Insert: "subject to (section 5)(6) of this act"

56. Amend page 10, section 11, lines 13 through 16.

Following: "unless"

Insert: "the panel finds"

Following: "period."

Strike: lines 13 through 16 in their entirety

57. Amend page 10, section 12, line 18.

Following: ", the"

Strike: "attorney"

Insert: "claimant"

58. Amend page 10, section 12, line 20.

Following: "constituting"

Insert: "the"

59. Amend page 11, section 12, line 1.

Following: "Medical"

Strike: "text"

Insert: "texts"

60. Amend page 11, section 12, lines 5 and 6.

Following: "reviewed."

Strike: lines 5 and 6 in their entirety

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61. Amend page ~~11~~, section 12, line~~s~~~~xxxxxxx~~ 5.

Following: ~~xxxxx~~ "(1)"

~~xxxxxxx~~ Insert: "At or prior to the time set for the hearing, the attorney members of the panel shall select a chairman who shall be an attorney and who shall preside over the panel deliberations,"

62. Amend page 12, section 13, line 8.

Following: "decide"

Strike: "only"

63. Amend page 12, section 13, line 14.

Following: "on the"

Strike: "two"

64. Amend page 12, section 13, lines 22 and 23.

Following: "chairman"

Strike: ", who may vote only in the event the other members of the panel are evenly divided,"

65. Amend page 13, section 13, line 1.

Following: "therefrom."

Strike: "If the vote is not unanimous, the"

Insert: "The"

66. Amend page 13, section 13, lines 14 through 16.

Following: "party."

Strike: lines 14 through 16 in their entirety.

Insert: "The panel may recommend an award, approve settlement agreements, and discuss the same, all in a manner not inconsistent with this section, and all such approved settlement agreements are binding on the parties."

67. Amend page 13, section 14, line 14.

Following: "director"

Insert: ", in consultation with the state bar of Montana and subject to approval of the supreme court,"

68. Amend page 14, section 15, line 1.

Following: "claim"

Strike: "shall be"

Insert: "is"

69. Amend page 14, section 15, line 2.

Following: "and"

Strike: "may"

Insert: "does"

70. Amend page 14, section 16, lines 7 and 8.

Following: "the"

Strike: "medical review commission"

Insert: "panel"

71. Amend page 14, section 16, line 11.

Following: "filed."

Strike: "These records"

Insert: "Any records which may identify any party to the proceedings"

72. Amend page 14, section 16, line 12.

Following: "and"

Strike: "may"

Insert: "are"

Following: "not"

Strike: "be"

73. Amend page 14, section 16, line 14.

Following: "facilitating"

Strike: "on-going"

Insert: "ongoing"

74. Amend page 14, section 17, lines 16 through line 7 on page 15.

Following: line 15

Strike: " section 17 in its entirety

Re-number: all subsequent sections

75. Amend page 15, section 19, line 15.

Following: line 15

Insert: "Section 18. Effective date. This act is effective upon its passage and approval."

HB 144 27

VISITOR'S REGISTER

12/23
Note Bill 26

NAME

REPRESENTING

Check One
Support Oppose

Bob Cyfer 27

Code Commissioners

✓

Dave Cogley

Code Commissioners

17

Greg Morgan 402

State Bar of Mont

✓