

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on January 24, 1989, at 8:05 a.m.

#### ROLL CALL

Members Present: All members were present with the following exception:

Members Excused: Rep. Mary McDonough

Members Absent: None.

Staff Present: Julie Emge, Secretary  
John MacMaster, Legislative Council

Announcements/Discussion: None.

#### HEARING ON HOUSE BILL 172

#### Presentation and Opening Statement by Sponsor:

Rep. Bernie Swift, House District 64 stated that HB 172 is an act making it a criminal mischief to purposely or knowingly insert into a tree, log, or piece of wood that is intended to be harvested, processed or manufactured, a substance that is hard enough to damage a saw or other equipment. Rep. Swift directed the Committee's attention to page 1, line 22 through line 1 of page 2. What this is saying is that if something is placed in a standing tree or a piece of tree that has been severed or cut into lengths and is intended to be processed, thus damaging the processing agent or the individual, will be known as criminal mischief. This is just adding a section to the law that is presently on the books. Rep. Swift commented that since 1985-1986 in the area that he represents, there has been about 3 or 4 different incidents of this type of problem arising. This particular type of problem is not known to the sawyers nor to the sawmill processors. When the saw hits the foreign material, the teeth of the saw (which are 1/2 inch thick or larger) fly into the air like a cannon blowing up a shell. This results in thousands of dollars in damage, plus personal injury and can only be avoided by intensive detection which takes much time. They never know if the material is in there or not. Rep. Swift stressed that this is not a simple bill, but it is a very important bill and it addresses key problems that are getting worse year by year.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Addy questioned why paragraph B isn't inclusive enough to prohibit the kinds of activities that Rep. Swift is so upset about. Isn't subparagraph D what we are adding as an example of the offense that is being described in subparagraph B? Rep. Swift stated that he feels that this offense is so vicious, damaging and costly that he portrays this to be exactly like the terrorists actions that are going on today. It needs to be specifically spelled out in the law so there is no question about what is being addressed.

Rep. Addy continued and asked why they don't make it a separate section of the code and pose a sterner penalty. Rep. Swift replied that he brought a facsimile bill from California before the legislative council that did exactly what Rep. Addy was questioning. It was more stringent, but he felt that if the Committee wanted to do so, they could. In California, Oregon and Washington they have had very dire personal injuries. They made it three times what this particular code in the Montana law does as far as penalties and reimbursements are concerned. Rep. Swift stated that he felt that this would be the best possible way to approach this problem so that everyone would be aware that they felt it was a serious problem.

Rep. Darko asked if any of the offenders have ever been caught. If so, what statute have they been prosecuted under? Rep. Swift commented that to his knowledge, none of them have ever been caught in Montana. That is why this is so serious. He thinks that something of this sort would hopefully deter some of this action.

Closing by Sponsor: Rep. Swift stated that this is added to the criminal mischief section of the code because he thinks it is very important that we have it. Although it is very difficult to detect who, what, and when this occurs, he thinks it should be there and hopefully we can stop some of

this from happening.

DISPOSITION OF HOUSE BILL 172

Motion: Rep. Eudaily made a DO PASS motion, seconded by Rep. Brooke.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Mercer suggested amendments in order to clarify and fix the bill. See attached committee report. Motion seconded by Rep. Hannah. A vote on the amendment was taken and CARRIED with Rep. Wyatt voting No.

Rep. Strizich stated that he agrees that this is supercilious. If they start enumerating all the criminal acts that constitute criminal mischief, they would also have to include derailing trains, sugaring gas tanks, and cutting brake lines. Rep. Strizich stated that dealing with criminal law, he can see that there are things that get stuck on the books that frankly, after a few years become kind of absurd looking because of the nature of the specificity. It is silly and the law is applicable as it is written. If they are having trouble prosecuting these cases, adding the specific language that has been introduced is not going to improve the prosecution. If there is something that they can do to improve the prosecution in the catching of the culprits, then they should act on that.

Rep. Darko agreed that putting this bill into law will not improve their chances any of catching the prosecutors.

Rep. Mercer stated that as the bill was being presented he had the same concerns that have already been commented upon. However, this seems to be a problem that the people are concerned about and want on the books, but are unable to do much to prevent this from happening. Rep. Mercer stated that he does not see what will be hurt from the passing of this legislation. To turn this down is a statement made by the committee that this is not a significant thing, and that would be dangerous. He does not think that they want to send those kinds of messages with those actions.

Rep. Addy commented that this bill is a perfect example of imposing specificity. This is a course in recent events more than a course in what the law shall read. He feels that if the bill were to be TABLED it would save the legislative process a great deal of work and will have cost the people of Montana nothing.

Rep. Eudaily stated that if the Committee did this with every bill that came to the Judiciary Committee, they would not be hearing many bills on the House floor. Practically every bill that the Committee receives has some kind of an

individualistic approach to it. The Committee would be making a big mistake if they thought that this bill didn't qualify to pose a serious enough problem.

Rep. Brown stated that with the amendment that was proposed by Rep. Mercer, it cleans the bill up a little bit. The folks that brought about this bill are in a highly heated position, both politically and sensitivity wise. Rep. Brown stated that he is going to vote for the bill.

Recommendation and Vote: Rep. Boharski made a motion that HB 172 DO PASS AS AMENDED, motion seconded by Rep. Gould. A vote was taken and CARRIED with Rep.'s Stickney, Wyatt, Strizich and Addy voting No.

#### HEARING ON HOUSE BILL 153

##### Presentation and Opening Statement by Sponsor:

Rep. Smith, House District 5 stated that HB 153 was requested by the Divisional Workers' Compensation. This bill deals with attorney fee liens. He stated that the previous night they represented the insurance people, the attorneys, the division, the adjuster and the laborer. The general consensus was that it would do more harm than good to pass this bill and therefore, would request the Committee to TABLE HB 153.

##### Testifying Proponents and Who They Represent:

None.

##### Proponent Testimony:

None.

##### Testifying Opponents and Who They Represent:

None.

##### Opponent Testimony:

None.

##### Questions From Committee Members: None.

##### Closing by Sponsor: None.

#### DISPOSITION OF HOUSE BILL 153

Motion: Rep. Addy made a motion to TABLE HB 153, motion seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the motion to TABLE and CARRIED unanimously.

HEARING ON HOUSE BILL 154

Presentation and Opening Statement by Sponsor:

Rep. Smith stated that the purpose for this legislation is to clarify the statutes by allowing a stay of Workers' Compensation Court Decision while that decision is being appealed. This is in response to a Supreme Court decision; Reil vs. the State Comp Insurance Fund. In this case, even though the initial decision was appealed, the State Compensation Insurance Fund had to start paying benefits according to the Workers' Compensation court decision. In that same case, the Supreme Court overturned a decision which then required the State Fund to attempt to seek reimbursement for the benefits paid. He believes this was around \$20,000. Prior to this decision, the judgement of Workers' Comp Court was in effect put on hold pending appeal regardless of whether the claimant or the insured employer was appealing the decision. Rep. Smith stated that the stay of judgement requested in this bill is in accordance with the procedures that apply in District Court cases where decisions are being reconsidered and will be appealed to the Supreme Court.

Testifying Proponents and Who They Represent:

Bill Palmer, Interim Administrator, Workers' Compensation  
Oliver Goe, Montana Municiple Insurance Authority  
Michael Sherwood, Montana Trial Lawyers Association  
Jim Murry, Executive Secretary, Montana AFLCIO  
George Wood, Executive Secretary, Montana Self Insurer's Assoc.  
Tim Reardon, Workers' Compensation Judge

Proponent Testimony:

Bill Palmer stated that HB 154 allows the employers as well as the insurer to request a stay of the Workers' Comp Court Decision to be reconsidered or appealed to the Supreme Court. There have been a number of cases that have been appealed to the Supreme Court in recent years; however, these cases vary, they are not all state funded cases. Additionally, there is a private carrier. In the current calendar year, of the 26 cases that have gone to the Supreme Court, 14 were cases appealed by the self insurers or private carriers and 12 were state funded cases (EXHIBIT 1). In the case of Reil vs. the State Compensation Insurance Fund, it was dated and decided on July 21, 1987. Referred to by Rep. Smith, the order denied the stay indicating that there were no provisions under the Workers' Compensation Act to grant the stay. The final decision on the issue was

issued on December 3, 1987 and a denial for a rehearing was made in January 1988. Mr. Palmer commented that during that interim, the State Fund paid approximately \$13,000 in compensation benefits and over \$10,000 in medical benefits. The State Fund had requested that these benefits be reimbursed; however, to date, they have received nothing back from the appellate in wage loss and only about 1/3 of the medical reimbursement from the medical providers. They intend to continue to pursue for the collection, but it is somewhat difficult as the claimant has spent the money and they understand that even one of the medical providers is no longer in business. Of course, this stay granted by the court would avoid these kinds of problems. It appears it will be necessary to pursue the collection of benefits paid through legal means or through the Dept. of Revenues normal collection process. Mr. Palmer stated that the question came up about the requirement for a bond. He presented to the Committee a proposed amendment (EXHIBIT 2) amending page 2, line 1. Following the word "bond", insert the Workers' Compensation judge may waive the bond requirement. This is an effort allowing the judge some discretion as to whether or not the appealing party should actually be required to put up the bond until the Supreme Court has come down with a final decision.

Oliver Goe, an attorney for Browning, Kaleczyc, Barry and Hogan, made an appearance on behalf of the Montana Municipal Insurance Authority. This is an association of approximately a little over 100 cities and towns throughout the State of Montana providing self insurance pool for liability as well as Workers' Compensation coverage. Appearing as a proponent to HB 154, he feels it is an important step in preserving the rights of litigants pending appeal before the Montana Supreme Court. The situation has arisen and will undoubtedly arise in the future that in those situations pending an appeal, where that decision is ultimately reversed by the Montana Supreme Court, it will be extremely difficult to recoup benefits which have been paid out during the pendency of the appeal. It becomes even more important in those situations where the Workers' Compensation Court has awarded a lump sum advance of benefits of any substantial nature where that decision is ultimately reversed by the Montana Supreme Court. Mr. Goe stated that he feels that the proposed amendment will place all litigants on equal footing. He feels this bill will just place us back to what we all thought was appropriate in the first instance and allow for a stay pending appeal.

Michael Sherwood stated that the Montana Trial Lawyers Association supports HB 154 as amended. He stated they did, however, have some problems with the supercedious bond. The state and the major insurers most likely don't need a bond and it is just a waste of their money and time in getting one. The problem, of course, arises in the factual situation that has been set forth regarding an appeal by a

claimant and inability to recoup the losses if indeed later his position is reversed by the Supreme Court.

Jim Murry and George Wood stated that they would like to go on record as supporting HB 154 as amended.

Tim Reardon expressed that he is not a proponent nor an opponent of this legislation. He simply has a couple of observations that the Committee should be aware of. First, any stay orders are discretionary orders. They are not automatically given. That isn't the case in District Court. Secondly, in section 5, the retroactive applicability in the 1987 and 1985 legislature made a number of changes to the act that were intended to be retroactive. The Supreme Court said at least three times since then that the law in effect on the day of the injury controls, and you can't retroactively change that. In this case, the retroactive application is stay. He doesn't think that it would be upheld. Whether it's a good idea or not, he doesn't think they could make it retroactive.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Mercer stated in section 1, subparagraph 1, last sentence, the stay may not extend more than 30 days. Subparagraph 2 talks about appeals. He is wondering if there wouldn't be some confusion that the 30 day limitation could possibly apply to sub 2 when it is not intended to.

Mr. Sherwood commented that this language was drafted and basically taken from the rules of civil procedure. This is consistent with the rules of civil procedure. The stay of lower court or district court is for 30 days; therefore, giving the person enough time to go to the Supreme Court and ask for a stay. Jurisdiction will have shifted at that point.

Rep. Brown commented on the statement made by Judge Reardon that the Supreme Court declared this to be invalid in previous cases. Is there some reason it would be different here? Rep. Mercer stated that what we are talking about is the application to something that is procedural in nature and not substitute. It is very similar to what they had with the mediation process. They considered a mediation process to be procedural. He hoped that it is more procedural and certainly not something that is an entitlement of a claimant; therefore, the retroactive applicability of it would apply.

Rep. Brown followed up with a question to the above mentioned regard. It seems to be that the word "procedural" is not appropriate. It is, in fact, substantive. Basically, what this bill does is give the insurer a club to force the claimant to either take lower benefits or to give up his benefits while he is awaiting for an appeal. That is pretty substantive.

Rep. Mercer stated that line 4 on page 2 talks about Rule 7-B of the Montana Rules of Civil Procedures. It is Rule 7-B of the Montana Rules of Appellate Procedures that these guys are most likely talking about. It is with great suspicion that the Committee must review the bill during executive session to be sure that they have accurately done their homework.

Closing by Sponsor: Rep. Smith closed.

#### DISPOSITION OF HOUSE BILL 154

Motion: A DO PASS motion was made by Rep. Eudaily, motion seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Eudaily moved the amendment listed as EXHIBIT 2. Motion seconded by Rep. Hannah. A vote was taken on the amendment and CARRIED unanimously.

Rep. Mercer introduced proposed amendments. Page 2, line 4, strike the word "civil", insert appellate. Line 17, page 1, insert notice of appeal has been filed. Line 21, page 1 following "appellant", insert comma, delete "may request". Line 22 following "appeal", insert may apply to the Workers' Compensation judge for. What this would do is say where there is no notice of appeal, then the judge can stay the execution. However, he cannot do it for over 30 days, but where there is an appeal then they apply to the Workers' Compensation judge for the state. If it is not in there it really is not clear who it is that is granting the stay. Under rule 7-B of the rules of the appellate procedures, the Montana Supreme Court can affect the stay however they deem it appropriate. Motion was seconded by Rep. Eudaily.

Rep. Addy commented that it is then Rep. Mercer's concept that the Workers' Comp judge would order a stay pending an appeal. That they would handle the entire stay process and it would not be up to the Supreme Court to order a further stay as provided in Rule 7-B. Once the case has left the Workers' Comp court and it is before the Supreme Court, the Workers' Comp court no longer has jurisdiction. It is then in the hands of the Supreme Court for the relief that they are trying to provide an appeal that has always been asked



for and generally been granted by the Supreme Court.

Rep. Mercer responded to Rep. Addy's comment by stating that first, when the bill was addressed, he read the bill and it was unclear to him who would be responsible in granting the stay. Secondly, the title of the bill, which says that the workers' comp judge would be able to issue a stay pending an appeal. Third, he looked at Rule 7-B and it is wishy-washy as to who actually does the stay. However, in the last sentence in Rule 7-B it states that the Supreme Court may modify any order that is made under that section. Rep. Mercer, therefore, assumed that the amendments that he proposed make it absolutely clear that if a person wants a stay, they go to the workers' comp judge. That is his option, and once the case is on appeal then the Supreme Court could change it if they so chose under Rule 7-B. If we don't amend this bill, he doesn't see how anyone knows who grants the stay.

Rep. Addy expressed that it appears to him that they have confused the situation more than they have clarified it. Presently it is very clear that the Workers' Comp judge can order the stay pending post trial motions and for 30 days thereafter, which is the appeal period. Thereafter, the only one that has that authority is the Supreme Court. They are mixing the powers of the Supreme Court that has jurisdiction after the appeal was taken, and a court that no longer has that; the Workers' Comp court.

Rep. Mercer stated that he just wants the bill to be as clear as possible. He wondered if the attorneys could be consulted as to what their intention is. If they could hold off on further action on the bill they could talk to the attorneys.

Recommendation and Vote: Rep. Brown suggested to the Committee to HOLD any further action on HB 154.

#### HEARING ON HOUSE BILL 155

#### Presentation and Opening Statement by Sponsor:

Rep. Clyde Smith stated that the purpose of HB 155 is to clarify the liability of the insured employer on an existing claim when an employee suffers a new injury to the same part of the body. This is in response to a Supreme Court decision, Guild vs. an insurance carrier. In this case, the injured worker sustained another injury at a parade while stepping out of the car. The Supreme Court overturned the Workers' Compensation Court and stated the following: "We owe that under the law of Montana the fact that a claimant has reached maximum healing does not eliminate the employers future liability for temporary total disability benefits, whereas here a subsequent non-employment related event caused aggravation of the first injury". Such a case is not comparable to a case where there is a second industrial

injury covered by Workman's Compensation. Rep. Smith commented that the underlying problem is that this decision appears to create unlimited liability for non-job related injuries even though the claimant had reached maximum healing. Additionally, there could be serious financial impacts on this system because of entitlement to benefits, particularly in view of the 1987 legislation which restricted the closure of claims through lump sums and compromise release statements.

Testifying Proponents and Who They Represent:

Bill Palmer, Interim Administrator, Workers' Compensation  
Oliver Goe, Montana Munciple Insurance Authority  
Jacqueline Terrell, American Insurance Association  
George Wood, Executive Secretary, Montana Self Insurers Assoc.  
Jim Murry, Executive Secretary, Montana AFLCIO

Proponent Testimony:

Bill Palmer stated that HB 155 attempts to address the problem of when an injured worker has reached maximum healing, is released by the physician, returns to work supposedly healed, and then at some subsequent time in his life, he re-injures that particular part of his body. What they are trying to get at with this bill is once a claimant has reached maximum healing, the insurer at risk at the time of the original injury is no longer responsible for any subsequent injuries or conditions that may arise out of either a workers' comp or industrial injury, or something that occurred outside of an industrial injury. Of course, if it was an industrial injury that occurred after that maximum healing, then a new insurer would be liable. Mr. Palmer presented as testimony EXHIBIT 3.

Oliver Goe, an attorney with Browning, Kaleczyc, Barry and Hogan, on behalf of the Montana Munciple Insurance Authority spoke in favor of HB 155. He stated that it is very important that when a worker receives an injury and has reached maximum healing and has returned to work, the insurer's liability must be cut off at some point. That is the real purpose of this bill. As other proponents have indicated, there is a possibility that the language contained within the bill is perhaps a little broad, and something which more fully articulates the real intent can be formulated.

Jacqueline Terrell presented for the Committee proposed amendments listed as EXHIBIT 4.

George Wood stated that the Montana Self Insurers Assoc. strongly supports the concept of this bill; however, they do have some concern about the language. They certainly think an amendment would be in order.

Jim Murry commented that the Montana AFLCIO does not have any

problems with the concept of this bill, but they too have trouble with the language that is presently in the measure. He hoped that the committee would see its way clear to assign this bill to a sub-committee so they could continue to work on it.

Testifying Opponents and Who They Represent:

Norm Grosfield, Helena Attorney  
Michael Sherwood, Montana Trial Lawyers Association

Opponent Testimony:

Norm Grosfield, an attorney practicing in Helena, stated that his practice involves both claimant in defense and the Workers' Compensation matters. He stated that he arises in opposition to this bill only in the sense that democracy should have two sides. He agrees with the concept of what is attempting to be obtained, but disagrees with the language. He feels the language basically precludes all future liabilities for an insured carrier after an intervening cause even though that intervening cause may be very minor. The language seems to be totally precluded and the drafters of the bill, as he understands it, did not intend it to be read that way.

Michael Sherwood stated that the Montana Trial Lawyers Association opposes this bill for the same reasons that Mr. Grosfield went over. They oppose the specific language, not the intent. He asked that the Committee delay action on the bill until such language can be agreed upon. He stated that there isn't any reason for a major injury to fall back on an insurers maximum healing, but there are certainly policy consideration that should allow at least a continuation of the benefits and thinks the language can be worked out.

Questions From Committee Members: Rep. Eudaily questioned the term "maximum healing". What does it mean? Rep. Smith responded that maximum healing means the occurrence when an individual is healed as well as they are going to get given the circumstances.

Rep. Eudaily asked who the person is that decides if maximum healing has been reached. Rep. Smith stated that the decision is made by a physician.

Rep. Hannah questioned if the courts address whether or not there is ever a possibility for an end to benefits for a work related injury. Mr. Wood responded to Rep. Hannah's question by stating that they set up two standards. If the subsequent incident to this person had been industrial, they would say that it was a new injury and it wouldn't go back to the old. However, if the injury was outside the course and scope of employment, then it would go back to the original insurer. If it is an accident, it is under the

act. If it is not an accident, it isn't under the act.

Closing by Sponsor: Rep. Smith agreed that as he pointed out before, there are some language problems with the bill that he hopes can be worked out in sub-committee.

#### HEARING ON HOUSE BILL 189

Presentation and Opening Statement by Sponsor:

Rep. Rice stated that HB 189 is a bill to increase the sentence for certain types of incest crimes. Incest, as defined, includes a whole range of sexual conduct between relatives. This bill is focusing on a narrow situation in which the victim is under 16 years of age and the offender is 3 or more years older than the victim, or if the offender has inflicted bodily harm. The reason for increasing the penalties for that particular type of incest crime is that presently in the State of Montana, the penalty for incest is actually less than the penalty for sexual assault. When incest crimes arise, county attorneys are electing to charge these people with sexual assault instead of charging them under the incest statutes even though that is the fact or the event that has occurred. Rep. Rice feels that it should be brought onto the table and charged as incest and the penalty should be the equivalent of the sexual assault penalty.

Testifying Proponents and Who They Represent:

John Connor, Dept. Justice, County Prosecutors Service Bureau

Proponent Testimony:

John Connor stated that the present statute with respect to the penalty under incest, was a carryover from the old law. The ten year penalty simply does not recognize the severity of the offense that we are beginning to see more and more of all the time. With a ten year penalty, it is simply not possible to get an offender in the sexual assault treatment program at the state prison if the person is sentenced to prison. Experts tell us in this area that curing people who commit these kinds of crimes is virtually non-existent, that they are contained and controlled with therapy, but they are not cured. The treatment program that is available at the prison is a good one. Mr. Connor commented that they are trying to get more people into it all the time, but unless the court has the option of passing the sentence that will allow them the time to wait out the entry into the program and complete the program, they just can't get into it. Unfortunately, when someone is sentenced to ten years in prison, they are basically assuming these people are non-dangerous and parole eligible within 2 years or less if they accumulate an average amount of good time.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Hannah, questioning Mr. Connor asked if once they get into the treatment program, if they are able to sustain that treatment program once they leave the institution, that there is a rate of recidivism. Should they do better on the streets or will they have the same problem when they go back on the streets as they did before? Mr. Connor stated that he feels that they do better on the whole. He can't say that no one is ever cured, but thinks statistically cured is not a wide percentage of the results. One of the most important things in terms of getting them better is to admit the fact that they have a problem. Denial is a very common sort of problem with trying to treat sex offenders. Once they have completed the prison program, they are in a much better position to do good with therapy on the outside or afterward with their parole program.

Rep. Eudaily asked if they are talking about inflicting bodily injury upon anyone in the course of committing the crime, the victim only, or are they talking about the victim and possibly someone else? For instance, if a man struck a woman before he committed a crime, are there two crimes committed or will he be charged with only one? Rep. Rice stated that he is not sure why that language is used except that it is the exact language taken from the statute addressing the penalties for the crime of sexual assault. They transferred that language to make the penalty equivalent.

Closing by Sponsor: Rep. Rice closed.

DISPOSITION OF HOUSE BILL 189

Motion: Rep. Darko made a DO PASS motion, seconded by Rep. Strizich.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the DO PASS motion and CARRIED unanimously.

## HEARING ON HOUSE BILL 194

Presentation and Opening Statement by Sponsor:

Rep. Rice, House District 43 stated that HB 194 is an amendment to the administrative procedure which is the statute that governs appeals from a decision of a state agency to the district court. The amendment addresses appeals only from OPI because of the unique way that those decisions are issued. These decisions from that office start from a local school and initially the dispute or question is handled by the principal or the local administration. From there it is taken up by the local school board. It is appealed from the school board to the county superintendent and from the county superintendent it is appealed to the state superintendent. This statute addresses the question of the appeal from the state superintendent. Until the point where it reaches the state superintendent office all of the decision making is made at the local level. After the state superintendent has issued a decision on the matter, the statute allows appeal to district court. Rep. Rice stated that the problem comes in on page 2, line 9. The statute gives the option of filing the case in court in several different places. One option that is given is allowing the case to be filed where the agency maintains its principle office which, of course, is OPI here in Helena. The problem appears in the district court in Helena, addressing a case which has arisen in another part of the state. The witness, parties, students, and parents, the board of trustees, county superintendent, the records, and the evidence is all in the town. This results in a tremendous inconvenience to all involved. This bill would require the local district court to hear this particular matter where all the witnesses, parties, and evidence is. It would also eliminate the possibility of forum shopping. This is the game that the lawyers play in trying to shop for the best possible court for his case. This is not a reaction to the local decision. It is a reaction to the decision being made up of cases that have been far removed from the issue itself.

Testifying Proponents and Who They Represent:

Bruce Moerer, Montana School Boards Association  
Chip Erdmann, Helena Attorney, Local Control  
Jess Long, School Administrators of Montana

Proponent Testimony:

Bruce Moerer stated that this legislation came through their resolutions process at the Montana School Boards Association. This was originally submitted by the Wolf Point School District. He stated that the people from Wolf Point wanted to participate or at least view this process of

the appeal and find out what is going on in the district court. With the current statute the way it is it would be quite difficult for them to partake in any of the appeal process. Many local school districts have the concern that they want to know what is going on, they want to be a part of the process and when those appeals of the state superintendent are filed here in Helena.

Chip Erdmann stated that initially, these kinds of disputes originate in the school board. The school board holds a hearing and it then goes to the county superintendent. That is the only record that is heard. It then goes to OPI for a record review with no additional evidence. Based on the current statute, there is then an appeal to district court which most likely takes place in Helena. It is impossible for the trustees to travel to Helena to hear an hour and one half argument. However, they would be able to do that if it were held in a local court. Additionally, another thing to consider is the work load that is in Helena. A bill like this would more evenly distribute the work load and get it back out to the counties where it arose from.

Jess Long added the School Administrators of Montana's support for HB 194 and urges the Committee to give it a Do Pass recommendation.

#### Testifying Opponents and Who They Represent:

Phil Campbell, Montana Education Association

#### Opponent Testimony:

Phil Campbell stated that the Montana Education Association stood in opposition to this bill for several reasons. 1.) The decision is made at the state level by the Superintendent of Public Instruction through the administrative procedures process and it is not a decision of the local school board or even the local county superintendent. They feel that it should take place in the district where the state superintendent resides. If it goes back to the local judge, while Mr. Campbell stated that he does not question the integrity of any judge within the state, they are elected and would have to be influenced somewhat by local politics. In some cases, the local school district, where there may be some additional costs, may not even be present. It would be carried out by their representatives. He feels the current system is working just fine as it has been.

Questions From Committee Members: Rep. Stickney questioned Rep. Rice as to how many cases there are per year. Rep. Rice stated that he checked with OPI and over the last four years they have had approximately 24 cases of which 16 have been appealed here in Helena. It is also to his understanding that because of the under funded lawsuits, they were quite back-logged and they have cases awaiting action. Sometimes

they are one to two years old just because of the back-log that they have had in the office.

Rep. Knapp wondered that with the hearings being local, wouldn't it be a good idea to have a change of venue to move it to Helena? Mr. Erdmann stated that he has not found the district judges to be partial. Rep. Rice brought up the issue of forum shopping which is looking around for the most favorable judge for the case. With this bill there would be no forum shopping.

Closing by Sponsor: In closing, Rep. Rice addressed some of the points brought about by the opponents and the Committee. Rep. Eudaily raised a point of OPI and the additional burden that may be placed upon their office. We have seen that they are really not involved in these cases. They did not appear to object to this piece of legislation. The opponent, Mr. Campbell, objected to moving it to the local level because the judges may not be impartial. We elect them because they are trustworthy and impartial. This is a good bill.

#### DISPOSITION OF HOUSE BILL 194

Motion: Rep. Mercer made a DO PASS motion, seconded by Rep. Boharski. Motion carried.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Eudaily made a motion to amend Section 2 to follow page 3 after line 14 and a change in the title as well (see attached standing committee report). Motion seconded by Rep. Rice.

Rep. Addy stated that he wanted to speak against the DO PASS motion as well as against the bill itself. Especially in a case where the dispute involves a school teacher. Just imagine what we are subjecting them to now. They have an initial consultation with the building principal and they have it with the superintendent of schools, then the county superintendent of schools and then they go to OPI. By the time they get to the district court level, they have pretty much the whole power structure and their local community raid on the side of the case opposite from them. If the Committee feels that is pretty conclusive evidence and they are wrong, then they should eliminate their right to appeal to district court. If the Committee feels that they need to give them a feeling that they are getting a fair shake from the system, then they better give them the choice of venue. Rep. Addy stated that he thinks that all the arguments that were heard are strong arguments and that the status quo ought to be maintained. They are taking one agency's decisions and making it an exception to the rule. For those reasons he can certainly see why school boards would want their judge to rule on the case. We have to have fairness,



but the appearance of fairness to all the parties before the system isn't going to have any validity.

Rep. Stickney stated that having been a member of a school board, she would prefer having it taken out of the district. There is a good process up to the point of involving all of the local officials. At that point, she would just as soon get it out of the community and into a more neutral court.

Rep. Darko commented that the testimony that brought this bill forward was for the convenience of the board and the convenience of the people of the community that wanted to be involved. She feels that the person who is making the appeal is the person whose wishes they should honor.

Rep. Nelson, responding to Rep. Addy's concern, stated that if she understands his concern correctly, he is assuming that the community would be against the teacher; therefore, perhaps it should go to a different court. Rep. Nelson does not think that this is a fair assumption. Often times the community is on the side of the teacher.

Rep. Addy responded to Rep. Nelson by stating that he was talking about the power structure. He realizes that there is a difference between the school board, in particular, and the community at large. If you still have a teacher that is appealing after all these people have reviewed it, you know what the outcome is. They are not satisfied with what the building principal, local superintendent, school board, county superintendent and OPI have given them. You have the power structure on one side and the appellant on the other side.

Rep. Mercer stated that he feels we should stay with the regular rules, that it should be held in the county where it occurred. Unless someone could make some showing that there has been unfair publicity, it would then be moved at that time.

Recommendation and Vote: Rep. Addy moved to TABLE HB 194, motion seconded by Rep. Darko. A roll call vote was taken and CARRIED with 12 voting aye, 4 voting nay.

#### DISPOSITION OF HOUSE BILL 177

Motion: A DO PASS motion was made by Rep. Darko, seconded by Rep. Addy.

Discussion: Rep. Brown stated that the Chair took on the liberty of drafting an amendment for the committee's discussion. This would put the chiropractors underneath the Montana Medical Board and Medical Review Panel and avoid a whole new process (EXHIBIT 5).

Rep. Mercer commented that one issue that was not raised by the

doctors but was of concern, is that they didn't think it would be fair to add other people into their particular group since they paid all of the start up costs. More importantly, there is really not a very good relationship between chiropractors and physicians. To allow the chiropractors to serve on their panel would be unfair to the physicians. Additionally, where is this chiropractic crisis? Rep. Mercer stated that he feels that there is not a crises and thinks it is unfair to take a non-existent crisis and use it as justification to cram chiropractors down the physicians throat.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Rep. Addy made a substitute motion to TABLE HB 177. Motion was seconded by Rep. Mercer. A Roll Call Vote was taken and CARRIED with 9 voting aye and 8 voting nay.

#### DISPOSITION OF HOUSE BILL 98

Motion: Rep. Gould made a DO PASS motion, seconded by Rep. Boharski.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A Roll Call Vote was taken on the DO PASS motion and FAILED with 8 voting aye, and 9 voting nay.

Rep. Mercer made a motion to TABLE HB 98, motion seconded by Rep. Strizich. A Roll Call Vote was taken and CARRIED with 13 voting aye, and 4 voting nay.

#### DISPOSITION OF HOUSE BILL 178

Motion: A DO PASS motion was made by Rep. Brooke, seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Darko moved to amend page 2, line 16, delete section B. Page 2, line 22, delete the language after "privilege". Motion seconded by Rep. Nelson.

Rep. Brown stated that if he remembers correctly, the child abuse government funds are in jeopardy if the bill is left as it currently is.

Rep. Darko offered an additional amendment to page 2, line 13, strike sub-a in parentheses.

Rep. Stickney stated that it appears to her that this amendment

effectively takes out the reason for the bill. She thought they were specifically trying to enable a professional to follow-up on an obvious knowledge that a child was being abused.

Rep. Brown commented that as he remembers the addition of the word made on the first page adds substantially to clarify for the folks working in the area when they should report and when they should not. That, in and of itself added substantially to clarifying their position under the law.

Rep. Eudaily stated that he doesn't understand why there wouldn't have been a simpler way to amend that under section B on page 2. If they had substituted health care provider for the name physician then that would have covered everyone. It seems what they are trying to cover is the mental health profession. Additionally, he expressed concern that adopting the second part of the amendment would make it easier to accuse someone unjustly by loosening up that language.

Rep. Mercer stated that he understood what the amendment was proposing to do because right now they say a professional must report. That is one law. The existing law in sub 4 seems to suggest that they can refuse to report on the grounds of a physician/patient privilege unless they happen to be treating the child. There is a conflict within our law right there. The amendment is very appropriate to accomplish what they want; therefore, they should do it for purposes of putting the bill in the form that it is intended to be.

Rep. Hannah asked Rep. Mercer to explain to him why it is a different issue. Rep. Mercer commented that if the amendment is not put into the bill, then the bill is not really doing what it is trying to do. It should be voted on up or down based on what the bill is trying to accomplish. Without this amendment it jeopardizes their money. It is confusing, however, because they still have that conflict in there and they should put the bill in the form that the people have intended it to be put in. Then they should vote on it up or down.

A vote was taken on the amendments and CARRIED unanimously.

Rep. Brooke commented that she has an additional amendment dealing with grammatical correctness. On line 14, page 1 following "child", insert a comma. Page 1 following "capacity", insert a comma. Motion seconded by Rep. Strizich.

Recommendation and Vote: Rep. Brown stated that the Committee will HOLD any further action on HB 178, although action taken at this point will stay as is.

ADJOURNMENT

Adjournment At: 10:55 a.m.

A handwritten signature in cursive script, appearing to read "Dave Brown", is written above a horizontal line.

REP. DAVE BROWN, Chairman

DB/je

2008.MIN

## DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 24, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH			X
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

January 24, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 172 (first reading copy -- white) do pass as amended.

Signed:   
Dave Brown, Chairman

And, that such amendments read:

1. Page 1, line 23.

Strike: "sufficiently hard"

Insert: "with the purpose"

2. Page 1, line 25, through line 1 on page 2.

Strike: "and he" on page 1, line 25, through "manufactured" on page 2, line 1

STANDING COMMITTEE REPORT

January 24, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE  
BILL 153 (first reading copy -- white) has been TABLED .

Signed:   
Dave Brown, Chairman

STANDING COMMITTEE REPORT

January 24, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE  
BILL 189 (first reading copy -- white) do pass.

Signed: \_\_\_\_\_  
Dave Brown, Chairman



STANDING COMMITTEE REPORT

January 24, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 194 (first reading copy -- white) is to be TABLED.

Signed: \_\_\_\_\_  
Dave Brown, Chairman

STANDING COMMITTEE REPORT

January 24, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE  
BILL 177 (first reading copy -- white) has been TABLED.

Signed: \_\_\_\_\_  
Dave Brown, Chairman

STANDING COMMITTEE REPORT

January 24, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 98 (first reading copy -- white) has been tabled.

Signed: \_\_\_\_\_  
Dave Brown, Chairman

DIVISION TESTIMONY

HOUSE BILL 154

HOUSE BILL 154 ALLOWS THE EMPLOYER'S INSURER TO REQUEST A STAY IF A WORKERS' COMPENSATION COURT DECISION IS BEING RECONSIDERED OR APPEALED TO THE SUPREME COURT.

THE IMPACT CAN BE PARTIALLY UNDERSTOOD IF YOU CONSIDER THE FOLLOWING STATISTICS:

1. CASES APPEALED TO THE SUPREME COURT

<u>F/Y</u>	<u>NUMBER</u>
1987	56
1988	36
1989 (6 mo.)	23

2. CASES APPEALED DURING C/Y 1988- 26

A. PLANS I & II	14
PLAN III	12
B. APPEALED BY CLAIMANT 10	
APPEALED BY INSURER	18*
C. TO DATE:	
AFFIRMED	19
REVERSED	4
PARTIAL	1

\*NOTE CROSS APPEAL IN TWO CASES

IN THE REIL DECISION REFERRED TO BY REPRESENTATIVE SMITH, THE ORDER DENYING THE STAY INDICATING THERE WAS NO PROVISION TO GET A STAY UNDER THE WORKERS' COMP ACT WAS DATED JULY 21, 1987. THE FINAL DECISION ON THE ISSUE WAS ON DECEMBER 3, 1987 AND THE DENIAL FOR REHEARING WAS ON JANUARY 5, 1988.

THE STATE COMPENSATION INSURANCE FUND PAID A TOTAL OF \$13,748 IN COMPENSATION BENEFITS AND \$10,294 IN MEDICAL. WE HAVE REQUESTED THE MONIES BE RETURNED AND HAVE RECEIVED NOTHING FROM THE CLAIMANT AND \$3,598 FROM MEDICAL PROVIDERS. WE INTEND TO CONTINUE TO PURSUE THE COLLECTION, BUT IT IS SOMEWHAT DIFFICULT BECAUSE THE CLAIMANT OF COURSE DOES NOT HAVE THE FUNDS AND WE UNDERSTAND ONE OF THE MAJOR MEDICAL PROVIDERS IS NO LONGER IN BUSINESS.

A STAY OF COURSE, IF GRANTED BY THE COURT, WOULD AVOID THESE PROBLEMS. IT APPEARS IT WILL BE NECESSARY TO PURSUE THE COLLECTION OF THE BENEFITS PAID THROUGH LEGAL MEANS OR AT LEAST THROUGH THE DEPARTMENT OF REVENUE'S NORMAL COLLECTION PROCEDURES WHICH OF COURSE ADDS ADDITIONAL ADMINISTRATIVE EXPENSES.

*William R. Palmer*

*Interim Administrator, DMC*

*1/24/89*

PROPOSED AMENDMENT TO HOUSE BILL NO. 154

1. Page 2, line 2.

Following: "the bond."

Insert: The workers' compensation judge may waive the  
bond requirement.

DIVISION TESTIMONY

HOUSE BILL 155

IN THE PAST, THE SUPREME COURT HAS APPLIED THE FOLLOWING STANDARD WHEN A CLAIMANT REINJURED OR AGGRAVATED AN ORIGINAL INJURY. THE ISSUE WAS WHETHER THE INSURER ON THE ORIGINAL INJURY WAS LIABLE OR WHETHER THE ACCIDENT OR INCIDENT WAS A NEW INJURY AND THE LIABILITY OF THE NEW EMPLOYER'S INSURER.

THE STANDARD APPLIED WAS ONCE A CLAIMANT REACHED MAXIMUM HEALING, THE INSURER AT RISK AT THE TIME OF THE ORIGINAL INJURY IS NO LONGER RESPONSIBLE FOR ANY SUBSEQUENT INJURIES OR CONDITIONS.

THIS STANDARD MAKES GOOD SENSE AND SHOULD BE APPLIED REGARDLESS OF WHETHER THE SUBSEQUENT INJURY IS JOB RELATED OR NOT. IN THE GUILD DECISION, THE SUPREME COURT DIFFERENTIATED BETWEEN A SUBSEQUENT INJURY ON THE JOB vs A NON-JOB RELATED INJURY. THIS DECISION COULD PLACE THE ORIGINAL EMPLOYER'S INSURER AT RISK FOR ANY OTHER FUTURE ACCIDENT WHICH WAS NON-JOB RELATED. IF AN INJURED WORKER IS REINJURED OFF THE JOB, SOME OTHER INSURANCE SHOULD BE RESPONSIBLE, BE THAT HEALTH AND ACCIDENT OR LIABILITY COVERAGE, BUT THE WORKERS' COMPENSATION SYSTEM SHOULD NOT BE AT RISK FOR THIS UNMEASURABLE AND UNKNOWN FUTURE LIABILITY. THE QUESTION IS WHETHER THE SYSTEM CAN AFFORD, AFTER THE CLAIMANT REACHES MAXIMUM HEALING, TO BE LIABLE FOR NON-JOB RELATED INJURIES AT HOME, OR CAR ACCIDENTS, ETC., WHICH MAY HAPPEN IN THE FUTURE.

PROPOSED AMENDMENT TO  
HOUSE BILL NO. 155  
AMERICAN INSURANCE ASSOCIATION  
BY  
JACQUELINE N. TERRELL

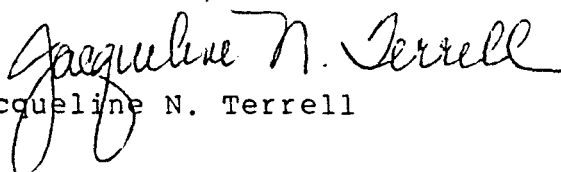
EXHIBIT 4  
DATE 1-24-89  
HB 155

1. Page 2, line 24.

(5) An insurer is not liable ON AN EXISTING CLAIM for the  
payment of compensation or medical benefits UNDER THIS CHAPTER on  
an existing claim if the WHEN AN employee receives a new injury,  
as defined in 39-71-119, regardless of whether the new injury are  
se out of and in the course of his employment, if the injury is  
to the same part of the body and the worker previously reached  
maximum healing, REGARDLESS OF WHETHER THE NEW INJURY AROSE OUT  
OF AND IN THE COURSE OF EMPLOYMENT. An employee WHO HAS REACHED  
MAXIMUM HEALING AND who receives a new work-related injury TO THE  
SAME PART OF THE BODY FOR WHICH HE HAS RECEIVED BENEFITS shall  
file a new claim FOR DETERMINATION OF BENEFITS UNDER THIS  
CHAPTER.

Submitted to House Judiciary committee for hearing on house  
bill 155, January 24, 1989, 8:00 o'clock a.m.

Respectfully submitted,

  
Jacqueline N. Terrell



Amendments to House Bill No. 177  
Introduced Copy

For the Committee on the Judiciary

Prepared by John MacMaster  
January 23, 1989

1. Title, line 4.

Strike: "CREATING A"

Insert: "ALLOWING THE MONTANA MEDICAL LEGAL"

2. Title, lines 6 and 7.

Strike: "APPROPRIATING" on line 6 through "17-7-502" on line 7

Insert: "AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-302,  
27-6-306, 27-6-307, and 27-6-401"

3. Pages 1 through 18.

Strike: everything following the enacting clause and insert:

"Section 1. Section 27-6-103, MCA, is amended to read:

"27-6-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Chiropractor" means:

(a) for purposes of the annual surcharge, an individual licensed to practice chiropractic under Title 37, chapter 12, who at the time of the assessment:

(i) has his principal residence or place of chiropractic practice in the state of Montana;

(ii) is not employed full time by any federal agency or entity; and

(iii) is not fully retired from the practice of chiropractic; or

(b) for all other purposes, a person licensed to practice chiropractic under Title 37, chapter 12, who at the time of the occurrence of the incident giving rise to a malpractice claim:

(i) had his principal residence or place of chiropractic practice in the state of Montana and was not employed full time by any federal agency or entity; or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of a state to render chiropractic services and each of whose shareholders, partners, or owners were chiropractic physicians licensed to practice chiropractic under Title 37, chapter 12.

(1) (2) "Dentist" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the assessment:

(i) has as his principal residence or place of dental practice the state of Montana;

(ii) is not employed full-time by any federal governmental

agency or entity; and

(iii) is not fully retired from the practice of dentistry;  
or

(b) for all other purposes, a person licensed to practice dentistry under the provisions of Title 37, chapter 4, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of dental practice the state of Montana and was not employed full-time by any federal governmental agency or entity;  
or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render dental services and whose shareholders, partners, or owners were individual dentists licensed to practice dentistry under the provisions of Title 37, chapter 4.

~~(2)~~ (3) "Health care facility" means a facility (other than a university, college, or governmental infirmary) licensed as a health care facility under Title 50, chapter 5.

~~(3)~~ (4) "Health care provider" means a physician, a dentist, a chiropractor, or a health care facility.

~~(4)~~ (5) "Hospital" means a hospital as defined in 50-5-101.

~~(5)~~ (6) "Malpractice claim" means any claim or potential claim of a claimant against a health care provider for medical or dental treatment, lack of medical or dental treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the claimant, whether the claimant's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

~~(6)~~ (7) "Panel" means the Montana medical legal panel provided for in 27-6-104.

~~(7)~~ (8) "Physician" means:

(a) for purposes of the assessment of the annual surcharge, an individual licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the assessment:

(i) has as his principal residence or place of medical practice the state of Montana;

(ii) is not employed full-time by any federal governmental agency or entity; and

(iii) is not fully retired from the practice of medicine; or

(b) for all other purposes, a person licensed to practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving rise to the claim:

(i) was an individual who had as his principal residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity;  
or

(ii) was a professional service corporation, partnership, or other business entity organized under the laws of any state to render medical services and whose shareholders, partners, or owners were individual physicians licensed to practice medicine under the provisions of Title 37, chapter 3."

Section 2. Section 27-6-206, MCA, is amended to read:

"27-6-206. Funding. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this chapter. 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 must be annually set by the director and must be apportioned among physicians, dentists, chiropractors, hospitals, and other health care providers by group. As to the group of all physicians, the group of all dentists, the group of all chiropractors, the group of all hospitals, and the group of all other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total health care providers brought before the panel that each group constitutes. The total number and group of health care providers brought before the panel must be determined from the annual report of the panel for the years preceding the year of assessment, as to all claims closed since April 19, 1977. The amount of the assessment for the group of all hospitals must be proportionately assessed against each hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in the most recent compilation of the department of health and environmental sciences. The amount of the assessment for the group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group of all dentists must be equally assessed against all dentists. The amount of the assessment for the group of all chiropractors must be equally assessed against all dentists. The amount of the assessment for the group of all other health care facilities must be equally assessed against all other health care facilities. Surplus funds, if any, over and above the amount required for the annual administration of the chapter shall be retained by the director and used to finance the administration of this chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this chapter.

(3) The annual surcharge shall be paid on or before the date physicians', chiropractors', and dentists' annual registration or renewal fees are due under 37-3-313, 37-12-307, and 37-4-307. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee is part of the annual surcharge. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of commerce has under 37-3-313 and 37-4-307 in connection with physicians', chiropractors', and dentists' annual registration or renewal fees."

Section 3. Section 27-6-302, MCA, is amended to read:

"27-6-302. Contents of application -- waiver of confidentiality of medical and dental records. The application shall contain the following:

(1) a statement in reasonable detail of the elements of the health care provider's conduct which are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all physicians, dentists, chiropractors, and hospitals having contact with the claimant and all witnesses;

(2) a statement authorizing the panel to obtain access to all medical, dental, chiropractic, and hospital records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents of those records. Nothing in that statement may in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court."

Section 4. Section 27-6-306, MCA, is amended to read:

"27-6-306. Health care provider's appearance and answer -- waiver of confidentiality of records. (1) If a health care provider involved chooses to retain legal counsel, his attorney shall informally enter his appearance with the director.

(2) The health care provider shall answer the application for review and shall submit a statement authorizing the panel to inspect all medical, dental, chiropractic, and hospital records and information pertaining to the application and, for the purposes of such inspection only, waiving any privilege as to the contents of those records. Nothing in the statement waives that privilege for any other purpose."

Section 5. Section 27-6-307, MCA, is amended to read:

"27-6-307. Assistance to claimant in obtaining expert consultation. The panel director shall cooperate fully with the claimant in retaining, to consult with the claimant, upon payment of a reasonable fee by the claimant, in claims involving:

(1) a physician, a physician qualified in the field of medicine involved; ~~or~~

(2) a dentist, a dentist qualified in the field of dentistry involved; ~~or~~

(3) a chiropractor, a chiropractor qualified in the field of chiropractic involved."

Section 6. Section 27-6-401, MCA, is amended to read:

"27-6-401. Composition of panel. (1) Those eligible to sit on the panel are health care providers licensed pursuant to Montana law and residing in Montana and the members of the state bar of Montana. Six panel members shall sit in review of each case. Three panel members who are physicians and three panel

members who are attorneys shall sit in review of each case in which the claim is heard only against one or more physicians. Three panel members who are dentists and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more dentists. Three panel members who are chiropractors and three panel members who are attorneys shall sit in review of each case in which the claim is heard only against one or more chiropractors. If the claim is heard only against one or more health care facilities, two of the panel members must be administrators of the same type of health care facility or facilities, one panel member must be a physician, and three panel members must be attorneys.

(2) In all other cases, two of the panel members must be physicians, one panel member must be an administrator of the same type of health care facility, and three panel members must be attorneys, except that when a claim is heard against a dentist, a dentist must be substituted for one of the physicians on the panel, and except that when a claim is heard against a chiropractor, a chiropractor must be substituted for one of the physicians on the panel." "

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 172DATE Jan. 24, 1989SPONSOR REP. SWIFT

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
<i>Jim Jensen</i>	<i>Helena METC</i>	<i>X</i>	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## JUDICIARY

BILL NO. HOUSE BILL 153

DATE JAN. 24, 1989

SPONSOR REP. SMITH

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 154

DATE JAN. 24, 1989

SPONSOR            REP. SMITH

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



## COMMITTEE

DATE JAN. 24, 1989

[illegible]

CS-33

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 189DATE JANUARY 24, 1989SPONSOR REP. RICE

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John Connor	Dept. of Justice	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HOUSE BILL 194DATE JAN. 24, 1989SPONSOR REP. RICE

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Phil Campbell	Mont. Ed. Assoc.		X
Bruce W. Moerer	MSBA	X	
OTIP EROMANN	"Local Control"	X	
W. L. Lutz	S. A. M.	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE JAN. 24, '89 BILL NO. H.B. 194 NUMBER 1

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN	X	
REP. OLE AAFEDT	X	
REP. WILLIAM BOHARSKI	X	
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY		
REP. PAULA DARKO	X	
REP. RALPH EUDAILY	X	
REP. BUDD GOULD	X	
REP. TOM HANNAH		X
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH		
REP. JOHN MERCER		X
REP. LINDA NELSON		X
REP. JIM RICE		X
REP. JESSICA STICKNEY	X	
REP. BILL STRIZICH	X	
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN	X	

TALLY

12 4

Julie Enge  
Secretary

\_\_\_\_\_  
Chairman

Motion: Motion made by Rep. Addy to TABLE, seconded  
by Rep. Darko.

# ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE JAN. 24, 1989

BILL NO. HB 177

NUMBER 1.

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN	X	
REP. OLE AAFEDT		X
REP. WILLIAM BOHARSKI	X	
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY		X
REP. PAULA DARKO		X
REP. RALPH EUDAILY		X
REP. BUDD GOULD		X
REP. TOM HANNAH	X	
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH		
REP. JOHN MERCER	X	
REP. LINDA NELSON	X	
REP. JIM RICE		X
REP. JESSICA STICKNEY	X	
REP. BILL STRIZICH		X
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN		X

TALLY

9 8

Julie Emge  
Secretary

Chairman

Motion: Rep. Addy's motion to TABLE, seconded by  
Rep. Mercer.

# ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE JAN. 24, 1989

BILL NO. HB 98

NUMBER 1.

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN		X
REP. OLE AAFEDT	X	
REP. WILLIAM BOHARSKI	X	
REP. VIVIAN BROOKE		X
REP. FRITZ DAILY		X
REP. PAULA DARKO		X
REP. RALPH EUDAILY		X
REP. BUDD GOULD	X	
REP. TOM HANNAH	X	
REP. ROGER KNAPP	X	
REP. MARY McDONOUGH		
REP. JOHN MERCER		X
REP. LINDA NELSON	X	
REP. JIM RICE		X
REP. JESSICA STICKNEY	X	
REP. BILL STRIZICH		X
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN		X

TALLY

8

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Julie Emge  
Secretary

Chairman

Motion: DO PASS MOTION MADE BY REP. GOULD,  
seconded by Rep. Boharski.

# ROLL CALL VOTE

JUDICIARY

COMMITTEE

DATE JAN. 24, 1989

BILL NO. HB 98

NUMBER 2.

NAME	AYE	NAY
REP. KELLY ADDY, VICE-CHAIRMAN	X	
REP. OLE AAFEDT		X
REP. WILLIAM BOHARSKI	X	
REP. VIVIAN BROOKE	X	
REP. FRITZ DAILY	X	
REP. PAULA DARKO	X	
REP. RALPH EUDAILY	X	
REP. BUDD GOULD		X
REP. TOM HANNAH		X
REP. ROGER KNAPP		X
REP. MARY McDONOUGH		
REP. JOHN MERCER	X	
REP. LINDA NELSON	X	
REP. JIM RICE	X	
REP. JESSICA STICKNEY	X	
REP. BILL STRIZICH	X	
REP. DIANA WYATT	X	
REP. DAVE BROWN, CHAIRMAN	X	

TALLY

13 4

Julie Emge  
Secretary

Chairman

Motion: Motion to TABLE made by Rep. Mercer,  
Seconded by Rep. Strizich.