HOUSE BILL NO. 618

INTRODUCED BY KEYSER, BARDANOUVE, VINGER, SHONTZ

IN THE HOUSE

February 2, 1983	Introduced and referred to Committee on Judiciary.			
February 10, 1983	Committee recommend bill do pass as amended. Report adopted.			
February 11, 1983	Bill printed and placed on members' desks.			
February 12, 1983	Second reading, do pass.			
February 14, 1983	Considered correctly engrossed.			
February 15, 1983	Third reading, passed. Transmitted to Senate.			
IN THE SENATE				
February 16, 1983	Introduced and referred to Committee on Judicary.			
March 19, 1983	Committee recommend bill be concurred in. Report adopted.			
March 22, 1983	Second reading, concurred in.			
March 24, 1983	Third reading, concurred in. Ayes, 49; Noes, 0.			
	IN THE HOUSE			
March 24, 1983	Returned to House.			
March 25, 1983	Sent to enrolling.			
	Reported correctly enrolled.			

LC 2043/01

Heysen Burnen Chige 1 INTRODUCED BY 2 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA HEDICAL MALPRACTICE PANEL ACT BY CHANGING THE NAME OF THE 5 6 ACT; CLARIFYING THE DEFINITIONS USED IN THE ACT; PROVIDING FOR A DIFFERENT ALLOCATION OF ASSESSMENTS; CHANGING THE TIME 7 WITHIN WHICH AFFIDAVITS OF DISQUALIFICATION MAY BE FILED: 8 9 PROVIDING FOR SERVICE BY CERTIFIED MAIL; INCREASING THE NUMBER OF PROPOSED PANELISTS INITIALLY SELECTED; DELETING 10 11 THE PROHIBITION AGAINST THE USE OF IMPEACHING EVIDENCE IN 12 COURT: AMENDING SECTIONS 27-6-101, 27-6-103, 27-6-104, 13 27-6-206, 27-6-305, 27-6-402, 27-6-404, AND 27-6-704, MCA; 14 AND PROVIDING EFFECTIVE DATES."

15

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

17 Section 1. Section 27-6-101, MCA, is amended to read: 18 #27-6-101. Short title. This chapter may be cited as the "Montana Medical Metprectice Legal Panel Act"." 19

Section 2. Section 27-6-103, MCA, is amended to read: 20 21 #27-6-103. Definitions. As used in this chapter, the 22 following definitions apply:

23 [1] _=Health_care_facility=_means_a_facility_father 24 than a university, college, or governmental bospital or 25 ipfirmary__licensed_as_a_health_care_facility_under_litle 1 50. chanter 5.

2 ftf(2) "Health care provider" means a physician 3 ticensed--to--practice--medicine--in--Montana-or-a-hospitaly hospital-related--facilityy or lang-term a health 4 care 5 facility.

6 (3) "Hospital" means a bospital as defined in 7 50-5-101.

8 +2+14) "Malpractice claim" means any claim or 9 potential claim against a health care provider for medical 10 treatment, lack of medical treatment, or other alleged 11 departure from accepted standards of health care which 12 proximately results in damage to the patient, whether the 13 patlent's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of 14 15 battery or wrongful death.

16 (3)(5) "Panel" means the Montana medical metpractice 17 legal panel provided for in 27-6-104.

18 (6) "Physician" means an individual licensed to 19

practice__medicine_under_the_provisions_of_Title_37. chapter

20 3."

21 Section 3. Section 27-6-104+ MCA+ is amended to read: 22 "27-6-104. Creation of panel. The Hontana medical 23 maggractice legal panel is created. The panel is attached to the Montana supreme court for administrative purposes only, 24 25 except that 2-15-121(2) does not apply."

-2- INTRODUCED BILL

1 Section 4. Section 27-6-206, MCA, is amended to read: 2 #27-6-206. Funding. (1) There is created a pretrial review fund to be administered by the director exclusively 3 4 for the purposes stated in this chapter. The fund and any 5 income from it shall be held in trust, deposited in an 6 account, and invested and reinvested by the director with 7 the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to 8 9 the general fund of this state but shall be open to auditing 10 by the legislative auditor.

11 (2) To create the fund, an annual surcharge shall be 12 levied on all health care providers -- The--amount--of--the 13 assessment--shall-be-set-by-the-directory-who-shall-allocate a-projected-cost-among-health-care-providars-on-a-per-capita 14 15 basisv-except-that-an-individual-not-engaged-in-the-proctice 16 of-his-profession-in-Montone-is-exempt-from-payment--of--the 17 assessmentur-The-director-may-provide-a-different-allocation 18 upon-approval-by-the-supreme-courts, except, physicians, not 19 engaged___in_the_private_practice_of_medicines___The_amount_of 20 the assessment must be annually set by the director. who 21 shall_allocate_a_projected_cost_amono_physicians. hospitals. 22 and other health care facilities. The amount of the 23 assessment for an individual physician. hospital. or other bealth_care_facility_must_be_that_portion_of_the_total 24 25 assessment which bears the same relationship to the total

1	assessment_as_the_pumber_of_claims_against_such_physician.
2	bospital.or_other_bealth_care_facility_bears_tothetotal
3	number_of_claims_against_physiclans+_hospitals+_and_other
4	<u>health_care_facilities_that_have_been_filed_withthepanel</u>
5	sinceApril19:1977:asthat_total_oumber_of_claims_is
6	shown in the annual reports of the panel. However, the
7	assessmentforanindividualbospitalmustalsobe
8	determined_by_dividing_the_totalpercentageofthe
9	<u>assessment for all_hospitals_by_the_total_number_of_hospital</u>
10	bedsexisting_at_tbe_time_of_the_assessment_and_multiplying
11	the_result_by_the_oumber_ofbedsinthebospitaltobe
12	assessed. Surplus funds, if any, over and above the amount
13	required for the annual administration of the chapter shall
14	be retained by the director and used to finance the
15	administration of this chapter in succeeding years, in which
16	event the director shall reduce the annual assessment in
17	subsequent years, commensurate with the proper
18	administration of this chapter.
19	(3) The annual surcharge shall be paid on or before

19 (3) The annual surcharge shall be paid on or before 20 the date physicians' annual registration fees are due under 21 37-3-313. The director has the same powers and duties in 22 connection with the collection of and failure to pay the 23 annual surcharge as the department of commerce has under 24 37-3-313 in connection with physicians' annual registration 25 fees.*

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1 Section 5. Section 27-6-305, MCA, is amended to read: 2 #27-6-305. Service on health care provider. Upon 3 receipt of an application for review, the director or his 4 delegate shall cause to be served a true copy of the 5 application on the health care providers involved. Service 6 shall be effected pursuant--to-the-Hontana-Rules-of-Eivil 7 Procedure by mailing a certified copy of the application to 8 the health care provider at the provider's last-known 9 address.postage_prepaid.py_certified_mail.return_receipt 10 requested."

11 Section 6. Section 27-6-402, MCA, is amended to read: 12 #27-6-402. Selection of panelists. (1) Application for 13 review shall be promptly transmitted by the director to the 14 directors of the health care provider's state professional 15 society or association and the state bar, which shalls 16 within __14__days__from_the__date__of__transmittal__of__the 17 application, each select three 12_proposed panelists from 18 which 3_will be selected within-30-days-from-the-date-of 19 transmittal-of-the-application.

20 (2) If no state professional society or association 21 exists or if the health care provider does not belong to 22 such a society or association, the director shall transmit 23 the application to the health care provider's state 24 licensing board, which shall in turn select three persons 25 from the health care provider's profession and, where LC 2043/01

applicable, from persons specializing in the same field or
 discipline as the health care provider."

3 Section 7. Section 27-6-404, MCA, is amended to read:
*27-6-404. Disqualification of panel member. (1) Any
member shall disqualify himself from consideration of any
case in which, by virtue of his circumstances, he feels his
7 presence on the panel would be inappropriate, considering
8 the purpose of the panel. The director may excuse a
9 proposed panelist from serving.

10 (2) Whenever a party makes and files an affidavit that a panel member selected pursuant to this part cannot, 11 12 according to the belief of the party making the affidavit, 13 sit in review of the application with impartiality, that 14 panel member may proceed no further. Another panel member 15 must be selected by the health care provider's professional 16 association, state licensing board, or the state bar, as the 17 case may be. A party may not disqualify more than three 18 panel members in this manner in any single malpractice 19 claim, and the affidavit must be filed at--feast--20--days 20 prior--to--the--date--of--hearing within 15_days_of__the 21 transmittal by the director, under 27-6-402, of the names of 22 the panel_members_selected." 23 Section 8. Section 27-6-704, MCA, is amended to read: 24 "27-6-704. Panel proceedings and decision privileged

25 from disclosure in court actions. (1) No panel member may be

called to testify in any proceeding concerning the
 deliberations, discussions, decisions, and internal
 proceedings of the panel.

4 (2) No-statement-made-by-any-person-during-a--hearing 5 before--the--panel--may--be--used--as-impeaching-evidence-in 6 courte The decision of the medical review panel is not 7 admissible as evidence in any action subsequently brought in 8 any court of law-*

9 <u>NEW_SECIION</u> Section 9. Effective dates. (1) Section
10 4 of this act is effective January 1, 1984.

11 (2) All other sections of this act are effective on 12 passage and approval.

-End-

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HB 0618/02

1	HOUSE BILL NO. 618	:
Z	INTRODUCED BY KEYSER, BARDANOUVE,	:
3	VINGER+ SHONT2	1
4		4
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6	MEDICAL MALPRACTICE PANEL ACT BY CHANGING THE NAME OF THE	l.
7	ACT; CLARIFYING THE DEFINITIONS USED IN THE ACT; PROVIDING	-
8	FOR A DIFFERENT ALLOCATION OF ASSESSMENTS; CHANGING THE TIME	1
9	WITHIN WHICH AFFIDAVITS OF DISQUALIFICATION MAY BE FILED;	I
10	PROVIDING FOR SERVICE BY CERTIFIED MAIL; INCREASING THE	1
11	NUMBER OF PROPOSED PANELISTS INITIALLY SELECTED; DELETING	. 1
12	THE PROHIBITION AGAINST THE USE OF IMPEACHING EVIDENCE IN	Ĩ
13	COURT; AMENDING SECTIONS 27-6-101, 27-6-103, 27-6-104,	. 1
14	27-6-206, 27-6-305, 27-6-402, 27-6-404, AND 27-6-704, MCA;	1
15	AND PROVIDING EFFECTIVE DATES."	1
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9	[2][4] "Malpractice claim" means any claim or
10	potential claim against a health care provider for medical
11	treatment, lack of medical treatment, or other alleged
12	departure from accepted standards of health care which
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HB 618

SECOND READING

1 except that 2-15-121(2) does not apply."

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12 (2) To create the fund, an annual surcharge shall be 13 levied on all health care providers -- The-- emount--of--the 14 assessment--shail-be-set-by-the-diffectory-who-shail-allocate 15 a-projected-cost-among-health-care-providers-on-s-per-copita 16 basisg-except-that-an-individual-not-engaged-in-the-practice of-his-profession-in-Honteng-is-exempt-from-payment--of--the 17 18 assessmenty--The-director-may-provide-a-different-allocation 19 upon-approval-by-the-supreme-courtys_<u>except__physicians__act</u> 20 encaded__in_the_private_practice_of_sedicines__The_asount_of the assessment must be annually set by the director: who 21 22 shall allocate a projected cost among physicians, hospitals, 23 and other health care facilities. The amount of the 24 assessment_for_ap_individual_physician. hospital. or _other 25 bealth__care_facility__aust_be_that_portion_of_the_total

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1 assessment_which_bears_the_same_relationship_to_the_total 2 assessment__as__the_number_of_claims_adainst_such_physician* 3 hospitals or other health care facility bears to the total 4 number_of_claims_against_physicians.bospitals.and_other 5 bealth_care_facilities_that_have_been_filed_with_the_panel 6 since__ipril__19._1977. as that total number of claims is 7 shown in the annual reports of the panel. However, the 8 assessment___for___an___individual__hospital__must__also__be 9 determined_py_dividing_the_total_percentage_of_the assessment_for_all_bospitals_by_the_total_number_of_bospital 10 11 beds__existing_at_the_time_of_the_assessment_aod_multiplying 12 the result by the number of beds in the bospital to be 13 assessed. Surplus funds, if any, over and above the amount 14 required for the annual administration of the chapter shall 15 be retained by the director and used to finance the 16 administration of this chapter in succeeding years, in which 17 event the director shall reduce the annual assessment in 18 subsequent years, commensurate with the proper administration of this chapter. 19 20 (3) The annual surcharge shall be paid on or before

21 the date physicians' annual registration fees are due under 22 37-3-313. The director has the same powers and duties in 23 connection with the collection of and failure to pay the 24 annual surcharge as the department of commerce has under 25 37-3-313 in connection with physicians' annual registration

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exists or if the health care provider does not belong to
such a society or association, the director shall transmit
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25 *27-6-704. Panel proceedings and decision privileged

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NEW SECTION: Section 9. Effective dates. (1) Section
 4 of this act is effective January 1, 1984.

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-End-

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HOUSE BILL ND. 618 INTRODUCED BY KEYSER, BARDANDUVE, VINGER, SHONTZ

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HB 0618/02

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A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA 5 MEDICAL MALPRACTICE PANEL ACT BY CHANGING THE NAME OF THE 6 ACT; CLARIFYING THE DEFINITIONS USED IN THE ACT; PROVIDING 7 FOR A DIFFERENT ALLOCATION OF ASSESSMENTS; CHANGING THE TIME 8 WITHIN WHICH AFFIDAVITS OF DISQUALIFICATION MAY BE FILED; 9 10 PROVIDING FOR SERVICE BY CERTIFIED MAIL: INCREASING THE NUMBER OF PROPOSED PANELISTS INITIALLY SELECTED: DELETING 11 THE PROHIBITION AGAINST THE USE OF IMPEACHING EVIDENCE IN 12 13 COURT; AMENDING SECTIONS 27-6-101, 27-6-103, 27-6-104, 27-6-206, 27-6-305, 27-6-402, 27-6-404, AND 27-6-704, MCA; 14 AND PROVIDING EFFECTIVE DATES." 15

16

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 17 Section 1. Section 27-6-101, MCA, is amended to read: 18 19 #27-6-101. Short title. This chapter may be cited as 20 the "Montana Medical Matpractice Legal Panel Act"." 21 Section 2. Section 27-6-103, MCA, is amended to read: 22 #27-6-103. Definitions. As used in this chapter, the 23 following definitions apply: 24 (1)__"Health_care_facility"_means_a_facility_fother

25 <u>Lhan_a_uoiversitys_colleges_or_governmental_bospital_or</u>

infirmary)_llcensedasa_health_care_facility_under_1	<u> Litle</u>
50cbapter_5.	
tit[2] "Health care provider" means a phys	ician
ticensedtopracticemedicineinMontana-or-o-hosp	ita lı
hospital-relatedfacility, or long-term <u>abealtb</u>	care
facility.	
(3)"Hospital"meaosabospital_as_defined	1in
59=5=101.	
{2}[4] "Malpractice claim" means any claim	or
potential claim against a health care provider for me	dical
treatment, lack of medical treatment, or other all	leged
departure from accepted standards of health care w	- nhich
proximately results in damage to the patient, whether	
patient's claim or potential claim sounds in tort	
contract, and includes but is not limited to allegation:	
battery or wrongful death.	
t31(51 "Panel" means the Montana medical matpres	
legal panel provided for in 27-6-104.	
(6)"Pbysician"meansanindividuallicensed	<u>to</u>

20 practice_medicine_under_the_provisions_of_litle_37s_chapter
21 3a^m

Section 3. Section 27-6-104. MCA, is amended to read:
"27-6-104. Creation of panel. The Montana medical
maternetice legal panel is created. The panel is attached to
the Montana supreme court for administrative purposes only.

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2 Section 4. Section 27-6-206, MCA, is amended to read: 3 #27-6-206. Funding. (1) There is created a pretrial 4 review fund to be administered by the director exclusively for the purposes stated in this chapter. The fund and any 5 6 income from it shall be held in trust, deposited in an 7 account, and invested and reinvested by the director with 8 the prior approval of the director of the Montana medical 9 association. The fund may not become a part of or revert to 10 the general fund of this state but shall be open to auditing 11 by the legislative auditor.

12 (2) To create the fund, an annual surcharge shall be 13 levied on all health care providersa--The--amount--of--the assessment--shall-be-set-by-the-directory-who-shall-allocate 14 15 s-projected-cost-smong-health-care-providers-on-a-per-capita 16 basi3r-except-that-on-individual-not-engaged-in-the-practice of-his-profession-in-Montana-is-exempt-from-payment--of--the 17 18 assessmenter-The-director-may-provide-a-different-allocation 19 upon-approval-by-the-supreme-court-s.excent__physicians__not 20 engaged__in_the_private_practice_of_medicine___Ibe_amount_of 21 the_assessment_must_be_annually_set_by_the_director:_who 22 sball_allocate_a_projected_cost_among_physicianse_hospitalse 23 and__other__bealth__care__facilities___ The __amount__of__the 24 assessment_for_an_individual_obysician. bospital. or_other 25 health_care_facility_must_be_that_portion_of the total

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1	assessment_which_bears_the_same_relationship_to_the_total
2	assessment_as_the_oumber_of_claims_against_such_physiciao.
3	bospitals_or_other_bealtb_care_facility_bears_tothe_total
4	oumberofclaimsagainst_physicianss_bospitalss_and_other
5	<u>bealth_care_facilities_that_baye_been_filed_with_the_namel</u>
6	<u>since_April_191977as_that_total_number_of_claims_is</u>
7	<pre>sbown_io_the_annual_reports_of_the_panelsHoweversthe</pre>
8	assessmentforanindividual_hospital_must_alsobe
9	determined_by_dividing_the_totalpercentageofthe
10	<u>assessment_for_all_bospitals_by_the_total_number_of_bospital</u>
11	beds_existing_at_the_time_of_the_assessment_and_multiplying
12	<u>the result by the cumber of beds in the baseital to be</u>
13	assessade Surplus funds, if any, over and above the amount
14	required for the annual administration of the chapter shall
15	be retained by the director and used to finance the
16	administration of this chapter in succeeding years, in which
17	event the director shall reduce the annual assessment in
18	subsequent years, commensurate with the proper
19	administration of this chapter.

20 (3) The annual surcharge shall be paid on or before 21 the date physicians' annual registration fees are due under 22 37-3-313. The director has the same powers and dutles in 23 connection with the collection of and failure to pay the 24 annual surcharge as the department of commerce has under 25 37-3-313 in connection with physicians' annual registration

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1	fees."
2	Saction 5. Section 27-6-305, MCA, is amended to read:
3	#27+6-305. Service on health care provider. Upon
4	receipt of an application for review, the director or his
5	delegate shall cause to be served a true copy of the
6	application on the health care providers involved. Service
7	shall be effected pursuantto-the-Montana-Rules-of-Civil
8	Procedure by mailing a certified copy of the application to
9	tbebealtbcareproviderattbeprovider!slast=known
10	address. postage prepaid. by certified mails return receipt
11	requested."

12 Section 6. Section 27-6~402. MCA. is amended to read: 13 "27-6-402. Selection of panelists. (1) Application for review shall be promptly transmitted by the director to the 14 directors of the health care provider's state professional 15 society or association and the state bar, which shalls 16 within___14__days__from_the__date__of__transmittal__of__the 17 application, each select three 12 proposed panelists from 18 which 3 will be selected within-30-days-from-the-date-of 19 20 transmittal-of-the-application.

(2) If no state professional society or association 21 exists or if the health care provider does not belong to 22 such a society or association, the director shall transmit 23 application to the health care provider's state 24 the licensing board, which shall in turn select three 12 persons 25

1 from the health care provider's profession and, where 2 applicable, from persons specializing in the same field or 3 discipline as the health care provider.*

4 Section 7. Section 27-6-404, MCA, is amended to read: 5 #27-6-404. Disgualification of panel member. (1) Any 6 member shall disgualify himself from consideration of any 7 case in which, by virtue of his circumstances, he feels his B presence on the panel would be inappropriate, considering 9 the purpose of the panel. The director may excuse a 10 proposed panelist from serving.

11 (2) Whenever a party makes and files an affidavit that 12 a panel member selected pursuant to this part cannot. 13 according to the belief of the party making the affidavit, sit in review of the application with impartiality, that 14 15 panel member may proceed no further. Another panel member 16 must be selected by the health care provider's professional 17 association, state licensing board, or the state bar, as the 18 case may be. A party may not disqualify more than three panel members in this manner in any single malpractice 19 20 claim, and the affidavit must be filed at-least-20-days 21 prior--to--the--date--of--hearing within_15_ days_of__the 22 transmittal_by_the_directors_under_27-6-402s_of_the_names_of 23 the wanel members selected." 24 Section 8. Section 27-6-704, MCA, is amended to read:

25 "27-6-704. Panel proceedings and decision privileged

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from disclosure in court actions. (1) No panel member may be
 called to testify in any proceeding concerning the
 deliberations, discussions, decisions, and internal
 proceedings of the panel.

5 (2) No--statement--made-by-any-person-during-a-hearing 6 before-the-panel-may--be--used--as--impeaching--evidence--in 7 courty The decision of the medical review panel is not 8 admissible as evidence in any action subsequently brought in 9 any court of law.*

10NEW_SECTION.Section 9. Effective dates. (1)Section114 of this act is effective January 1, 1984.

12 (2) All other sections of this act are effective on13 passage and approval.

-End-

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