## HOUSE BILL NO. 738

# INTRODUCED BY ADDY, KEYSER

# IN THE HOUSE

February 9, 1985	Introduced and referred to Committee on Judiciary.
	Fiscal Note requested.
February 14, 1985	Fiscal Note returned.
February 20, 1985	Committee recommend bill do pass as amended. Report adopted.
	Bill printed and placed on members' desks.
February 21, 1985	Second reading, do pass.
February 22, 1985	Considered correctly engrossed.
February 23, 1985	Third reading, passed.
·	Transmitted to Senate.
IN THE	SENATE
March 4, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
March 21, 1985	Committee recommend bill be concurred in. Report adopted.
March 23, 1985	Second reading, concurred in.
March 26, 1985	Third reading, concurred in. Ayes, 48; Noes, 2.
	Returned to House.

## IN THE HOUSE

March 27, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

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the assessment:

medicine; or

practice the state of Montana;

governmental agency or entity; and

1	HOUSE, BILL NO. 738
2	INTRODUCED BY Ally Blush
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4	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
5	MEDICAL LEGAL PANEL ACT BY CLARIFYING THE DEFINITIONS OF
6	"HEALTH CARE FACILITY", "MALPRACTICE CLAIM", AND
7	"PHYSICIAN"; CLARIFYING THE ALLOCATION OF ASSESSMENTS AND
8	DETERMINATION OF ASSESSMENTS; PROVIDING FOR A LATE FEE FOR
9	DELINQUENT ASSESSMENTS; CLARIFYING THE COMPOSITION OF THE
10	PANEL; CLARIFYING THE TOLLING OF THE STATUTE OF LIMITATIONS
11	AGAINST PARTIES NOT PARTIES TO THE CLAIM AND PROVIDING FOR
12	DISMISSAL OF CLAIMS AND THE RUNNING OF THE STATUTE OF
13	LIMITATIONS; AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-301,
14	27-6-303, 27-6-401, AND 27-6-702, MCA; AND PROVIDING AN
15	IMMEDIATE EFFECTIVE DATE."
16	
17	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
18	Section 1. Section 27-6-103, MCA, is amended to read:
19	"27-6-103. Definitions. As used in this chapter, the
20	following definitions apply:
21	(1) "Health care facility" means a facility (other
22	than a university, college, or governmental hospital-or
23	infirmary) licensed as a health care facility under Title
24	50, chapter 5.

(2) "Health care provider" means a physician or a

2	(3) "Hospital" means a hospital as defined in
3	50~5-101.
4	(4) "Malpractice claim" means any claim or potential
5	claim of a claimant against a health care provider for
6	medical treatment, lack of medical treatment, or other
7	alleged departure from accepted standards of health care
8	which proximately results in damage to the patient claimant,
9	whether the patient's claimant's claim or potential claim
10	sounds in tort or contract, and includes but is not limited
11	to allegations of battery or wrongful death.
12	(5) "Panel" means the Montana medical legal panel
13	provided for in 27-6-104.
14	(6) "Physician" means:
15	(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

(i) has as his principal residence or place of medical

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

(iii) is not fully retired from the practice of

(b) for all other purposes, a person licensed to

health care facility.

INTRODUCED BILL HB 738

- 1 practice medicine under the provisions of Title 37, chapter 3, who at the time of the occurrence of the incident giving 2 rise to the claim: 3
- (i) was an individual who had as his principal 4 residence or place of medical practice the state of Montana and was not employed full-time by any federal governmental agency or entity; or

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- 8 (ii) was a professional service corporation, partnership, or other business entity organized under the 9 10 laws of any state to render medical services, whose shareholders, partners, or owners were individual physicians 11 licensed to practice medicine under the provisions of Title 12 13 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 24 levied on all health care providers 7-except-physicians-not 25

1 engaged-in-the-private-practice-of-medicine. The amount of 2 the assessment must be annually set by the director,-who shall-allocate-a-projected--cost and must be apportioned 3 4 among physicians, hospitals, and other health care facilities providers by group. The-amount-of-the-assessment 6 for-an-individual-physician,-hospital,-or-other-health--care facility--must-be-that-portion-of-the-total-assessment-which bears-the-same-relationship-to-the-total-assessment--as--the 9 number--of-claims-against-such-physician,-hospital,-or-other 10 health-care-facility-bears-to-the--total--number--of--claims against---physicians;---hospitals;--and--other--health--care 11 1.2 facilities-that-have-been-filed-with-the-panel--since--April 13 19,--1977,--as--that--total-number-of-claims-is-shown-in-the annual-reports-of-the-panel---However,-the-assessment-for-an 14 individual-hospital-must-also-be-determined-by-dividing--the 15 16 total--percentage-of-the-assessment-for-all-hospitals-by-the 17 total-number-of-hospital-beds-existing-at-the--time--of--the 18 assessment--and-multiplying-the-result-by-the-number-of-beds 19 in-the-hospital-to-be-assessed: As to the group of all physicians, the group of all hospitals, and the group of all 20 21 other health care facilities, the amount of the assessment must be proportionate to the respective percentage of total 22 23 health care providers brought before the panel that each group constitutes. The total number and group of health 24 25 care providers brought before the panel must be determined

from the annual report of the panel for the years preceding 1 the year of assessment, as to all claims closed since April 3 19, 1977. The amount of the assessment for the group of all hospitals must be proportionately assessed against each 5 hospital on the basis of each hospital's total number of licensed hospital beds, whether used or not, as reflected in б 7 the most recent compilation of the department of health and environmental sciences. The amount of the assessment for the 8 group of all physicians must be equally assessed against all 10 physicians. The amount of the assessment for the group of 11 all other health care facilities must be equally assessed against all other health care facilities. Surplus funds, if 12 13 any, over and above the amount required for the annual 14 administration of the chapter shall be retained by the 15 director and used to finance the administration of this 16 chapter in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, 17 18 commensurate with the proper administration of this chapter. (3) The annual surcharge shall be paid on or before 19 the date physicians' annual registration fees are due under 20 21 37-3-313. All unpaid assessments bear a late charge fee equal to the judgment rate of interest. The late charge fee 22 is part of the annual surcharge. The director has the same 23 24 powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of 25

commerce has under 37-3-313 in connection with physicians' 1 2 annual registration fees." 3 Section 3. Section 27-6-301, MCA, is amended to read: 4 "27-6-301. How cases submitted. Claimants shall submit a case for the consideration of the panel prior to filing a 5 6 complaint in any district court or other court sitting in Montana by addressing an application, in writing, signed by 7 8 the patient claimant or his attorney, to the director of the 9 panel." 10 Section 4. Section 27-6-303, MCA, is amended to read: 11 "27-6-303. Amendments to application. Any--amendments 12 Amendments to the application must may be filed-not-less 13 than-14-days-prior-to-the-hearing-date authorized by rule." 14 Section 5. Section 27-6-401, MCA, is amended to read: 15 "27-6-401. Composition of panel. (1) Those eligible to sit on the panel are health care providers licensed pursuant 16 17 to Montana law and residing in Montana and the members of 18 the state bar of Montana. Six panel members shall sit in 19 review of each case. Three panel members from--the--health 20 care--provider's--profession who are physicians and three panel members from-the-state-bar who are attorneys shall sit 21 in review of each case in which the claim is heard only 22 23 against one or more physicians. If the claim is heard only 24 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

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- (2) In those all other cases where--the--theory--of respondent--superior--or--some--other--derivative--theory-of recovery-is-employed, two of the panel members shall must be chosen-from-the-individual-health-care-provider's-profession and physicians, one panel member shall must be chosen--from the--profession-of-the an administrator of one of the health care provider-named-a-respondent-as--employer,--master,--or principal facilities, and three panel members must be attorneys."
- Section 6. Section 27-6-702, MCA, is amended to read: "27-6-702. Tolling of statute of limitations. The running of the applicable limitation period in a malpractice claim is tolled upon receipt by the director of the application for review and as to all health care providers named in the application as parties to the panel proceeding and as to all other persons or entities named in the application as necessary or proper parties for any court action which might subsequently arise out of the same factual circumstances set forth in the application. The running of the applicable limitation period in a malpractice claim does not begin again until 30 days after either an order of dismissal, with or without prejudice against refiling, is issued from the panel chairman or from the

- director upon the consent of the parties to the claim or the
- panel's final decision, whichever occurs first, is entered 2
- 3 in the permanent files of the panel and a copy is served
- 4 upon the complainant and his attorney if he is represented
- 5 by counsel, by certified mail."
- 6 NEW SECTION. Section 7. Effective date. This act is
- 7 effective on passage and approval.

-End-

#### STATE OF MONTANA

#### FISCAL NOTE

REQUEST NO. FNN380-85

Form BD-15

19 85 , there is hereby submitted a In compliance with a written request received February 9 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Fiscal Note for H.B. 738 Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

## DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 738 revises the Montana Medical Legal Panel Act by clarifying the definitions of "Health Care Facility". "Malpractice Claim", and "Physician"; clarifying the allocation of assessments and determination of assessments; providing for a late fee for delinquent assessments; clarifying the composition of the panel; clarifying the tolling of the statute of limitations against parties not parties to the claim and providing for dismissal of claims and the running of the statute of limitations.

## FISCAL IMPACT:

None

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: Feb 14, 1985

FN8: I/1

# APPROVED BY COMMITTEE ON JUDICIARY

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

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- 20 practice the state of Montana;
- 21 (ii) is not employed full-time by any federal
- 22 governmental agency or entity; and
- 23 (iii) is not fully retired from the practice of
- 24 medicine; or
- 25 (b) for all other purposes, a person licensed to

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- director upon the consent of the parties to the claim, or the panel's final decision, whichever occurs first, is
- 3 entered in the permanent files of the panel and a copy is
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- 5 represented by counsel, by certified mail."
- 6 NEW SECTION. Section 7. Effective date. This act is 7 effective on passage and approval.

-End-

Montana Legislative Council

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2 annual registration fees." Section 3. Section 27-6-301, MCA, is amended to read: 3 "27-6-301. How cases submitted. Claimants shall submit 4 a case for the consideration of the panel prior to filing a complaint in any district court or other court sitting in Montana by addressing an application, in writing, signed by the patient claimant or his attorney, to the director of the 9 panel." 10

commerce has under 37-3-313 in connection with physicians'

Section 4. Section 27-6-303, MCA, is amended to read: 11 "27-6-303. Amendments to application. Any--amendments 12 Amendments to the application must may be filed-not-less 13 than-14-days-prior-to-the-hearing-date authorized by rule." 14 Section 5. Section 27-6-401, MCA, is amended to read: "27-6-401. Composition of panel, (1) Those eligible to 15 16 sit on the panel are health care providers licensed pursuant 17 to Montana law and residing in Montana and the members of 18 the state bar of Montana. Six panel members shall sit in review of each case. Three panel members from--the--health 20 care--provider's--profession who are physicians and three 21 panel members from-the-state-bar who are attorneys shall sit 22 in review of each case in which the claim is heard only against one or more physicians. If the claim is heard only 24 against one or more health care facilities, two of the panel

members must be administrators of the same type of health

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care facility or facilities, one panel member must be a physician, and three panel members must be attorneys.

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- respondent—superior—or—some—other—derivative—theory—of recovery—is—employed, two of the panel members shall must be chosen—from—the—individual—health—care—provider—s—profession and physicians, one panel member shall must be chosen—from the—profession—of—the an administrator of one—of the SAME TYPE OF health care provider—named—a—respondent—as—employer, master,—or—principal facilities FACILITY, and three panel members must be attorneys."
- Section 6. Section 27-6-702, MCA, is amended to read:

  "27-6-702. Tolling of statute of limitations. The running of the applicable limitation period in a malpractice claim is tolled upon receipt by the director of the application for review and as to all health care providers named in the application as parties to the panel proceeding and as to all other persons or entities named in the application as necessary or proper parties for any court action which might subsequently arise out of the same factual circumstances set forth in the application. The running of the applicable limitation period in a malpractice claim does not begin again until 30 days after either an order of dismissal, with or without prejudice against refiling, is issued from the panel chairman, or from the

- director upon the consent of the parties to the claim, or
- 2 the panel's final decision, whichever occurs first, is
- 3 entered in the permanent files of the panel and a copy is
- 4 served upon the complainant and OR his attorney if he is
- 5 represented by counsel, by certified mail."
- 6 <u>NEW SECTION.</u> Section 7. Effective date. This act is
- 7 effective on passage and approval.

-End-

HB 738

49th Legislature HB 0738/02

1	HOUSE BILL NO. 738
2	INTRODUCED BY ADDY, KEYSER
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTAN
5	MEDICAL LEGAL PANEL ACT BY CLARIFYING THE DEFINITIONS OF
6	"HEALTH CARE FACILITY", "MALPRACTICE CLAIM", AN
7	"PHYSICIAN"; CLARIFYING THE ALLOCATION OF ASSESSMENTS AND
8	DETERMINATION OF ASSESSMENTS; PROVIDING FOR A LATE FEE FOR
9	DELINQUENT ASSESSMENTS; CLARIFYING THE COMPOSITION OF THE
10	PANEL; CLARIFYING THE TOLLING OF THE STATUTE OF LIMITATIONS
11	AGAINST PARTIES NOT PARTIES TO THE CLAIM AND PROVIDING FOR
12	DISMISSAL OF CLAIMS AND THE RUNNING OF THE STATUTE OF
13	LIMITATIONS; AMENDING SECTIONS 27-6-103, 27-6-206, 27-6-301
14	27-6-303, 27-6-401, AND 27-6-702, MCA; AND PROVIDING A
15	IMMEDIATE EFFECTIVE DATE."
16	
17	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
18	Section 1. Section 27-6-103, MCA, is amended to read:
19	"27-6-103. Definitions. As used in this chapter, the
20	following definitions apply:
21	(1) "Health care facility" means a facility (other
22	than a university, college, or governmental hospital-or

infirmary) licensed as a health care facility under Title

(2) "Health care provider" means a physician or a

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50, chapter 5.

- health care facility.
- 2 (3) "Hospital" means a hospital as defined in 3 50-5-101.
- 4 (4) "Malpractice claim" means any claim or potential
  5 claim of a claimant against a health care provider for
  6 medical treatment, lack of medical treatment, or other
  7 alleged departure from accepted standards of health care
  8 which proximately results in damage to the patient claimant,
  9 whether the patient's claimant's claim or potential claim
  10 sounds in tort or contract, and includes but is not limited
  11 to allegations of battery or wrongful death.
- 12 (5) "Panel" means the Montana medical legal panel 13 provided for in 27-6-104.
  - (6) "Physician" means:

- 15 (a) for purposes of the assessment of the annual

  16 surcharge, an individual licensed to practice medicine under

  17 the provisions of Title 37, chapter 3, who at the time of

  18 the assessment:
- 19 (i) has as his principal residence or place of medical
  20 practice the state of Montana;
- 21 <u>(ii) is not employed full-time by any federal</u>
  22 governmental agency or entity; and
- 23 <u>(iii) is not fully retired from the practice of</u>
  24 medicine; or
- (b) for all other purposes, a person licensed to

1	practice medicine under the provisions of Title 37, chapter
2	3, who at the time of the occurrence of the incident giving
3	rise to the claim:
4	(i) was an individual who had as his principal
5	residence or place of medical practice the state of Montana
6	and was not employed full-time by any federal governmental
7	agency or entity; or
8	(ii) was a professional service corporation,
9	partnership, or other business entity organized under the
10	laws of any state to render medical services, whose
11	shareholders, partners, or owners were individual physicians
12	licensed to practice medicine under the provisions of Title
13	37, chapter 3."
14	Section 2. Section 27-6-206, MCA, is amended to read:
15	"27-6-206. Funding. (1) There is created a pretrial
16	review fund to be administered by the director exclusively
17	for the purposes stated in this chapter. The fund and any
18	income from it shall be held in trust, deposited in an
19	account, and invested and reinvested by the director with
20	the prior approval of the director of the Montana medical
21	association. The fund may not become a part of or revert to
22	the general fund of this state but shall be open to auditing
23	by the legislative auditor.

engaged-in-the-private-practice-of-medicine. The amount of 1 the assessment must be annually set by the director,-who shall-allocate-a-projected--cost and must be apportioned 3 4 among physicians, hospitals, and other health care facilities providers by group. The-amount-of-the-assessment 5 for-an-individual-physician,-hospital,-or-other-health--care facility--must-be-that-portion-of-the-total-assessment-which 7 8 bears-the-same-relationship-to-the-total-assessment--as--the 9 number--of-claims-against-such-physician;-hospital;-or-other 10 health-care-facility-bears-to-the--total--number--of--claims 11 against --- physicians --- hospitals -- and -- other -- health -- care 12 facilities-that-have-been-filed-with-the-panel--since--April 197--19777--as--that--total-number-of-claims-is-shown-in-the 13 14 annual-reports-of-the-panel:--However;-the-assessment-for-an individual-hospital-must-also-be-determined-by-dividing--the 15 16 total--percentage-of-the-assessment-for-all-hospitals-by-the 17 total-number-of-hospital-beds-existing-at-the--time--of--the assessment--and-multiplying-the-result-by-the-number-of-beds 18 19 in-the-hospital-to-be-assessed. As to the group of all 20 physicians, the group of all hospitals, and the group of all 21 other health care facilities, the amount of the assessment 22 must be proportionate to the respective percentage of total 23 health care providers brought before the panel that each 24 group constitutes. The total number and group of health care providers brought before the panel must be determined 25

levied on all health care providers,-except-physicians-not

(2) To create the fund, an annual surcharge shall be

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from the annual report of the panel for the years preceding 1 the year of assessment, as to all claims closed since April 2 19, 1977. The amount of the assessment\_for the group of all 3 4 hospitals must be proportionately assessed against each 5 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 7 environmental sciences. The amount of the assessment for the 8 9 group of all physicians must be equally assessed against all physicians. The amount of the assessment for the group of 10 11 all other health care facilities must be equally assessed 12 against all other health care facilities. Surplus funds, if any, over and above the amount required for the annual 13 administration of the chapter shall be retained by the 14 15 director and used to finance the administration of this 16 chapter in succeeding years, in which event the director 17 shall reduce the annual assessment in subsequent years. commensurate with the proper administration of this chapter. 18 (3) The annual surcharge shall be paid on or before 19 20 the date physicians' annual registration fees are due under 21 37-3-313. All unpaid assessments bear a late charge fee 22 equal to the judgment rate of interest. The late charge fee 23 is part of the annual surcharge. The director has the same 24 powers and duties in connection with the collection of and 25. failure to pay the annual surcharge as the department of

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(2) In those all other cases where—the—theory—of respondent—superior—or—some—other—derivative—theory—of recovery—is—employed, two of the panel members shall must be chosen—from—the—individual—health—care—provider—s—profession and physicians, one panel member shall must be chosen—from the—profession—of—the an administrator of one—of the SAME TYPE OF health care provider—named—a—respondent—as—employer, master;—or—principal facilities FACILITY, and three panel members must be attorneys."

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