

SENATE BILL NO. 48

INTRODUCED BY B. BROWN, ADDY, THAYER

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE  
ON LIABILITY ISSUES

IN THE SENATE

JANUARY 6, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 8, 1987	ON MOTION BY CHIEF SPONSOR, SENATOR THAYER AND REPRESENTATIVE ADDY ADDED AS SPONSORS.
JANUARY 23, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 24, 1987	PRINTING REPORT.
JANUARY 27, 1987	SECOND READING, DO PASS.
JANUARY 28, 1987	ENGROSSING REPORT.
JANUARY 29, 1987	THIRD READING, PASSED. AYES, 50; NOES, 0.  TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 4, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
APRIL 8, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 10, 1987	SECOND READING, CONCURRED IN.
APRIL 11, 1987	THIRD READING, CONCURRED IN. AYES, 73; NOES, 17.  RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 14, 1987

ON MOTION, RULES SUSPENDED TO ALLOW  
RECEIPT OF SB NO. 48.

APRIL 15, 1987

SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 16, 1987

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 22, 1987

FREE CONFERENCE COMMITTEE REPORTED.

ON MOTION, RULES SUSPENDED TO PLACE  
BILL ON SECOND READING THIS DAY.

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

ON MOTION, RULES SUSPENDED TO PLACE  
BILL ON THIRD READING THIS DAY.

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 22, 1987

FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE SENATE

APRIL 23, 1987

SENT TO ENROLLING.

1                                    SENATE    BILL NO.    48  
 2    INTRODUCED BY    B. BROWN  
 3                                    BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE  
 4                                    ON LIABILITY ISSUES

5  
 6    A BILL FOR AN ACT ENTITLED:    "AN ACT PROVIDING FOR THE  
 7    PERIODIC PAYMENT OF FUTURE DAMAGES IN AN ACTION FOR PERSONAL  
 8    INJURY, PROPERTY DAMAGE, OR WRONGFUL DEATH IF THE AMOUNT OF  
 9    FUTURE DAMAGES AWARDED EQUALS OR EXCEEDS \$50,000; AND  
 10    PROVIDING FOR A SEPARATE STATEMENT AND METHOD OF CALCULATION  
 11    OF ATTORNEY FEES."

12  
 13    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14            Section 1. Definitions. In [sections 2 through 5]:

15            (1) "future damages" includes damages for future  
 16    medical treatment, care, or custody, loss of future  
 17    earnings, loss of bodily function, and future pain and  
 18    suffering of the judgment creditor; and

19            (2) "periodic payment" means the payment of money or  
 20    delivery of other property to the judgment creditor at  
 21    regular intervals.

22            Section 2. Request for periodic payment of future  
 23    damages. (1) A party to an action for personal injury,  
 24    property damage, or wrongful death in which \$50,000 or more  
 25    of future damages is awarded may, prior to the entry of

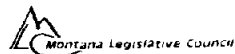
1    judgment, request the court to enter a judgment ordering  
 2    future damages to be paid in whole or in part by periodic  
 3    payments rather than by a lump-sum payment. Upon such  
 4    request, the court shall enter an order for periodic payment  
 5    of future damages.

6            (2) A court ordering the payment of future damages by  
 7    periodic payments shall make a specific finding as to the  
 8    dollar amount of periodic payments needed to compensate the  
 9    judgment creditor for future damages.

10            (3) The judgment order must specify the recipient or  
 11    recipients of periodic payments, the dollar amount of the  
 12    payments, the interval between payments, and the number of  
 13    payments or the period of time over which payments shall be  
 14    made.

15            (4) A court ordering periodic payment of future  
 16    damages shall order that the payments be made, during the  
 17    life of the judgment creditor or during the continuance of  
 18    the compensable injury or disability of the judgment  
 19    creditor, through the establishment of a trust fund or the  
 20    purchase of an inflation-indexed annuity.

21            (5) A court ordering periodic payments must order a  
 22    judgment debtor who is not an insurer licensed to do  
 23    business in this state to post security if payments are made  
 24    through a trust fund. Upon termination of periodic payments,  
 25    the court shall order the security returned to the judgment



1 debtor.

2       Section 3. Extension of periodic payments. If the  
3 judgment creditor lives beyond the date of the final  
4 periodic payment and the payments were not based on an  
5 inflation-indexed annuity, the judgment creditor may apply  
6 to the court for additional payments for economic damages.  
7 Additional payments must be calculated at the annual rate at  
8 which payments were calculated under the original order for  
9 periodic payments.

10       Section 4. Payment of attorney fees. A judgment must  
11 order payment of attorney fees and litigation expenses  
12 separately from an order for periodic payments of future  
13 damages. The attorney fees and expenses must be paid either  
14 in a lump sum or by periodic payments pursuant to an  
15 agreement entered into between the claimant and his  
16 attorney. An agreement for the immediate lump-sum payment of  
17 that portion of the attorney fees incurred to recover future  
18 damages to be paid by periodic payments must be calculated  
19 on the basis of the present value of the future damages.

20       Section 5. Failure to pay -- penalty. If the court  
21 finds that the judgment debtor has unjustifiably exhibited a  
22 continuing pattern of failing to make periodic payments, the  
23 court shall find the judgment debtor in contempt of court  
24 and order the judgment debtor to pay past-due payments and  
25 the judgment creditor's damages caused by the failure to

1 make payments, including court costs and attorney fees.

2       Section 6. Severability. If a part of this act is  
3 invalid, all valid parts that are severable from the invalid  
4 part remain in effect. If a part of this act is invalid in  
5 one or more of its applications, the part remains in effect  
6 in all valid applications that are severable from the  
7 invalid applications.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

1                   SENATE BILL NO. 48  
2                   INTRODUCED BY B. BROWN, ADDY, THAYER  
3                   BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE  
4                   ON LIABILITY ISSUES

5  
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7   PERIODIC PAYMENT OF FUTURE DAMAGES IN AN ACTION FOR PERSONAL  
8   INJURY, PROPERTY DAMAGE, OR WRONGFUL DEATH IF THE AMOUNT OF  
9   FUTURE DAMAGES AWARDED EQUALS OR EXCEEDS \$50,000 AND IF  
10 PERIODIC PAYMENT IS IN THE BEST INTERESTS OF THE CLAIMANT;  
11 AND PROVIDING FOR A SEPARATE STATEMENT AND METHOD OF  
12 CALCULATION OF ATTORNEY FEES."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15       Section 1. Definitions. In [sections 2 through 5 7]:

16       (1) "future damages" includes damages for future  
17       medical treatment, care, or custody, loss of future  
18       earnings, loss of bodily function, and future pain and  
19       suffering of the judgment creditor; and

20       (2) "periodic payment" means the payment of money or  
21       delivery of other property to the judgment creditor at  
22       regular intervals.

23       Section 2. Request for periodic payment of future  
24       damages. (1) A party to an action for personal injury,  
25       property damage, or wrongful death in which \$50,000 or more

1   of future damages is awarded may, prior to the entry of  
2   judgment, request the court to enter a judgment ordering  
3   future damages to be paid in whole or in part by periodic  
4   payments rather than by a lump-sum payment. Upon such  
5   request, the court ~~shall~~ MAY enter an order for periodic  
6   payment of future damages IF THE COURT FINDS THAT SUCH  
7   PAYMENT IS IN THE BEST INTERESTS OF THE CLAIMANT.

8               (2) A court ordering the payment of future damages by  
9   periodic payments shall make a specific finding FINDINGS as  
10 to the dollar amount of periodic payments needed to  
11 compensate the judgment creditor for future damages AND AS  
12 TO WHETHER AN ORDER FOR PERIODIC PAYMENT OF FUTURE DAMAGES  
13 IS IN THE BEST INTERESTS OF THE CLAIMANT.

14              (3) The judgment order must specify the recipient or  
15 recipients of periodic payments, the dollar amount of the  
16 payments, the interval between payments, and the number of  
17 payments or the period of time over which payments shall be  
18 made.

19              (4) A court ordering periodic payment of future  
20 damages shall order that the payments be made, during the  
21 life of the judgment creditor or during the continuance of  
22 the compensable injury or disability of the judgment  
23 creditor, through the establishment of a trust fund or the  
24 purchase of an inflation-indexed annuity.

25              (5) A court ordering periodic payments must order a

1 judgment debtor who is not an insurer licensed to do  
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4 the court shall order the security returned to the judgment  
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6 Section 3. Extension of periodic payments. If the  
7 judgment creditor lives beyond the date of the final  
8 periodic payment and the payments were not based on an  
9 inflation-indexed annuity, the judgment creditor may apply  
10 to the court for additional payments for economic damages.  
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12 which payments were calculated under the original order for  
13 periodic payments.

14 Section 4. Payment of attorney fees. A judgment must  
15 order payment of attorney fees and litigation expenses  
16 separately from an order for periodic payments of future  
17 damages. The attorney fees and expenses must be paid either  
18 in a lump sum or by periodic payments pursuant to an  
19 agreement entered into between the claimant and his  
20 attorney. An agreement for the immediate lump-sum payment of  
21 that portion of the attorney fees incurred to recover future  
22 damages to be paid by periodic payments must be calculated  
23 on the basis of the present value of the future damages.

24 Section 5. Failure to pay -- penalty. If the court  
25 finds that the judgment debtor has unjustifiably exhibited a

1 continuing pattern of failing to make periodic payments, the  
2 court shall find the judgment debtor in contempt of court  
3 and order the judgment debtor to pay past-due payments and  
4 the judgment creditor's damages caused by the failure to  
5 make payments, including court costs and attorney fees.

6 SECTION 6. ASSIGNMENT OF PERIODIC INSTALLMENTS. AN  
7 ASSIGNMENT OF OR AN AGREEMENT TO ASSIGN ANY RIGHT TO  
8 PERIODIC INSTALLMENTS FOR FUTURE DAMAGES CONTAINED IN A  
9 JUDGMENT ENTERED UNDER [SECTIONS 1 THROUGH 7] IS ENFORCEABLE  
10 ONLY AS TO AMOUNTS:

11 (1) TO SECURE PAYMENT OF ALIMONY, MAINTENANCE, OR  
12 CHILD SUPPORT;

13 (2) FOR THE COSTS OF PRODUCTS, SERVICES, OR  
14 ACCOMMODATIONS PROVIDED OR TO BE PROVIDED BY THE ASSIGNEE  
15 FOR MEDICAL OR OTHER HEALTH CARE; OR

16 (3) FOR ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION  
17 INCURRED IN SECURING THE JUDGMENT.

18 SECTION 7. FORM OF SECURITY -- SATISFACTION OF  
19 JUDGMENTS. (1) SECURITY AUTHORIZED OR REQUIRED FOR PAYMENT  
20 OF A JUDGMENT FOR PERIODIC INSTALLMENTS ENTERED IN  
21 ACCORDANCE WITH [SECTIONS 1 THROUGH 7] MUST BE IN ONE OR  
22 MORE OF THE FOLLOWING FORMS AND APPROVED BY THE COURT:

23 (A) A BOND EXECUTED BY A QUALIFIED INSURER;

24 (B) AN ANNUITY CONTRACT EXECUTED BY A QUALIFIED  
25 INSURER;

1        (C) EVIDENCE OF APPLICABLE AND COLLECTABLE LIABILITY  
2        INSURANCE WITH ONE OR MORE QUALIFIED INSURERS;

3        (D) AN AGREEMENT BY ONE OR MORE QUALIFIED INSURERS TO  
4        GUARANTEE PAYMENT OF THE JUDGMENT; OR

5        (E) ANY OTHER SATISFACTORY FORM OF SECURITY.

6        (2) SECURITY COMPLYING WITH THIS SECTION SERVES ALSO  
7        AS ANY REQUIRED SUPERSEDEAS BOND.

8        (3) IF SECURITY IS POSTED EITHER UPON REQUEST OF A  
9        JUDGMENT DEBTOR OR AS REQUIRED BY [SECTIONS 1 THROUGH 7] AND  
10       IS APPROVED UNDER A FINAL JUDGMENT ENTERED UNDER [SECTIONS 1  
11       THROUGH 7], THE COURT MAY, IN ITS DISCRETION, ORDER THAT THE  
12       JUDGMENT IS SATISFIED AND THE JUDGMENT DEBTOR ON WHOSE  
13       BEHALF THE SECURITY IS POSTED IS DISCHARGED.

14       Section 8. Severability. If a part of this act is  
15       invalid, all valid parts that are severable from the invalid  
16       part remain in effect. If a part of this act is invalid in  
17       one or more of its applications, the part remains in effect  
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19       invalid applications.

-End-

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2 INTRODUCED BY B. BROWN, ADDY, THAYER

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

4 ON LIABILITY ISSUES

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8       (3) IF SECURITY IS POSTED EITHER UPON REQUEST OF A  
9       JUDGMENT DEBTOR OR AS REQUIRED BY [SECTIONS 1 THROUGH 7] AND  
10       IS APPROVED UNDER A FINAL JUDGMENT ENTERED UNDER [SECTIONS 1  
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12       JUDGMENT IS SATISFIED AND THE JUDGMENT DEBTOR ON WHOSE  
13       BEHALF THE SECURITY IS POSTED IS DISCHARGED.

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15       invalid, all valid parts that are severable from the invalid  
16       part remain in effect. If a part of this act is invalid in  
17       one or more of its applications, the part remains in effect  
18       in all valid applications that are severable from the  
19       invalid applications.

-End-

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 2                   INTRODUCED BY B. BROWN, ADDY, THAYER  
 3                   BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE  
 4                   ON LIABILITY ISSUES

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 11 AND PROVIDING FOR A SEPARATE STATEMENT AND METHOD OF  
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 17 medical treatment, care, or custody, loss of future  
 18 earnings, loss of bodily function, and future pain and  
 19 suffering of the judgment creditor; and

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 21 delivery of other property to the judgment creditor at  
 22 regular intervals.

23       Section 2. Request for periodic payment of future  
 24 damages. (1) A party to an action for personal injury,  
 25 property damage, or wrongful death in which \$50,000 or more

1 of future damages is awarded may, prior to the entry of  
 2 judgment, request the court to enter a judgment ordering  
 3 future damages to be paid in whole or in part by periodic  
 4 payments rather than by a lump-sum payment. Upon such  
 5 request, the court shall MAY enter an order for periodic  
 6 payment of future damages IF THE COURT FINDS THAT SUCH  
 7 PAYMENT IS IN THE BEST INTERESTS OF THE CLAIMANT. THE TOTAL  
 8 DOLLAR AMOUNT OF THE ORDERED PERIODIC PAYMENTS MUST EQUAL  
 9 THE TOTAL DOLLAR AMOUNT OF THE FUTURE DAMAGES THEY REPRESENT  
 10 WITHOUT A REDUCTION TO PRESENT VALUE.

11       (2) A court ordering the payment of future damages by  
 12 periodic payments shall make a specific finding FINDINGS as  
 13 to the dollar amount of periodic payments needed to  
 14 compensate the judgment creditor for future damages AND AS  
 15 TO WHETHER AN ORDER FOR PERIODIC PAYMENT OF FUTURE DAMAGES  
 16 IS IN THE BEST INTERESTS OF THE CLAIMANT. THE COURT SHALL  
 17 MAKE SEPARATE FINDINGS SPECIFYING THE AMOUNT OF:

18                   (A) ANY PAST DAMAGES; AND

19                   (B) FUTURE DAMAGES:

20                   (I) THE PERIOD OR PERIODS OVER WHICH THEY WILL ACCRUE,  
 21 ON AN ANNUAL BASIS; AND

22                   (II) THE DOLLAR AMOUNT OF FUTURE DAMAGES BOTH BEFORE  
 23 AND AFTER A REDUCTION TO PRESENT VALUE.

24       (3) The judgment order must specify the recipient or  
 25 recipients of periodic payments, the dollar amount of the



1 payments, the interval between payments, and the number of  
2 payments or the period of time over which payments shall be  
3 made.

4 (4) A court ordering periodic payment of future  
5 damages shall order that the payments be made, during the  
6 life of the judgment creditor or during the continuance of  
7 the compensable injury or disability of the judgment  
8 creditor, through ~~the establishment of a trust fund or~~ the  
9 purchase of an inflation-indexed annuity APPROVED BY THE  
10 COURT. THE ANNUITY MUST BE IN THE FORM OF AN  
11 INFLATION-INDEXED ANNUITY CONTRACT PURCHASED FROM A  
12 QUALIFIED INSURER THAT, IN THE MOST RECENT EDITION OF A.M.  
13 BEST, HAS AN "A" (EXCELLENT) OR HIGHER RATING AND IS IN A  
14 CLASS 7 OR HIGHER CLASSIFICATION. THE ANNUITY ALSO SERVES  
15 AS ANY REQUIRED SUPERSEDEAS BOND. UPON PURCHASE OF A  
16 COURT-APPROVED ANNUITY, THE COURT MAY ORDER THAT THE  
17 JUDGMENT IS SATISFIED AND THAT THE JUDGMENT DEBTOR IS  
18 DISCHARGED. IF THE JUDGMENT CREDITOR DIES BEFORE ALL  
19 PERIODIC PAYMENTS HAVE BEEN MADE, THE REMAINING PAYMENTS  
20 BECOME THE PROPERTY OF HIS ESTATE.

21 ~~{5}--A court ordering periodic payments--must--order--a~~  
22 ~~judgment--debtor--who--is--not--an--insurer--licensed--to--do~~  
23 ~~business--in--this--state--to--post--security--if--payments--are--made~~  
24 ~~through--a--trust--fund--Upon--termination--of--periodic--payments,~~  
25 ~~the--court--shall--order--the--security--returned--to--the--judgment~~

1 debtor.

2 ~~Section 3--Extension--of--periodic--payments--If--the~~  
3 ~~judgment--creditor--lives--beyond--the--date--of--the--final~~  
4 ~~periodic--payment--and--the--payments--were--not--based--on--an~~  
5 ~~inflation-indexed annuity, the judgment creditor may apply~~  
6 ~~to--the--court--for--additional--payments--for--economic--damages.~~  
7 ~~Additional payments must be calculated at the annual rate at~~  
8 ~~which payments were calculated under the original order for~~  
9 ~~periodic payments.~~

10 Section 3. Payment of attorney fees. A judgment must  
11 order payment of attorney fees and litigation expenses  
12 separately from an order for periodic payments of future  
13 damages. The attorney fees and expenses must be paid either  
14 in a lump sum or by periodic payments pursuant to an  
15 agreement entered into between the claimant and his  
16 attorney. An agreement for the immediate lump-sum payment of  
17 that portion of the attorney fees incurred to recover future  
18 damages to be paid by periodic payments must be calculated  
19 on the basis of the present value of the future damages.

20 Section 4. Failure to pay -- penalty. If the court  
21 finds that the INSURER THAT SOLD THE ANNUITY TO THE judgment  
22 debtor has unjustifiably exhibited a continuing pattern of  
23 failing to make periodic payments, the court shall find the  
24 judgment debtor INSURER in contempt of court and order the  
25 judgment debtor INSURER to pay past-due payments and the

1 judgment creditor's damages caused by the failure to make  
2 payments, including court costs and attorney fees.

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4 ASSIGNMENT OF OR AN AGREEMENT TO ASSIGN ANY RIGHT TO  
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9 CHILD SUPPORT; OR

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11 ACCOMMODATIONS PROVIDED OR TO BE PROVIDED BY THE ASSIGNEE  
12 FOR MEDICAL OR OTHER HEALTH CARE; OR.

13 (3) FOR ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION  
14 INCURRED IN SECURING THE JUDGMENT.

15 SECTION 7. FORM OF SECURITY-----SATISFACTION OF  
16 JUDGMENTS.--(1) SECURITY AUTHORIZED OR REQUIRED FOR PAYMENT  
17 OF A JUDGMENT FOR PERIODIC INSTALLMENTS ENTERED IN  
18 ACCORDANCE WITH {SECTIONS 1 THROUGH 7} MUST BE IN ONE OR  
19 MORE OF THE FOLLOWING FORMS AND APPROVED BY THE COURT:

20 (A) A BOND EXECUTED BY A QUALIFIED INSURER;

21 (B) AN ANNUITY CONTRACT EXECUTED BY A QUALIFIED  
22 INSURER;

23 (C) EVIDENCE OF APPLICABLE AND COLLECTABLE LIABILITY  
24 INSURANCE WITH ONE OR MORE QUALIFIED INSURERS;

25 (D) AN AGREEMENT BY ONE OR MORE QUALIFIED INSURERS TO

1 GUARANTEE PAYMENT OF THE JUDGMENT; OR  
2 (E) ANY OTHER SATISFACTORY FORM OF SECURITY;  
3 (2) SECURITY COMPLYING WITH THIS SECTION SERVES ALSO  
4 AS ANY REQUIRED SUPERSEDEAS BOND;  
5 (3) IF SECURITY IS POSTED EITHER UPON REQUEST OF A  
6 JUDGMENT DEBTOR OR AS REQUIRED BY {SECTIONS 1 THROUGH 7} AND  
7 IS APPROVED UNDER A FINAL JUDGMENT ENTERED UNDER {SECTIONS 1  
8 THROUGH 7}, THE COURT MAY, IN ITS DISCRETION, ORDER THAT THE  
9 JUDGMENT IS SATISFIED AND THE JUDGMENT DEBTOR ON WHOSE  
10 BEHALF THE SECURITY IS POSTED IS DISCHARGED.

11 Section 6. Severability. If a part of this act is  
12 invalid, all valid parts that are severable from the invalid  
13 part remain in effect. If a part of this act is invalid in  
14 one or more of its applications, the part remains in effect  
15 in all valid applications that are severable from the  
16 invalid applications.

-End-

# CONFERENCE COMMITTEE REPORT

Report No. ....1.....

April..21,..... 1987.....

MR. SPEAKER

We, your FREE Conference Committee on

Senate Bill 48

met and considered Senate Bill 48 in its entirety

We recommend as follows:

THAT SENATE BILL NO. 48, reference copy salmon, BE AMENDED AS FOLLOWS:

1. Title, line 9.

Strike: "\$50,000"

Insert: "\$100,000"

2. Page 1, line 15.

Strike: "5"

Insert: "6"

3. Page 1, line 18.

Following: "earnings,"

Strike: "loss of bodily function,"

4. Page 1, lines 20 and 21.

Following: "money" on line 20

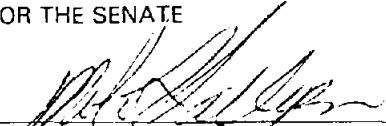
Strike: remainder of line 20 through "property" on line 21

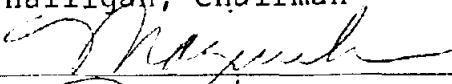
CONTINUED

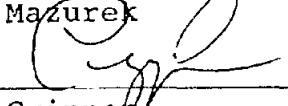
And that this Conference Committee report be adopted.

FOR THE SENATE

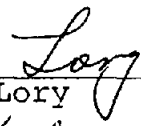
*B.*

  
Halligan, Chairman

  
Mazurek

  
Crippen

FOR THE HOUSE

  
Lory

  
Keller

  
Addy

ADOPT REJECT

April 21,

87

19.....

5. Page 1, line 23.

Following: line 22

Insert: "Section 2. Findings by trier of fact - - civil actions. In any action for personal injury, property damage, or wrongful death where liability is found after trial and in which \$100,000 or more in future damages is awarded to the claimant, the trier of fact shall make a separate finding as to the amount of any future damages so awarded and state whether the amount of future damages has been reduced to present value."

Renumber: subsequent sections

6. Page 1, line 25.

Strike: "\$50,000"

Insert; "\$100,000"

7. Page 2, line 9.

Strike: "THEY REPRESENT"

8. Page 2, lines 16 through 23.

Following: "CLAIMANT." on line 16

Strike: remainder of line 16 through line 23

9. Page 5, line 6.

Strike: "5"

Insert: "6"

C:\LANE\WP\AMDSB48.

HOUSE  
STANDING COMMITTEE REPORT

APRIL 8, 1987

JUDICIARY COMMITTEE

AMENDMENTS TO SB #48/PAGE TWO  
APRIL 8, 1987

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 48

do pass  be concurred in  as amended  
 do not pass  be not concurred in  statement of intent attached

*Earl Long*  
Chairman

1. Page 1, line 15.

Strike: "7"

Insert: "5"

2. Page 2, line 7.

Following: "CLAIMANT."

Insert: "The total dollar amount of the ordered periodic payments must equal the total dollar amount of the future damages they represent without a reduction to present value."

3. Page 2, line 13.

Following: "CLAIMANT."

Insert: "The court shall make separate findings specifying the amount of:  
(a) any past damages; and  
(b) future damages; the period or periods over which they will accrue, on an annual basis; and the dollar amount of future damages both before and after a reduction to present value."

4. Page 2, line 23.

Strike: "the establishment of a trust fund or"

5. Page 2, line 24.

Following: "annuity"

Insert: approved by the court. The annuity must be in the form of an inflation-indexed annuity contract purchased from a qualified insurer that, in the most recent edition of A.M. Best, has an A (excellent) or higher rating and is in a class 7 or higher classification. The annuity also serves as any required supersedeas bond. Upon purchase of a court-approved annuity the court may order that the judgment is satisfied and that the judgment debtor is discharged. If the judgment creditor dies before all periodic payments have been made, the remaining payments become the property of his estate"

6. Page 2, line 25 through line 13 of page 3.

Strike: page 2, line 25 through line 13 of page 3 in their entirety

Renumber: subsequent sections

7. Page 3, line 25.

Following: "finds that the"

Insert: "insurer that sold the annuity to the"

8. Page 4, lines 2 and 3.

Strike: "judgment debtor" on each line

Insert: "insurer" on each line

9. Page 4, line 9.

Strike: "7"

Insert: "5"

10. Page 4, line 12.

Following: "SUPPORT;"

Insert: "or"

11. Page 4, line 15.

Strike: ".i. OR"

Insert: ".."

12. Page 4, line 16 through line 13 on page 5.

Strike: page 4, line 16 through line 13 on page 5 in their entirety

Renumber: subsequent section

THIRD reading copy (BLUE color)

REP. addy WILL CARRY THE BILL!



## 1 SENATE BILL NO. 48

2 INTRODUCED BY B. BROWN, ADDY, THAYER

3 BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE

4 ON LIABILITY ISSUES

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE  
7 PERIODIC PAYMENT OF FUTURE DAMAGES IN AN ACTION FOR PERSONAL  
8 INJURY, PROPERTY DAMAGE, OR WRONGFUL DEATH IF THE AMOUNT OF  
9 FUTURE DAMAGES AWARDED EQUALS OR EXCEEDS ~~500,000~~ \$100,000  
10 AND IF PERIODIC PAYMENT IS IN THE BEST INTERESTS OF THE  
11 CLAIMANT; AND PROVIDING FOR A SEPARATE STATEMENT AND METHOD  
12 OF CALCULATION OF ATTORNEY FEES."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:15 Section 1. Definitions. In [sections 2 through 5 ~~7~~ 5  
16 6]:17 (1) "future damages" includes damages for future  
18 medical treatment, care, or custody, loss of future  
19 earnings, ~~loss-of--bodily--function~~, and future pain and  
20 suffering of the judgment creditor; and21 (2) "periodic payment" means the payment of money or  
22 ~~delivery-of-other--property~~ to the judgment creditor at  
23 regular intervals.24 SECTION 2. FINDINGS BY TRIER OF FACT -- CIVIL ACTIONS.  
25 IN ANY ACTION FOR PERSONAL INJURY, PROPERTY DAMAGE, OR

1 WRONGFUL DEATH WHERE LIABILITY IS FOUND AFTER TRIAL AND IN  
2 WHICH \$100,000 OR MORE IN FUTURE DAMAGES IS AWARDED TO THE  
3 CLAIMANT, THE TRIER OF FACT SHALL MAKE A SEPARATE FINDING AS  
4 TO THE AMOUNT OF ANY FUTURE DAMAGES SO AWARDED AND STATE  
5 WHETHER THE AMOUNT OF FUTURE DAMAGES HAS BEEN REDUCED TO  
6 PRESENT VALUE.

7 Section 3. Request for periodic payment of future  
8 damages. (1) A party to an action for personal injury,  
9 property damage, or wrongful death in which ~~500,000~~ \$100,000  
10 or more of future damages is awarded may, prior to the entry  
11 of judgment, request the court to enter a judgment ordering  
12 future damages to be paid in whole or in part by periodic  
13 payments rather than by a lump-sum payment. Upon such  
14 request, the court shall MAY enter an order for periodic  
15 payment of future damages IF THE COURT FINDS THAT SUCH  
16 PAYMENT IS IN THE BEST INTERESTS OF THE CLAIMANT. THE TOTAL  
17 DOLLAR AMOUNT OF THE ORDERED PERIODIC PAYMENTS MUST EQUAL  
18 THE TOTAL DOLLAR AMOUNT OF THE FUTURE DAMAGES THEY REPRESENT  
19 WITHOUT A REDUCTION TO PRESENT VALUE.

20 (2) A court ordering the payment of future damages by  
21 periodic payments shall make a specific finding FINDINGS as  
22 to the dollar amount of periodic payments needed to  
23 compensate the judgment creditor for future damages AND AS  
24 TO WHETHER AN ORDER FOR PERIODIC PAYMENT OF FUTURE DAMAGES  
25 IS IN THE BEST INTERESTS OF THE CLAIMANT. THE--COURT--SHALL

MAKE SEPARATE FINDINGS SPECIFYING THE AMOUNT OF:

(A) ANY PAST DAMAGES; AND

(B) FUTURE DAMAGES;

(i) THE PERIOD OR PERIODS OVER WHICH THEY WILL ACCRUE;

ON AN ANNUAL BASIS; AND

(ii) THE DOLLAR AMOUNT OF FUTURE DAMAGES BOTH BEFORE AND AFTER A REDUCTION TO PRESENT VALUE;

(3) The judgment order must specify the recipient or recipients of periodic payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made.

(4) A court ordering periodic payment of future damages shall order that the payments be made, during the life of the judgment creditor or during the continuance of the compensable injury or disability of the judgment creditor, through the establishment of a trust fund or the purchase of an inflation-indexed annuity APPROVED BY THE COURT. THE ANNUITY MUST BE IN THE FORM OF AN INFLATION-INDEXED ANNUITY CONTRACT PURCHASED FROM A QUALIFIED INSURER THAT, IN THE MOST RECENT EDITION OF A.M. BEST, HAS AN "A" (EXCELLENT) OR HIGHER RATING AND IS IN A CLASS 7 OR HIGHER CLASSIFICATION. THE ANNUITY ALSO SERVES AS ANY REQUIRED SUPERSEDEAS BOND. UPON PURCHASE OF A COURT-APPROVED ANNUITY, THE COURT MAY ORDER THAT THE

JUDGMENT IS SATISFIED AND THAT THE JUDGMENT DEBTOR IS DISCHARGED. IF THE JUDGMENT CREDITOR DIES BEFORE ALL PERIODIC PAYMENTS HAVE BEEN MADE, THE REMAINING PAYMENTS BECOME THE PROPERTY OF HIS ESTATE.

(5) A court ordering periodic payments must order a judgment debtor who is not an insurer licensed to do business in this state to post security if payments are made through a trust fund. Upon termination of periodic payments, the court shall order the security returned to the judgment debtor.

Section 3. Extension of periodic payments. If the judgment creditor lives beyond the date of the final periodic payment and the payments were not based on an inflation-indexed annuity, the judgment creditor may apply to the court for additional payments for economic damages. Additional payments must be calculated at the annual rate at which payments were calculated under the original order for periodic payments.

Section 4. Payment of attorney fees. A judgment must order payment of attorney fees and litigation expenses separately from an order for periodic payments of future damages. The attorney fees and expenses must be paid either in a lump sum or by periodic payments pursuant to an agreement entered into between the claimant and his attorney. An agreement for the immediate lump-sum payment of

1 that portion of the attorney fees incurred to recover future  
2 damages to be paid by periodic payments must be calculated  
3 on the basis of the present value of the future damages.

4 Section 5. Failure to pay -- penalty. If the court  
5 finds that the INSURER THAT SOLD THE ANNUITY TO THE judgment  
6 debtor has unjustifiably exhibited a continuing pattern of  
7 failing to make periodic payments, the court shall find the  
8 judgment-debtor INSURER in contempt of court and order the  
9 judgment-debtor INSURER to pay past-due payments and the  
10 judgment creditor's damages caused by the failure to make  
11 payments, including court costs and attorney fees.

12 SECTION 6. ASSIGNMENT OF PERIODIC INSTALLMENTS. AN  
13 ASSIGNMENT OF OR AN AGREEMENT TO ASSIGN ANY RIGHT TO  
14 PERIODIC INSTALLMENTS FOR FUTURE DAMAGES CONTAINED IN A  
15 JUDGMENT ENTERED UNDER [SECTIONS 1 THROUGH 7 5 6] IS  
16 ENFORCEABLE ONLY AS TO AMOUNTS:

17 (1) TO SECURE PAYMENT OF ALIMONY, MAINTENANCE, OR  
18 CHILD SUPPORT; OR

19 (2) FOR THE COSTS OF PRODUCTS, SERVICES, OR  
20 ACCOMMODATIONS PROVIDED OR TO BE PROVIDED BY THE ASSIGNEE  
21 FOR MEDICAL OR OTHER HEALTH CARE; OR.

22 (3) FOR ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION  
23 INCURRED IN SECURING THE JUDGMENT;

24 SECTION 7. FORM OF SECURITY-----SATISFACTION OF  
25 JUDGMENTS.-(1)-SECURITY AUTHORIZED OR REQUIRED FOR PAYMENT

1 OF--A--JUDGMENT--FOR--PERIODIC--INSTALLMENTS--ENTERED--IN  
2 ACCORDANCE--WITH--(SECTIONS--1--THROUGH--7)--MUST--BE--IN--ONE--OR  
3 MORE--OF--THE--FOLLOWING--FORMS--AND--APPROVED--BY--THE--COURT:

4 (A)--A--BOND--EXECUTED--BY--A--QUALIFIED--INSURER;

5 (B)--AN--ANNUITY--CONTRACT--EXECUTED--BY--A--QUALIFIED  
6 INSURER;

7 (C)--EVIDENCE--OF--APPLICABLE--AND--CREDITABLE--LIABILITY  
8 INSURANCE--WITH--ONE--OR--MORE--QUALIFIED--INSURERS;

9 (D)--AN--AGREEMENT--BY--ONE--OR--MORE--QUALIFIED--INSURERS--TO  
10 GUARANTEE--PAYMENT--OF--THE--JUDGMENT;--OR

11 (E)--ANY--OTHER--SATISFACTORY--FORM--OF--SECURITY;

12 (2)--SECURITY--COMPLYING--WITH--THIS--SECTION--SERVES--ALSO  
13 AS--ANY--REQUIRED--SUPERSEDES--BOND;

14 (3)--IF--SECURITY--IS--POSTED--EITHER--UPON--REQUEST--OF--A  
15 JUDGMENT--DEBTOR--OR--AS--REQUIRED--BY--(SECTIONS--1--THROUGH--7)--AND  
16 IS--APPROVED--UNDER--A--FINAL--JUDGMENT--ENTERED--UNDER--(SECTIONS--1  
17 THROUGH--7);--THE--COURT--MAY,--IN--ITS--DISCRETION,--ORDER--THAT--THE  
18 JUDGMENT--IS--SATISFIED--AND--THE--JUDGMENT--DEBTOR--ON--WHOSE  
19 BEHALF--THE--SECURITY--IS--POSTED--IS--DISCHARGED;

20 Section 7. Severability. If a part of this act is  
21 invalid, all valid parts that are severable from the invalid  
22 part remain in effect. If a part of this act is invalid in  
23 one or more of its applications, the part remains in effect  
24 in all valid applications that are severable from the  
25 invalid applications.

-End-