

HOUSE BILL NO. 177

INTRODUCED BY J. BROWN, DARKO, ROTH, MCDONOUGH,
VAN VALKENBURG, GLASER, COHEN

IN THE HOUSE

JANUARY 13, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 14, 1989	FIRST READING.
FEBRUARY 3, 1989	TAKEN FROM THE TABLE BY COMMITTEE
FEBRUARY 6, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 7, 1989	PRINTING REPORT.
FEBRUARY 8, 1989	SECOND READING, DO PASS.
FEBRUARY 9, 1989	ENGROSSING REPORT.
FEBRUARY 10, 1989	THIRD READING, PASSED. AYES, 89; NOES, 3.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 6, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 7, 1989	SECOND READING, CONCURRED IN.
MARCH 9, 1989	THIRD READING, CONCURRED IN. AYES, 47; NOES, 3.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 11, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 13, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 177
 2 INTRODUCED BY J. Brown Marko
 3 Van Vleet Marko Robert
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PANEL TO
 5 REVIEW CHIROPRACTOR MALPRACTICE CLAIMS PRIOR TO A COURT
 6 ACTION; APPROPRIATING FUNDS FOR ADMINISTRATION OF THE ACT;
 7 AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE
 8 DATE AND AN APPLICABILITY DATE."
 9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 11 NEW SECTION. Section 1. Short title. [Sections 1
 12 through 37] may be cited as the "Montana Chiropractic Legal
 13 Panel Act".
 14 NEW SECTION. Section 2. Purpose. The purpose of
 15 [sections 1 through 37] is to:
 16 (1) prevent, whenever possible, filed court actions
 17 against chiropractic health care providers and their
 18 employees for professional liability in situations in which
 19 the facts do not permit at least a reasonable inference of
 20 malpractice; and
 21 (2) make possible the fair and equitable disposition
 22 of such claims against chiropractic health care providers as
 23 are or reasonably may be well founded.
 24 NEW SECTION. Section 3. Definitions. As used in
 25 [sections 1 through 37], the following definitions apply:

1 (1) "Chiropractic physician" means:
 2 (a) for purposes of the annual assessment under
 3 [section 12], a person licensed to practice chiropractic
 4 under Title 37, chapter 12, who at the time of the
 5 assessment:
 6 (i) has his principal residence or place of
 7 chiropractic practice in the state of Montana;
 8 (ii) is not employed full time by any federal agency or
 9 entity; and
 10 (iii) is not fully retired from the practice of
 11 chiropractic; or
 12 (b) for all other purposes, a person licensed to
 13 practice chiropractic under Title 37, chapter 12, who at the
 14 time of the occurrence of the incident giving rise to a
 15 malpractice claim:
 16 (i) had his principal residence or place of
 17 chiropractic practice in the state of Montana and was not
 18 employed full time by any federal agency or entity; or
 19 (ii) was a professional service corporation,
 20 partnership, or other business entity organized under the
 21 laws of a state to render chiropractic services and each of
 22 whose shareholders, partners, or owners were chiropractic
 23 physicians licensed to practice chiropractic under Title 37,
 24 chapter 12.
 25 (2) "Director" means the director of the Montana

chiropractic legal panel.

(3) "Health care provider" means a chiropractic physician or a hospital acting in conjunction with a chiropractic physician.

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

(5) "Malpractice claim" means any claim or potential claim against a health care provider for chiropractic treatment, lack of chiropractic treatment, or alleged departure from accepted standards of chiropractic health care that proximately results in damage to the claimant, and includes but is not limited to a tort or contract claim or potential claim.

(6) "Panel" means the Montana chiropractic legal panel created in [section 4].

NEW SECTION. Section 4. Creation of panel. There is a Montana chiropractic legal panel. The panel is a state agency allocated to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply.

NEW SECTION. Section 5. What claims panel to review. The panel shall review all malpractice claims or potential claims against health care providers covered by [sections 1 through 37], except claims subject to a valid arbitration agreement allowed by law.

NEW SECTION. Section 6. Immunity of panel members and witnesses from civil liability. Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by [sections 1 through 37].

NEW SECTION. Section 7. Appointment, term, and salary of director. The executive director of the Montana chiropractic association shall appoint the director of the panel, subject to the approval of the chief justice of the Montana supreme court. The director shall serve at the pleasure of and the director's salary must be set by the executive director of the Montana chiropractic association, subject to the approval of the chief justice.

NEW SECTION. Section 8. Employment of staff and maintenance of offices. (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants as he considers necessary.

(2) The panel shall maintain adequate offices, in which its records must be kept and official business transacted.

NEW SECTION. Section 9. Compensation of panel members and staff. (1) Each member of the panel must be paid a salary of \$40 an hour, under guidelines promulgated by the

1 Montana supreme court.

2 (2) Each member of the panel, the director, and his
3 staff are entitled to travel expenses incurred while on the
4 business of the panel, as provided in 2-18-501 through
5 2-18-503. The director shall approve such expenses before
6 payment is made.

7 NEW SECTION. Section 10. Authority to adopt rules.
8 The director, in consultation with the state bar of Montana
9 and subject to approval of the supreme court, is authorized
10 to adopt and publish rules of procedure necessary to
11 implement and carry out the duties of the panel. Rules may
12 be adopted that require a party to make a monetary payment
13 as a condition of bringing a malpractice claim before the
14 chiropractic review panel.

15 NEW SECTION. Section 11. Powers of panel. The panel
16 may provide for the administration of oaths, the receipt of
17 claims filed, the promulgation of forms required by rules
18 adopted by the director, the issuance of subpoenas, and the
19 performance of all other acts required to fairly and
20 effectively administer [sections 1 through 37].

21 NEW SECTION. Section 12. Funding. (1) There is an
22 account in the state special revenue fund. Money from the
23 assessments levied under this section must be deposited in
24 the account. The money in the account is statutorily
25 appropriated, as provided in 17-7-502, to the director to be

1 used to administer [sections 1 through 37].

2 (2) For each fiscal year, beginning July 1, an annual
3 assessment is levied on all chiropractic physicians. The
4 amount of the assessment must be annually set by the
5 director and equally assessed against all chiropractic
6 physicians. A fund surplus at the end of a fiscal year, not
7 required for the administration of [sections 1 through 37],
8 must be retained by the director and used to finance the
9 administration of [sections 1 through 37] during the next
10 fiscal year, in which event the director shall reduce the
11 next annual assessment to an amount estimated to be
12 necessary for the proper administration of [sections 1
13 through 37] during that fiscal year.

14 (3) The annual assessment must be paid on or before
15 the date the chiropractic physician's annual renewal fee
16 under 37-12-307 is due. An unpaid assessment bears a late
17 charge fee equal to the judgment rate of interest. The late
18 charge fee is part of the annual assessment. The director
19 has the same powers and duties in connection with the
20 collection of and failure to pay the annual assessment as
21 the department of commerce has under 37-12-307 with a
22 chiropractic physician's annual license fee.

23 NEW SECTION. Section 13. Panel audits. (1) The panel
24 and fund must be audited by or at the direction of the
25 legislative auditor and in accordance with 5-13-304 and

5-13-309. The audit must include a determination of the adequacy, sufficiency, and reasonableness of the annual assessment.

(2) A copy of each audit report must be furnished to the supreme court.

(3) The cost of an audit must be paid by the panel.

NEW SECTION. Section 14. How cases submitted. A claimant shall submit a case for the consideration of the panel before filing a complaint in a court sitting in Montana by addressing an application in writing, signed by the claimant or his attorney, to the director of the panel.

NEW SECTION. Section 15. Content of application -- waiver of confidentiality of medical records. The application must contain a statement:

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

(2) authorizing the panel to obtain access to all medical and hospital records and information pertaining to the claim and, for the purposes of the panel's consideration of the claim, waiving any privilege as to the contents of those records. Nothing in the statement may in any way be

construed as waiving any privilege for any other purpose or in any other context, in or out of court.

NEW SECTION. Section 16. Amendments to application. Amendments to an application may be made in the manner authorized by rule.

NEW SECTION. Section 17. Copies of application to professional societies when vicarious liability claimed. If an application employs a theory of respondeat superior or any other derivative theory of recovery, the director shall give a copy of the application to the state professional society, association, or licensing board of both the individual health care provider whose alleged malpractice caused the application to be filed and the health care provider named a defendant as employer, master, or principal.

NEW SECTION. Section 18. Service on health care provider. Upon receipt of an application, the director or his delegate shall serve a copy of the application on the health care provider whose alleged malpractice caused the application to be filed. Service must be by mailing a certified copy of the application to the health care provider at his last-known address, postage prepaid, by certified mail, return receipt requested.

NEW SECTION. Section 19. Health care provider's appearance and answer -- waiver of confidentiality of

1 records. (1) If a health care provider whose alleged
2 malpractice caused the application to be filed chooses to
3 retain legal counsel, his attorney must informally enter an
4 appearance with the director.

5 (2) The health care provider shall answer the
6 application and submit a statement authorizing the panel to
7 inspect all medical and hospital records and information
8 pertaining to the application and, for the purposes of such
9 inspection only, waiving any privilege as to the content of
10 those records. Nothing in the statement waives any privilege
11 for any other purpose.

12 NEW SECTION. Section 20. Assistance to claimant in
13 obtaining expert consultation. The director shall cooperate
14 fully with the claimant in retaining as an expert consultant
15 a chiropractic physician qualified in the field of
16 chiropractic.

17 NEW SECTION. Section 21. Director to furnish panel
18 members with documents. At least 10 days prior to the
19 hearing, the director shall give each panel member copies of
20 all claims, briefs, medical or hospital records, and other
21 documents the director considers necessary.

22 NEW SECTION. Section 22. Composition of panel. Those
23 eligible to sit on the panel are health care providers
24 licensed under Montana law and residing in Montana and
25 attorneys who are members of the state bar of Montana. Six

1 panel members shall sit in review of each case.

2 (1) If a claim is heard against one or more
3 chiropractic physicians, three panel members who are
4 chiropractic physicians and three panel members who are
5 attorneys shall sit in review of each case.

6 (2) If a claim is heard against one or more hospitals
7 and one or more chiropractic physicians or against one or
8 more hospitals, one panel member must be an administrator of
9 the same type of hospital, two panel members must be
10 chiropractic physicians, and three panel members must be
11 attorneys.

12 NEW SECTION. Section 23. Selection of panelists. (1)
13 The director shall promptly transmit an application
14 submitted under [section 14] to the directors of the health
15 care provider's state professional society or association
16 and the state bar of Montana. Within 14 days from the date
17 of transmittal of the application, the director of the
18 professional society or association and the state bar of
19 Montana shall each select 12 proposed panelists from which
20 the director shall select three from each list to serve on
21 the panel. The director shall notify the parties of the
22 names of the panelists.

23 (2) If no state professional society or association
24 exists or if the health care provider does not belong to
25 such a society or association, the director shall transmit

the application to the health care provider's state licensing board and the licensing board shall select 12 proposed panelists from the health care provider's profession and, when applicable, from persons specializing in the same field or discipline as the health care provider.

NEW SECTION. Section 24. Panel in cases involving multiple defendants. If there are multiple defendants, the case against each may be reviewed by a separate panel or, at the discretion of the panel initially appointed or by stipulation of the parties, a single combined panel may review all the claims against all defendants.

NEW SECTION. Section 25. Disqualification of panel member. (1) A panel member or proposed member shall disqualify himself from consideration of a case in which, by virtue of his circumstances he believes his presence on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a panel member or proposed member from serving.

(2) If a party files an affidavit stating that he believes a panel member cannot impartially sit in review of the application, that panel member is disqualified from consideration of the case. The affidavit must be filed within 15 days of the transmittal by the director, under [section 23], of the names of the panel members selected. A party may not disqualify more than three panel members. The

entity that chose the disqualified member shall select another panel member.

NEW SECTION. Section 26. Time and place of hearing.

(1) Subject to subsection (2), the director shall choose a date, time, and place for hearing and give prompt notice thereof to the parties involved, their attorneys, and the members of the panel. The hearing date may not be more than 120 days after transmittal of the application by the director, unless the panel finds that good cause exists for extending the 120-day period.

(2) Panel hearings may be held in any county the panel considers necessary or advisable. The county commissioners or other governing authority shall, upon request of the director of the panel, provide suitable facilities for the hearing.

NEW SECTION. Section 27. Conduct of hearing. (1) At

the time set for hearing, the claimant must be present and give a brief statement of his case, including the facts constituting the alleged professional malpractice that he is prepared to prove. The health care provider against whom the claim is brought and his attorney may be present and may make an introductory statement of his case.

(2) A party may call witnesses to testify before the panel. Witnesses must be sworn. Medical texts, journals, studies, and other documentary evidence relied upon by a

1 party may be offered and admitted if relevant. Written
2 statements of facts by treating health care providers may be
3 reviewed.

4 (3) The hearing is informal, and an official
5 transcript must not be made.

6 NEW SECTION. Section 28. Conclusion of hearing --
7 supplemental hearing. (1) At the conclusion of the hearing,
8 the panel may take the case under advisement or may request
9 that additional facts, records, witnesses, or other
10 information be obtained and presented to it at a
11 supplemental hearing. The supplemental hearing must be held
12 at a date and time no more than 30 days from the date of the
13 original hearing, unless the claimant or his attorney
14 consents in writing to a longer period.

15 (2) A supplemental hearing must be held in the same
16 manner as the original hearing, and the parties and their
17 attorneys may be present.

18 NEW SECTION. Section 29. Selection of chairman. At or
19 prior to the time set for the hearing, the attorney members
20 of the panel shall select a chairman, who must be an
21 attorney.

22 NEW SECTION. Section 30. Questions panel must decide.
23 Upon consideration of all relevant evidence, the panel shall
24 decide whether there is:

25 (1) substantial evidence that the acts complained of

1 occurred and that they constitute malpractice; and

2 (2) a reasonable medical probability that the patient
3 was injured thereby.

4 NEW SECTION. Section 31. Deliberations to be secret
5 -- voting. The deliberations of the panel are confidential.
6 Each vote of the panel on a question for discussion must be
7 by secret ballot. The decision must be by a majority vote
8 of those voting members of the panel who sat during the
9 case.

10 NEW SECTION. Section 32. Form and content of
11 decision. (1) The decision must:

12 (a) be in writing and signed by the chairman;

13 (b) contain only the conclusions reached by a majority
14 of the panel; and

15 (c) list the number of dissenting members, if any.

16 (2) The majority may briefly explain the reasoning and
17 the basis for its decision, and the dissenters may likewise
18 explain the reasons for disagreement.

19 NEW SECTION. Section 33. Decision to be filed and
20 copies sent to parties, attorneys, and licensing board. A
21 copy of the decision must be:

22 (1) given to the parties and their attorneys;

23 (2) retained in the permanent files of the panel; and

24 (3) given to the health care provider's professional
25 licensing board.

1 NEW SECTION. **Section 34.** Decision not binding --
 2 settlement agreements. The panel's decision is without
 3 administrative or judicial authority and is not binding upon
 4 a party. The panel may recommend an award or approve a
 5 settlement agreement. An approved settlement agreement is
 6 binding on the parties.

7 NEW SECTION. **Section 35.** Tolling of statute of
 8 limitations. (1) Upon receipt of an application by the
 9 director, the running of an applicable limitation period in
 10 a malpractice claim is tolled as to each health care
 11 provider named as a party and as to each other person or
 12 entity named as a necessary or proper party for a court
 13 action that might subsequently arise out of the factual
 14 circumstances set forth in the application.

15 (2) The running of the applicable limitation period in
 16 a malpractice claim does not begin again until:

17 (a) 30 days after an order of dismissal, with or
 18 without prejudice against refiling, is issued; or

19 (b) after the panel's final decision is entered in the
 20 permanent files of the panel and a copy is served upon the
 21 complainant or his attorney.

22 NEW SECTION. **Section 36.** Records of proceedings --
 23 confidentiality. The director shall maintain records of all
 24 proceedings before the panel. The record must include the
 25 nature of the act or omission complained of, a brief summary

1 of the evidence, the decision of the panel, and any majority
 2 or dissenting opinions filed. Records that identify a party
 3 to the proceedings may not be made public, are not subject
 4 to subpoena, and may be used only to compile statistical
 5 data and facilitate studies of medical malpractice in
 6 Montana.

7 NEW SECTION. **Section 37.** Panel proceedings and
 8 decision privileged from disclosure in court actions. (1) A
 9 panel member must not be called to testify in any proceeding
 10 concerning the deliberations, discussions, decisions, and
 11 internal proceedings of the panel.

12 (2) A decision of the panel is not admissible as
 13 evidence in an action subsequently brought in a court of
 14 law.

15 **Section 38.** Section 17-7-502, MCA, is amended to read:

16 "17-7-502. Statutory appropriations -- definition --
 17 requisites for validity. (1) A statutory appropriation is an
 18 appropriation made by permanent law that authorizes spending
 19 by a state agency without the need for a biennial
 20 legislative appropriation or budget amendment.

21 (2) Except as provided in subsection (4), to be
 22 effective, a statutory appropriation must comply with both
 23 of the following provisions:

24 (a) The law containing the statutory authority must be
 25 listed in subsection (3).

1 (b) The law or portion of the law making a statutory
2 appropriation must specifically state that a statutory
3 appropriation is made as provided in this section.

4 (3) The following laws are the only laws containing
5 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
6 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
7 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
8 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
9 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
10 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
11 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
12 23-5-610; 23-5-1027; [section 12]; 33-31-212; 33-31-401;
13 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205;
14 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228;
15 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306;
16 90-15-103; section 13, House Bill No. 861, Laws of 1985; and
17 section 1, Chapter 454, Laws of 1987.

18 (4) There is a statutory appropriation to pay the
19 principal, interest, premiums, and costs of issuing, paying,
20 and securing all bonds, notes, or other obligations, as due,
21 that have been authorized and issued pursuant to the laws of
22 Montana. Agencies that have entered into agreements
23 authorized by the laws of Montana to pay the state
24 treasurer, for deposit in accordance with 17-2-101 through
25 17-2-107, as determined by the state treasurer, an amount

1 sufficient to pay the principal and interest as due on the
2 bonds or notes have statutory appropriation authority for
3 such payments. (In subsection (3): pursuant to sec. 15, Ch.
4 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
5 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
6 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
7 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
8 1987, terminates July 1, 1988.)"

9 NEW SECTION. **Section 39.** Effective date --
10 applicability. (1) [This act] is effective January 1, 1990.
11 (2) [This act] applies to causes of action arising on
12 or after January 1, 1990.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB177, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

"An act creating a panel to review chiropractor malpractice claims prior to a court action; appropriating funds for administration of the act; amending Section 17-7-502, MCA; and providing an effective date and applicability date."

ASSUMPTIONS:

1. Assume the six member panel will meet quarterly within the state for one day hearings.
2. Assume each member will receive one night lodging, one and one-half days meals, and travel 300 miles to and from each hearing.
3. Assume panel members will be paid a salary of \$40 an hour, under guidelines promulgated by the Montana Supreme Court.

FISCAL IMPACT:

	Current Law	FY90 Proposed Law	Difference	Current Law	FY91 Proposed Law	Difference
Expenditures:						
State Special Revenue	\$ -0-	\$8,591	\$ 8,591	\$ -0-	\$8,591	\$8,591

Ray Shackelford 1/21/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Jan Brown 2/07/89
JAN BROWN, PRIMARY SPONSOR DATE

Fiscal Note for HB177, as introduced

HB 177

APPROVED BY COMMITTEE
ON JUDICIARY

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INTRODUCED BY J. BROWN, DARKO, ROTH, MCDONOUGH,

VAN VALKENBURG, GLASER, COHEN

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(1) prevent, whenever possible, filed court actions against chiropractic health care providers and their employees for professional liability in situations in which the facts do not permit at least a reasonable inference of malpractice; and

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[sections 1 through 37], the following definitions apply:

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(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.

(2) "Director" means the director of the Montana chiropractic legal panel.

(3) "Health care provider" means a chiropractic physician or a hospital acting in conjunction with a chiropractic physician.

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13 necessary for the proper administration of [sections 1
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15 (3) The annual assessment must be paid on or before
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6 the supreme court.

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18 malpractice claim, the dates the conduct occurred, and the
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24 the claim and, for the purposes of the panel's consideration
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7 (2) If a claim is heard against one or more hospitals
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17 and the state bar of Montana. Within 14 days from the date
18 of transmittal of the application, the director of the
19 professional society or association and the state bar of
20 Montana shall each select 12 proposed panelists from which
21 the director shall select three from each list to serve on
22 the panel. The director shall notify the parties of the
23 names of the panelists.

24 (2) If no state professional society or association
25 exists or if the health care provider does not belong to

1 such a society or association, the director shall transmit
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 3 licensing board and the licensing board shall select 12
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 6 in the same field or discipline as the health care provider.

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 11 stipulation of the parties, a single combined panel may
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 15 disqualify himself from consideration of a case in which, by
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 18 panel. The director may excuse a panel member or proposed
 19 member from serving.

20 (2) If a party files an affidavit stating that he
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 22 the application, that panel member is disqualified from
 23 consideration of the case. The affidavit must be filed
 24 within 15 days of the transmittal by the director, under
 25 [section 23], of the names of the panel members selected. A

1 party may not disqualify more than three panel members. The
 2 entity that chose the disqualified member shall select
 3 another panel member.

4 NEW SECTION. Section 26. Time and place of hearing.
 5 (1) Subject to subsection (2), the director shall choose a
 6 date, time, and place for hearing and give prompt notice
 7 thereof to the parties involved, their attorneys, and the
 8 members of the panel. The hearing date may not be more than
 9 120 days after transmittal of the application by the
 10 director, unless the panel finds that good cause exists for
 11 extending the 120-day period.

12 (2) Panel hearings may be held in any county the panel
 13 considers necessary or advisable. The county commissioners
 14 or other governing authority shall, upon request of the
 15 director of the panel, provide suitable facilities for the
 16 hearing.

17 NEW SECTION. Section 27. Conduct of hearing. (1) At
 18 the time set for hearing, the claimant must be present and
 19 give a brief statement of his case, including the facts
 20 constituting the alleged professional malpractice that he is
 21 prepared to prove. The health care provider against whom the
 22 claim is brought and his attorney may be present and may
 23 make an introductory statement of his case.

24 (2) A party may call witnesses to testify before the
 25 panel. Witnesses must be sworn. Medical texts, journals,

1 studies, and other documentary evidence relied upon by a
2 party may be offered and admitted if relevant. Written
3 statements of facts by treating health care providers may be
4 reviewed.

5 (3) The hearing is informal, and an official
6 transcript must not be made.

7 NEW SECTION. Section 28. Conclusion of hearing --
8 supplemental hearing. (1) At the conclusion of the hearing,
9 the panel may take the case under advisement or may request
10 that additional facts, records, witnesses, or other
11 information be obtained and presented to it at a
12 supplemental hearing. The supplemental hearing must be held
13 at a date and time no more than 30 days from the date of the
14 original hearing, unless the claimant or his attorney
15 consents in writing to a longer period.

16 (2) A supplemental hearing must be held in the same
17 manner as the original hearing, and the parties and their
18 attorneys may be present.

19 NEW SECTION. Section 29. Selection of chairman. At or
20 prior to the time set for the hearing, the attorney members
21 of the panel shall select a chairman, who must be an
22 attorney.

23 NEW SECTION. Section 30. Questions panel must decide.
24 Upon consideration of all relevant evidence, the panel shall
25 decide whether there is:

1 (1) substantial evidence that the acts complained of
2 occurred and that they constitute malpractice; and

3 (2) a reasonable medical probability that the patient
4 was injured thereby.

5 NEW SECTION. Section 31. Deliberations to be secret
6 -- voting. The deliberations of the panel are confidential.
7 Each vote of the panel on a question for discussion must be
8 by secret ballot. The decision must be by a majority vote
9 of those voting members of the panel who sat during the
10 case.

11 NEW SECTION. Section 32. Form and content of
12 decision. (1) The decision must:

13 (a) be in writing and signed by the chairman;

14 (b) contain only the conclusions reached by a majority
15 of the panel; and

16 (c) list the number of dissenting members, if any.

17 (2) The majority may briefly explain the reasoning and
18 the basis for its decision, and the dissenters may likewise
19 explain the reasons for disagreement.

20 NEW SECTION. Section 33. Decision to be filed and
21 copies sent to parties, attorneys, and licensing board. A
22 copy of the decision must be:

23 (1) given to the parties and their attorneys;

24 (2) retained in the permanent files of the panel; and

25 (3) given to the health care provider's professional

1 licensing board.

2 NEW SECTION. Section 34. Decision not binding --
3 settlement agreements. The panel's decision is without
4 administrative or judicial authority and is not binding upon
5 a party. The panel may recommend an award or approve a
6 settlement agreement. An approved settlement agreement is
7 binding on the parties.

8 NEW SECTION. Section 35. Tolling of statute of
9 limitations. (1) Upon receipt of an application by the
10 director, the running of an applicable limitation period in
11 a malpractice claim is tolled as to each health care
12 provider named as a party and as to each other person or
13 entity named as a necessary or proper party for a court
14 action that might subsequently arise out of the factual
15 circumstances set forth in the application.

16 (2) The running of the applicable limitation period in
17 a malpractice claim does not begin again until:

18 (a) 30 days after an order of dismissal, with or
19 without prejudice against refiling, is issued; or

20 (b) after the panel's final decision is entered in the
21 permanent files of the panel and a copy is served upon the
22 complainant or his attorney.

23 NEW SECTION. Section 36. Records of proceedings --
24 confidentiality. The director shall maintain records of all
25 proceedings before the panel. The record must include the

1 nature of the act or omission complained of, a brief summary
2 of the evidence, the decision of the panel, and any majority
3 or dissenting opinions filed. Records that identify a party
4 to the proceedings may not be made public, are not subject
5 to subpoena, and may be used only to compile statistical
6 data and facilitate studies of medical malpractice in
7 Montana.

8 NEW SECTION. Section 37. Panel proceedings and
9 decision privileged from disclosure in court actions. (1) A
10 panel member must not be called to testify in any proceeding
11 concerning the deliberations, discussions, decisions, and
12 internal proceedings of the panel.

13 (2) A decision of the panel is not admissible as
14 evidence in an action subsequently brought in a court of
15 law.

16 **Section 38.** Section 17-7-502, MCA, is amended to read:

17 **"17-7-502. Statutory appropriations -- definition --**
18 **requisites for validity.** (1) A statutory appropriation is an
19 appropriation made by permanent law that authorizes spending
20 by a state agency without the need for a biennial
21 legislative appropriation or budget amendment.

22 (2) Except as provided in subsection (4), to be
23 effective, a statutory appropriation must comply with both
24 of the following provisions:

25 (a) The law containing the statutory authority must be

1 listed in subsection (3).

2 (b) The law or portion of the law making a statutory
3 appropriation must specifically state that a statutory
4 appropriation is made as provided in this section.

5 (3) The following laws are the only laws containing
6 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
7 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
8 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
9 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
10 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
11 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
12 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
13 23-5-610; 23-5-1027; [section 12]; 33-31-212; 33-31-401;
14 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205;
15 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228;
16 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306;
17 90-15-103; section 13, House Bill No. 861, Laws of 1985; and
18 section 1, Chapter 454, Laws of 1987.

19 (4) There is a statutory appropriation to pay the
20 principal, interest, premiums, and costs of issuing, paying,
21 and securing all bonds, notes, or other obligations, as due,
22 that have been authorized and issued pursuant to the laws of
23 Montana. Agencies that have entered into agreements
24 authorized by the laws of Montana to pay the state
25 treasurer, for deposit in accordance with 17-2-101 through

1 17-2-107, as determined by the state treasurer, an amount
2 sufficient to pay the principal and interest as due on the
3 bonds or notes have statutory appropriation authority for
4 such payments. (In subsection (3): pursuant to sec. 15, Ch.
5 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
6 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
7 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
8 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
9 1987, terminates July 1, 1988.)"

10 NEW SECTION. **Section 39.** Effective date --
11 **applicability.** (1) [This act] is effective January 1, 1990.
12 (2) [This act] applies to causes of action arising on
13 or after January 1, 1990.

-End-

HOUSE BILL NO. 177

INTRODUCED BY J. BROWN, DARKO, ROTH, MCDONOUGH,
VAN VALKENBURG, GLASER, COHEN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PANEL TO
REVIEW CHIROPRACTOR MALPRACTICE CLAIMS PRIOR TO A COURT
ACTION; APPROPRIATING FUNDS FOR ADMINISTRATION OF THE ACT;
AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE
DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1
through 37] may be cited as the "Montana Chiropractic Legal
Panel Act".

NEW SECTION. Section 2. Purpose. The purpose of
[sections 1 through 37] is to:

(1) prevent, whenever possible, filed court actions
against chiropractic health care providers and their
employees for professional liability in situations in which
the facts do not permit at least a reasonable inference of
malpractice; and

(2) make possible the fair and equitable disposition
of such claims against chiropractic health care providers as
are or reasonably may be well founded.

NEW SECTION. Section 3. Definitions. As used in

[sections 1 through 37], the following definitions apply:

(1) "Chiropractic physician" means:

(a) for purposes of the annual assessment under
[section 12], a person 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.

(2) "Director" means the director of the Montana chiropractic legal panel.

(3) "Health care provider" means a chiropractic physician or a hospital acting in conjunction with a chiropractic physician.

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

(5) "Malpractice claim" means any claim or potential claim against a health care provider for chiropractic treatment, lack of chiropractic treatment, or alleged departure from accepted standards of chiropractic health care that proximately results in damage to the claimant, and includes but is not limited to a tort or contract claim or potential claim.

(6) "Panel" means the Montana chiropractic legal panel created in [section 4].

NEW SECTION. Section 4. Creation of panel. There is a Montana chiropractic legal panel. The panel is a state agency allocated to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply.

NEW SECTION. Section 5. What claims panel to review. The panel shall review all malpractice claims or potential claims against health care providers covered by [sections 1 through 37], except claims subject to a valid arbitration

agreement allowed by law.

NEW SECTION. Section 6. Immunity of panel members and witnesses from civil liability. Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by [sections 1 through 37].

NEW SECTION. Section 7. Appointment, term, and salary of director. The executive director of the Montana chiropractic association shall appoint the director of the panel, subject to the approval of the chief justice of the Montana supreme court. The director shall serve at the pleasure of and the director's salary must be set by the executive director of the Montana chiropractic association, subject to the approval of the chief justice.

NEW SECTION. Section 8. Employment of staff and maintenance of offices. (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants as he considers necessary.

(2) The panel shall maintain adequate offices, in which its records must be kept and official business transacted.

NEW SECTION. Section 9. Compensation of panel members and staff. (1) Each member of the panel must be paid a

1 salary of \$40 an hour, under guidelines promulgated by the
2 Montana supreme court.

3 (2) Each member of the panel, the director, and his
4 staff are entitled to travel expenses incurred while on the
5 business of the panel, as provided in 2-18-501 through
6 2-18-503. The director shall approve such expenses before
7 payment is made.

8 NEW SECTION. Section 10. Authority to adopt rules.
9 The director, in consultation with the state bar of Montana
10 and subject to approval of the supreme court, is authorized
11 to adopt and publish rules of procedure necessary to
12 implement and carry out the duties of the panel. Rules may
13 NOT be adopted that require a party to make a monetary
14 payment as a condition of bringing a malpractice claim
15 before the chiropractic review panel.

16 NEW SECTION. Section 11. Powers of panel. The panel
17 may provide for the administration of oaths, the receipt of
18 claims filed, the promulgation of forms required by rules
19 adopted by the director, the issuance of subpoenas, and the
20 performance of all other acts required to fairly and
21 effectively administer [sections 1 through 37].

22 NEW SECTION. Section 12. Funding. (1) There is an
23 account in the state special revenue fund. Money from the
24 assessments levied under this section must be deposited in
25 the account. The money in the account is statutorily

1 appropriated, as provided in 17-7-502, to the director to be
2 used to administer [sections 1 through 37].

3 (2) For each fiscal year, beginning July 1, an annual
4 assessment is levied on all chiropractic physicians. The
5 amount of the assessment must be annually set by the
6 director and equally assessed against all chiropractic
7 physicians. A fund surplus at the end of a fiscal year, not
8 required for the administration of [sections 1 through 37],
9 must be retained by the director and used to finance the
10 administration of [sections 1 through 37] during the next
11 fiscal year, in which event the director shall reduce the
12 next annual assessment to an amount estimated to be
13 necessary for the proper administration of [sections 1
14 through 37] during that fiscal year.

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16 the date the chiropractic physician's annual renewal fee
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20 physicians, and hospitals having contact with the claimant;
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(1) Subject to subsection (2), the director shall choose a date, time, and place for hearing and give prompt notice thereof to the parties involved, their attorneys, and the members of the panel. The hearing date may not be more than 120 days after transmittal of the application by the director, unless the panel finds that good cause exists for extending the 120-day period.

(2) Panel hearings may be held in any county the panel considers necessary or advisable. The county commissioners or other governing authority shall, upon request of the director of the panel, provide suitable facilities for the hearing.

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3 statements of facts by treating health care providers may be
4 reviewed.

5 (3) The hearing is informal, and an official
6 transcript must not be made.

7 **NEW SECTION. Section 28. Conclusion of hearing --**
8 **supplemental hearing.** (1) At the conclusion of the hearing,
9 the panel may take the case under advisement or may request
10 that additional facts, records, witnesses, or other
11 information be obtained and presented to it at a
12 supplemental hearing. The supplemental hearing must be held
13 at a date and time no more than 30 days from the date of the
14 original hearing, unless the claimant or his attorney
15 consents in writing to a longer period.

16 (2) A supplemental hearing must be held in the same
17 manner as the original hearing, and the parties and their
18 attorneys may be present.

19 **NEW SECTION. Section 29. Selection of chairman.** At or
20 prior to the time set for the hearing, the attorney members
21 of the panel shall select a chairman, who must be an
22 attorney.

23 **NEW SECTION. Section 30. Questions panel must decide.**
24 Upon consideration of all relevant evidence, the panel shall
25 decide whether there is:

1 (1) substantial evidence that the acts complained of
2 occurred and that they constitute malpractice; and

3 (2) a reasonable medical probability that the patient
4 was injured thereby.

5 **NEW SECTION. Section 31. Deliberations to be secret**
6 **-- voting.** The deliberations of the panel are confidential.
7 Each vote of the panel on a question for discussion must be
8 by secret ballot. The decision must be by a majority vote
9 of those voting members of the panel who sat during the
10 case.

11 **NEW SECTION. Section 32. Form and content of**
12 **decision.** (1) The decision must:

13 (a) be in writing and signed by the chairman;

14 (b) contain only the conclusions reached by a majority
15 of the panel; and

16 (c) list the number of dissenting members, if any.

17 (2) The majority may briefly explain the reasoning and
18 the basis for its decision, and the dissenters may likewise
19 explain the reasons for disagreement.

20 **NEW SECTION. Section 33. Decision to be filed and**
21 **copies sent to parties, attorneys, and licensing board.** A
22 copy of the decision must be:

23 (1) given to the parties and their attorneys;

24 (2) retained in the permanent files of the panel; and

25 (3) given to the health care provider's professional

1 licensing board.

2 **NEW SECTION. Section 34. Decision not binding --**
 3 **settlement agreements.** The panel's decision is without
 4 administrative or judicial authority and is not binding upon
 5 a party. The panel may recommend an award or approve a
 6 settlement agreement. An approved settlement agreement is
 7 binding on the parties.

8 **NEW SECTION. Section 35. Tolling of statute of**
 9 **limitations.** (1) Upon receipt of an application by the
 10 director, the running of an applicable limitation period in
 11 a malpractice claim is tolled as to each health care
 12 provider named as a party and as to each other person or
 13 entity named as a necessary or proper party for a court
 14 action that might subsequently arise out of the factual
 15 circumstances set forth in the application.

16 (2) The running of the applicable limitation period in
 17 a malpractice claim does not begin again until:

18 (a) 30 days after an order of dismissal, with or
 19 without prejudice against refiling, is issued; or

20 (b) after the panel's final decision is entered in the
 21 permanent files of the panel and a copy is served upon the
 22 complainant or his attorney.

23 **NEW SECTION. Section 36. Records of proceedings --**
 24 **confidentiality.** The director shall maintain records of all
 25 proceedings before the panel. The record must include the

1 nature of the act or omission complained of, a brief summary
 2 of the evidence, the decision of the panel, and any majority
 3 or dissenting opinions filed. Records that identify a party
 4 to the proceedings may not be made public, are not subject
 5 to subpoena, and may be used only to compile statistical
 6 data and facilitate studies of medical malpractice in
 7 Montana.

8 **NEW SECTION. Section 37. Panel proceedings and**
 9 **decision privileged from disclosure in court actions.** (1) A
 10 panel member must not be called to testify in any proceeding
 11 concerning the deliberations, discussions, decisions, and
 12 internal proceedings of the panel.

13 (2) A decision of the panel is not admissible as
 14 evidence in an action subsequently brought in a court of
 15 law.

16 **Section 38. Section 17-7-502, MCA, is amended to read:**

17 **"17-7-502. Statutory appropriations -- definition --**
 18 **requisites for validity.** (1) A statutory appropriation is an
 19 appropriation made by permanent law that authorizes spending
 20 by a state agency without the need for a biennial
 21 legislative appropriation or budget amendment.

22 (2) Except as provided in subsection (4), to be
 23 effective, a statutory appropriation must comply with both
 24 of the following provisions:

25 (a) The law containing the statutory authority must be

1 listed in subsection (3).

2 (b) The law or portion of the law making a statutory
3 appropriation must specifically state that a statutory
4 appropriation is made as provided in this section.

5 (3) The following laws are the only laws containing
6 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
7 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
8 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
9 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
10 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
11 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
12 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
13 23-5-610; 23-5-1027; [section 12]; 33-31-212; 33-31-401;
14 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205;
15 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228;
16 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306;
17 90-15-103; section 13, House Bill No. 861, Laws of 1985; and
18 section 1, Chapter 454, Laws of 1987.

19 (4) There is a statutory appropriation to pay the
20 principal, interest, premiums, and costs of issuing, paying,
21 and securing all bonds, notes, or other obligations, as due,
22 that have been authorized and issued pursuant to the laws of
23 Montana. Agencies that have entered into agreements
24 authorized by the laws of Montana to pay the state
25 treasurer, for deposit in accordance with 17-2-101 through

1 17-2-107, as determined by the state treasurer, an amount
2 sufficient to pay the principal and interest as due on the
3 bonds or notes have statutory appropriation authority for
4 such payments. (In subsection (3): pursuant to sec. 15, Ch.
5 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
6 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
7 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
8 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
9 1987, terminates July 1, 1988.)"

10 NEW SECTION. Section 39. Effective date --
11 applicability. (1) [This act] is effective January 1, 1990.
12 (2) [This act] applies to causes of action arising on
13 or after January 1, 1990.

-End-

SENATE STANDING COMMITTEE REPORT

page 1 of 2
March 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 177 (third reading copy -- blue), respectfully report that HB 177 be amended and as so amended be concurred in:

Sponsor: Brown, J. (Beck)

1. Page 1, lines 18 and 23.
Strike: "health care providers"
Insert: "physicians"
2. Page 3, lines 3 through 7.
Strike: subsections (3) and (4) in their entirety
Renumber: subsequent subsections
3. Page 3, line 9.
Strike: "health care provider"
Insert: "chiropractic physician"
4. Page 3, line 24.
Strike: "health care providers"
Insert: "chiropractic physicians"
5. Page 7, lines 16 and 17.
Following: "elements of the" on line 16
Strike: remainder of line 16 through "provider's" on line 17
Insert: "chiropractic physician's"
6. Page 8, lines 13 and 20.
Strike: "health care provider"
Insert: "chiropractic physician"
7. Page 8, lines 14 and 15.
Following: "and the" on line 14
Strike: remainder of line 14 through "provider" on line 15
Insert: "chiropractic physician"
8. Page 8, lines 22 and 23.
Following: "to the" on line 22
Strike: remainder of line 22 through "provider" on line 23
Insert: "chiropractic physician"
9. Page 8, line 25.
Strike: "Health care provider's"
Insert: "Chiropractic physician's"
10. Page 9, lines 2 and 6.
Strike: "health care provider"
Insert: "chiropractic physician"

continued

scrhb177.306

34
SENATE COMMITTEE ON JUDICIARY, HB 177
page 2 of 2

11. Page 9, line 24.
Strike: "health care providers"
Insert: "chiropractic physicians"
12. Page 10, lines 1 through 4.
Following: "Montana." on line 1
Strike: remainder of line 1 through "three" on line 4
Insert: "Three"
13. Page 10, lines 7 through 12.
Strike: subsection (2) in its entirety
14. Page 10, lines 15 and 16.
Following: "of the" on line 15
Strike: remainder of line 15 through "provider's" on line 16
Insert: "chiropractic physician's"
15. Page 10, line 25.
Strike: "health care provider"
Insert: "chiropractic physician"
16. Page 11, lines 2 and 4.
Strike: "health care provider's"
Insert: "chiropractic physician's"
17. Page 11, line 6.
Page 12, line 21.
Strike: "health care provider"
Insert: "chiropractic physician"
18. Page 13, line 3.
Strike: "health care providers"
Insert: "chiropractic physicians"
19. Page 14, line 25.
Strike: "health care provider's"
Insert: "chiropractic physician's"
20. Page 15, lines 11 and 12.
Following: "each" on line 11
Strike: remainder of line 11 through "provider" on line 12
Insert: "chiropractic physician"

AND AS AMENDED BE CONCURRED IN

Signed: 
Bruce D. Crippen, Chairman

SENATE

scrhb177.306
HB 177

HOUSE BILL NO. 177

INTRODUCED BY J. BROWN, DARKO, ROTH, MCDONOUGH,

VAN VALKENBURG, GLASER, COHEN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PANEL TO REVIEW CHIROPRACTOR MALPRACTICE CLAIMS PRIOR TO A COURT ACTION; APPROPRIATING FUNDS FOR ADMINISTRATION OF THE ACT; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1.** Short title. [Sections 1 through 37] may be cited as the "Montana Chiropractic Legal Panel Act".

NEW SECTION. **Section 2.** Purpose. The purpose of [sections 1 through 37] is to:

(1) prevent, whenever possible, filed court actions against chiropractic health-care--providers PHYSICIANS and their employees for professional liability in situations in which the facts do not permit at least a reasonable inference of malpractice; and

(2) make possible the fair and equitable disposition of such claims against chiropractic health--care--providers PHYSICIANS as are or reasonably may be well founded.

NEW SECTION. **Section 3.** Definitions. As used in

[sections 1 through 37], the following definitions apply:

(1) "Chiropractic physician" means:

(a) for purposes of the annual assessment under [section 12], a person 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.

(2) "Director" means the director of the Montana chiropractic legal panel.

~~{3}--"Health-care-provider"--means---a---chiropractic physician--or---a--hospital--acting--in--conjunction--with--a chiropractic-physician--~~

~~{4}--"Hospital"--means--a--hospital---as---defined---in 50-5-101--~~

~~{5}{3}~~ "Malpractice claim" means any claim or potential claim against a health-care-provider CHIROPRACTIC PHYSICIAN for chiropractic treatment, lack of chiropractic treatment, or alleged departure from accepted standards of chiropractic health care that proximately results in damage to the claimant, and includes but is not limited to a tort or contract claim or potential claim.

~~{6}{4}~~ "Panel" means the Montana chiropractic legal panel created in [section 4].

NEW SECTION. Section 4. Creation of panel. There is a Montana chiropractic legal panel. The panel is a state agency allocated to the Montana supreme court for administrative purposes only, except that 2-15-121(2) does not apply.

NEW SECTION. Section 5. What claims panel to review. The panel shall review all malpractice claims or potential claims against health-care-providers CHIROPRACTIC PHYSICIANS covered by [sections 1 through 37], except claims subject to

a valid arbitration agreement allowed by law.

NEW SECTION. Section 5. Immunity of panel members and witnesses from civil liability. Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by [sections 1 through 37].

NEW SECTION. Section 7. Appointment, term, and salary of director. The executive director of the Montana chiropractic association shall appoint the director of the panel, subject to the approval of the chief justice of the Montana supreme court. The director shall serve at the pleasure of and the director's salary must be set by the executive director of the Montana chiropractic association, subject to the approval of the chief justice.

NEW SECTION. Section 8. Employment of staff and maintenance of offices. (1) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants as he considers necessary.

(2) The panel shall maintain adequate offices, in which its records must be kept and official business transacted.

NEW SECTION. Section 9. Compensation of panel members and staff. (1) Each member of the panel must be paid a

1 salary of \$40 an hour, under guidelines promulgated by the
2 Montana supreme court.

3 (2) Each member of the panel, the director, and his
4 staff are entitled to travel expenses incurred while on the
5 business of the panel, as provided in 2-18-501 through
6 2-18-503. The director shall approve such expenses before
7 payment is made.

8 NEW SECTION. **Section 10. Authority to adopt rules.**
9 The director, in consultation with the state bar of Montana
10 and subject to approval of the supreme court, is authorized
11 to adopt and publish rules of procedure necessary to
12 implement and carry out the duties of the panel. Rules may
13 NOT be adopted that require a party to make a monetary
14 payment as a condition of bringing a malpractice claim
15 before the chiropractic review panel.

16 NEW SECTION. **Section 11. Powers of panel.** The panel
17 may provide for the administration of oaths, the receipt of
18 claims filed, the promulgation of forms required by rules
19 adopted by the director, the issuance of subpoenas, and the
20 performance of all other acts required to fairly and
21 effectively administer [sections 1 through 37].

22 NEW SECTION. **Section 12. Funding.** (1) There is an
23 account in the state special revenue fund. Money from the
24 assessments levied under this section must be deposited in
25 the account. The money in the account is statutorily

1 appropriated, as provided in 17-7-502, to the director to be
2 used to administer [sections 1 through 37].

3 (2) For each fiscal year, beginning July 1, an annual
4 assessment is levied on all chiropractic physicians. The
5 amount of the assessment must be annually set by the
6 director and equally assessed against all chiropractic
7 physicians. A fund surplus at the end of a fiscal year, not
8 required for the administration of [sections 1 through 37],
9 must be retained by the director and used to finance the
10 administration of [sections 1 through 37] during the next
11 fiscal year, in which event the director shall reduce the
12 next annual assessment to an amount estimated to be
13 necessary for the proper administration of [sections 1
14 through 37] during that fiscal year.

15 (3) The annual assessment must be paid on or before
16 the date the chiropractic physician's annual renewal fee
17 under 37-12-307 is due. An unpaid assessment bears a late
18 charge fee equal to the judgment rate of interest. The late
19 charge fee is part of the annual assessment. The director
20 has the same powers and duties in connection with the
21 collection of and failure to pay the annual assessment as
22 the department of commerce has under 37-12-307 with a
23 chiropractic physician's annual license fee.

24 NEW SECTION. **Section 13. Panel audits.** (1) The panel
25 and fund must be audited by or at the direction of the

1 legislative auditor and in accordance with 5-13-304 and
2 5-13-309. The audit must include a determination of the
3 adequacy, sufficiency, and reasonableness of the annual
4 assessment.

5 (2) A copy of each audit report must be furnished to
6 the supreme court.

7 (3) The cost of an audit must be paid by the panel.

8 **NEW SECTION. Section 14. How cases submitted.** A
9 claimant shall submit a case for the consideration of the
10 panel before filing a complaint in a court sitting in
11 Montana by addressing an application in writing, signed by
12 the claimant or his attorney, to the director of the panel.

13 **NEW SECTION. Section 15. Content of application --**
14 **waiver of confidentiality of medical records.** The
15 application must contain a statement:

16 (1) in reasonable detail of the elements of the health
17 care-provider's CHIROPRACTIC PHYSICIAN'S conduct that are
18 believed to constitute a malpractice claim, the dates the
19 conduct occurred, and the names and addresses of all
20 witnesses, chiropractic and other physicians, and hospitals
21 having contact with the claimant; and

22 (2) authorizing the panel to obtain access to all
23 medical and hospital records and information pertaining to
24 the claim and, for the purposes of the panel's consideration
25 of the claim, waiving any privilege as to the contents of

1 those records. Nothing in the statement may in any way be
2 construed as waiving any privilege for any other purpose or
3 in any other context, in or out of court.

4 **NEW SECTION. Section 16. Amendments to application.**
5 Amendments to an application may be made in the manner
6 authorized by rule.

7 **NEW SECTION. Section 17. Copies of application to**
8 **professional societies when vicarious liability claimed.** If
9 an application employs a theory of respondeat superior or
10 any other derivative theory of recovery, the director shall
11 give a copy of the application to the state professional
12 society, association, or licensing board of both the
13 individual health-care-provider CHIROPRACTIC PHYSICIAN whose
14 alleged malpractice caused the application to be filed and
15 the health-care--provider CHIROPRACTIC PHYSICIAN named a
16 defendant as employer, master, or principal.

17 **NEW SECTION. Section 18. Service on health care**
18 **provider.** Upon receipt of an application, the director or
19 his delegate shall serve a copy of the application on the
20 health-care-provider CHIROPRACTIC PHYSICIAN whose alleged
21 malpractice caused the application to be filed. Service must
22 be by mailing a certified copy of the application to the
23 health--care--provider CHIROPRACTIC PHYSICIAN at his
24 last-known address, postage prepaid, by certified mail,
25 return receipt requested.

1 NEW SECTION. Section 19. Health---care---provider's
 2 CHIROPRACTIC PHYSICIAN'S appearance and answer -- waiver of
 3 confidentiality of records. (1) If a health--care--provider
 4 CHIROPRACTIC PHYSICIAN whose alleged malpractice caused the
 5 application to be filed chooses to retain legal counsel, his
 6 attorney must informally enter an appearance with the
 7 director.

8 (2) The health--care--provider CHIROPRACTIC PHYSICIAN
 9 shall answer the application and submit a statement
 10 authorizing the panel to inspect all medical and hospital
 11 records and information pertaining to the application and,
 12 for the purposes of such inspection only, waiving any
 13 privilege as to the content of those records. Nothing in the
 14 statement waives any privilege for any other purpose.

15 NEW SECTION. Section 20. Assistance to claimant in
 16 obtaining expert consultation. The director shall cooperate
 17 fully with the claimant in retaining as an expert consultant
 18 a chiropractic physician qualified in the field of
 19 chiropractic.

20 NEW SECTION. Section 21. Director to furnish panel
 21 members with documents. At least 10 days prior to the
 22 hearing, the director shall give each panel member copies of
 23 all claims, briefs, medical or hospital records, and other
 24 documents the director considers necessary.

25 NEW SECTION. Section 22. Composition of panel. Those

1 eligible to sit on the panel are health-care-providers
 2 CHIROPRACTIC PHYSICIANS licensed under Montana law and
 3 residing in Montana and attorneys who are members of the
 4 state bar of Montana. Six-panel-members-shall-sit-in--review
 5 of-each-case.

6 (1)--if---a---claim---is---heard---against---one---or---more
 7 chiropractic-physicians, three THREE panel members who are
 8 chiropractic physicians and three panel members who are
 9 attorneys shall sit in review of each case.

10 (2)--if-a-claim-is-heard-against-one-or-more--hospitals
 11 and--one--or--more-chiropractic-physicians-or-against-one-or
 12 more-hospitals, one-panel-member-must-be-an-administrator-of
 13 the-same--type--of--hospital, two-panel-members-must-be
 14 chiropractic--physicians,--and--three--panel-members-must-be
 15 attorneys.

16 NEW SECTION. Section 23. Selection of panelists. (1)
 17 The director shall promptly transmit an application
 18 submitted under [section 14] to the directors of the health
 19 care--provider's CHIROPRACTIC PHYSICIAN'S state professional
 20 society or association and the state bar of Montana. Within
 21 14 days from the date of transmittal of the application, the
 22 director of the professional society or association and the
 23 state bar of Montana shall each select 12 proposed panelists
 24 from which the director shall select three from each list to
 25 serve on the panel. The director shall notify the parties of

1 the names of the panelists.

2 (2) If no state professional society or association
3 exists or if the health-care-provider CHIROPRACTIC PHYSICIAN
4 does not belong to such a society or association, the
5 director shall transmit the application to the health--care
6 provider's CHIROPRACTIC PHYSICIAN'S state licensing board
7 and the licensing board shall select 12 proposed panelists
8 from the health--care--provider's CHIROPRACTIC PHYSICIAN'S
9 profession and, when applicable, from persons specializing
10 in the same field or discipline as the health-care-provider
11 CHIROPRACTIC PHYSICIAN.

12 NEW SECTION. Section 24. Panel in cases involving
13 multiple defendants. If there are multiple defendants, the
14 case against each may be reviewed by a separate panel or, at
15 the discretion of the panel initially appointed or by
16 stipulation of the parties, a single combined panel may
17 review all the claims against all defendants.

18 NEW SECTION. Section 25. Disqualification of panel
19 member. (1) A panel member or proposed member shall
20 disqualify himself from consideration of a case in which, by
21 virtue of his circumstances he believes his presence on the
22 panel would be inappropriate, considering the purpose of the
23 panel. The director may excuse a panel member or proposed
24 member from serving.

25 (2) If a party files an affidavit stating that he

1 believes a panel member cannot impartially sit in review of
2 the application, that panel member is disqualified from
3 consideration of the case. The affidavit must be filed
4 within 15 days of the transmittal by the director, under
5 [section 23], of the names of the panel members selected. A
6 party may not disqualify more than three panel members. The
7 entity that chose the disqualified member shall select
8 another panel member.

9 NEW SECTION. Section 26. Time and place of hearing.
10 (1) Subject to subsection (2), the director shall choose a
11 date, time, and place for hearing and give prompt notice
12 thereof to the parties involved, their attorneys, and the
13 members of the panel. The hearing date may not be more than
14 120 days after transmittal of the application by the
15 director, unless the panel finds that good cause exists for
16 extending the 120-day period.

17 (2) Panel hearings may be held in any county the panel
18 considers necessary or advisable. The county commissioners
19 or other governing authority shall, upon request of the
20 director of the panel, provide suitable facilities for the
21 hearing.

22 NEW SECTION. Section 27. Conduct of hearing. (1) At
23 the time set for hearing, the claimant must be present and
24 give a brief statement of his case, including the facts
25 constituting the alleged professional malpractice that he is

1 prepared to prove. The health-care-provider CHIROPRACTIC
 2 PHYSICIAN against whom the claim is brought and his attorney
 3 may be present and may make an introductory statement of his
 4 case.

5 (2) A party may call witnesses to testify before the
 6 panel. Witnesses must be sworn. Medical texts, journals,
 7 studies, and other documentary evidence relied upon by a
 8 party may be offered and admitted if relevant. Written
 9 statements of facts by treating health--care--providers
 10 CHIROPRACTIC PHYSICIANS may be reviewed.

11 (3) The hearing is informal, and an official
 12 transcript must not be made.

13 NEW SECTION. Section 28. Conclusion of hearing --
 14 supplemental hearing. (1) At the conclusion of the hearing,
 15 the panel may take the case under advisement or may request
 16 that additional facts, records, witnesses, or other
 17 information be obtained and presented to it at a
 18 supplemental hearing. The supplemental hearing must be held
 19 at a date and time no more than 30 days from the date of the
 20 original hearing, unless the claimant or his attorney
 21 consents in writing to a longer period.

22 (2) A supplemental hearing must be held in the same
 23 manner as the original hearing, and the parties and their
 24 attorneys may be present.

25 NEW SECTION. Section 29. Selection of chairman. At or

1 prior to the time set for the hearing, the attorney members
 2 of the panel shall select a chairman, who must be an
 3 attorney.

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 6 decide whether there is:

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 8 occurred and that they constitute malpractice; and

9 (2) a reasonable medical probability that the patient
 10 was injured thereby.

11 NEW SECTION. Section 31. Deliberations to be secret
 12 -- voting. The deliberations of the panel are confidential.
 13 Each vote of the panel on a question for discussion must be
 14 by secret ballot. The decision must be by a majority vote
 15 of those voting members of the panel who sat during the
 16 case.

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 18 decision. (1) The decision must:

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22 (c) list the number of dissenting members, if any.

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- 4 (1) given to the parties and their attorneys;
- 5 (2) retained in the permanent files of the panel; and
- 6 (3) given to the health-care-provider's CHIROPRACTIC
 7 PHYSICIAN'S professional licensing board.

8 **NEW SECTION. Section 34.** Decision not binding --
 9 settlement agreements. The panel's decision is without
 10 administrative or judicial authority and is not binding upon
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 20 party for a court action that might subsequently arise out
 21 of the factual circumstances set forth in the application.

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 23 a malpractice claim does not begin again until:

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 25 without prejudice against refiling, is issued; or

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 2 permanent files of the panel and a copy is served upon the
 3 complainant or his attorney.

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 5 confidentiality. The director shall maintain records of all
 6 proceedings before the panel. The record must include the
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 8 of the evidence, the decision of the panel, and any majority
 9 or dissenting opinions filed. Records that identify a party
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 11 to subpoena, and may be used only to compile statistical
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 13 Montana.

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 15 decision privileged from disclosure in court actions. (1) A
 16 panel member must not be called to testify in any proceeding
 17 concerning the deliberations, discussions, decisions, and
 18 internal proceedings of the panel.

19 (2) A decision of the panel is not admissible as
 20 evidence in an action subsequently brought in a court of
 21 law.

22 **Section 38.** Section 17-7-502, MCA, is amended to read:

23 "17-7-502. Statutory appropriations -- definition --
 24 requisites for validity. (1) A statutory appropriation is an
 25 appropriation made by permanent law that authorizes spending

1 by a state agency without the need for a biennial
2 legislative appropriation or budget amendment.

3 (2) Except as provided in subsection (4), to be
4 effective, a statutory appropriation must comply with both
5 of the following provisions:

6 (a) The law containing the statutory authority must be
7 listed in subsection (3).

8 (b) The law or portion of the law making a statutory
9 appropriation must specifically state that a statutory
10 appropriation is made as provided in this section.

11 (3) The following laws are the only laws containing
12 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
13 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
14 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
15 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
16 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
17 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
18 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
19 23-5-610; 23-5-1027; [section 12]; 33-31-212; 33-31-401;
20 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205;
21 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228;
22 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306;
23 90-15-103; section 13, House Bill No. 861, Laws of 1985; and
24 section 1, Chapter 454, Laws of 1987.

25 (4) There is a statutory appropriation to pay the

1 principal, interest, premiums, and costs of issuing, paying,
2 and securing all bonds, notes, or other obligations, as due,
3 that have been authorized and issued pursuant to the laws of
4 Montana. Agencies that have entered into agreements
5 authorized by the laws of Montana to pay the state
6 treasurer, for deposit in accordance with 17-2-101 through
7 17-2-107, as determined by the state treasurer, an amount
8 sufficient to pay the principal and interest as due on the
9 bonds or notes have statutory appropriation authority for
10 such payments. (In subsection (3): pursuant to sec. 15, Ch.
11 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
12 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
13 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
14 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
15 1987, terminates July 1, 1988.)"

16 NEW SECTION. **Section 39.** Effective date --
17 applicability. (1) [This act] is effective January 1, 1990.
18 (2) [This act] applies to causes of action arising on
19 or after January 1, 1990.

-End-