

HOUSE BILL 649

Introduced by Squires, et al.

2/06	Introduced
2/06	Referred to Judiciary
2/06	First Reading
	Died in Committee

1 *HOUSE* BILL NO. *649*
 2 INTRODUCED BY *[Signature]*
 3 *[Signature]*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TEMPORARY
 5 RESTRAINING ORDER ON THE BASIS OF VERBAL INTIMIDATION OR
 6 VERBAL HARASSMENT BY A FAMILY OR HOUSEHOLD MEMBER; AND
 7 AMENDING SECTIONS 27-19-201, 40-4-123, AND 41-4-121, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 40-4-121, MCA, is amended to read:

11 "40-4-121. Temporary order or temporary injunction. (1)
 12 In a proceeding for dissolution of marriage or for legal
 13 separation or in a proceeding for disposition of property or
 14 for maintenance or support following dissolution of the
 15 marriage by a court which lacked personal jurisdiction over
 16 the absent spouse, either party may move for temporary
 17 maintenance or temporary support of a child of the marriage
 18 entitled to support. The motion shall be accompanied by an
 19 affidavit setting forth the factual basis for the motion and
 20 the amounts requested.

21 (2) As a part of a motion for temporary maintenance or
 22 support or by independent motion accompanied by affidavit,
 23 either party may request the court to issue a temporary
 24 injunction for any of the following relief:

25 (a) restraining any person from transferring,

1 encumbering, concealing, or otherwise disposing of any
 2 property except in the usual course of business or for the
 3 necessities of life and, if so restrained, requiring him to
 4 notify the moving party of any proposed extraordinary
 5 expenditures made after the order is issued;

6 (b) enjoining a party from molesting or disturbing the
 7 peace of the other party or of any child;

8 (c) excluding a party from the family home or from the
 9 home of the other party upon a showing that physical or
 10 emotional harm would otherwise result;

11 (d) enjoining a party from removing a child from the
 12 jurisdiction of the court; and

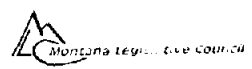
13 (e) providing other injunctive relief proper in the
 14 circumstances.

15 (3) A person may seek the relief provided for in
 16 subsection (2) of this section without filing a petition
 17 under this part for a dissolution of marriage or legal
 18 separation by filing a verified petition:

19 (a) alleging physical abuse, harm, or bodily injury
 20 against the petitioner by a family or household member; and
 21 or

22 (b) alleging verbal intimidation or verbal harassment
 23 against the petitioner by a family or household member; and

24 ~~(b)(c)~~ requesting relief under Title 27, chapter 19,
 25 part 3. Any preliminary injunction entered under this



1 subsection must be for a fixed period of time, not to exceed
 2 1 year, and may be modified as provided in Title 27, chapter
 3 19, part 4, and 40-4-208. Persons who may request relief
 4 under this subsection include spouses, former spouses, and
 5 persons cohabiting or who have cohabited with the other
 6 party within 1 year immediately preceding the filing of the
 7 petition.

8 (4) The court may issue a temporary restraining order
 9 for a period not to exceed 20 days without requiring notice
 10 to the other party only if it finds on the basis of the
 11 moving affidavit or other evidence that irreparable injury
 12 will result to the moving party if no order is issued until
 13 the time for responding has elapsed.

14 (5) A response may be filed within 20 days after
 15 service of notice of motion or at the time specified in the
 16 temporary restraining order.

17 (6) On the basis of the showing made and in conformity
 18 with 40-4-203 and 40-4-204, the court may issue a temporary
 19 injunction and an order for temporary maintenance or support
 20 in amounts and on terms just and proper in the circumstance.

21 (7) A temporary order or temporary injunction:

22 (a) does not prejudice the rights of the parties or the
 23 child which are to be adjudicated at subsequent hearings in
 24 the proceeding;

25 (b) may be revoked or modified before final decree on a

1 showing by affidavit of the facts necessary to revocation or
 2 modification of a final decree under 40-4-208;

3 (c) terminates upon order of the court or when a final
 4 decree is entered or when a petition for dissolution or
 5 legal separation is voluntarily dismissed; and

6 (d) when issued under this section must conspicuously
 7 bear the following: "Violation of this order is a criminal
 8 offense under 45-5-626."

9 (8) When the petitioner has fled the parties'
 10 residence, notice of petitioner's new residence must be
 11 withheld except by order of the court for good cause shown."

12 **Section 2.** Section 40-4-123, MCA, is amended to read:

13 **"40-4-123. Jurisdiction and venue.** (1) District courts,
 14 municipal courts, justices' courts, and city courts have
 15 concurrent jurisdiction to hear and issue orders under
 16 40-4-121(3).

17 (2) The municipal judge, justice of the peace, or city
 18 court judge shall on motion suspend all further proceedings
 19 in the action and certify the pleading and any orders to the
 20 clerk of the district court of the county where the action
 21 was begun if an action for declaration of invalidity of a
 22 marriage, legal separation, or dissolution of marriage, or
 23 child custody is pending between the parties. From the time
 24 of the certification of such pleadings and any orders to the
 25 clerk, the district court has the same jurisdiction over the

1 action as if it had been commenced therein.

2 (3) An action brought under 40-4-121(3) may be tried in
3 the county in which either party resides or in which the
4 physical abuse, the verbal intimidation, or the verbal
5 harassment was committed.

6 (4) The right to petition for relief may not be denied
7 because the plaintiff has vacated the residence or household
8 to avoid abuse."

9 **Section 3.** Section 27-19-201, MCA, is amended to read:

10 "27-19-201. When preliminary injunction may be granted.
11 An injunction order may be granted in the following cases:

12 (1) when it shall appear that the applicant is entitled
13 to the relief demanded and such relief or any part thereof
14 consists in restraining the commission or continuance of the
15 act complained of, either for a limited period or
16 perpetually;

17 (2) when it shall appear that the commission or
18 continuance of some act during the litigation would produce
19 a great or irreparable injury to the applicant;

20 (3) when it shall appear during the litigation that the
21 adverse party is doing or threatens or is about to do or is
22 procuring or suffering to be done some act in violation of
23 the applicant's rights, respecting the subject of the
24 action, and tending to render the judgment ineffectual;

25 (4) when it appears that the adverse party, during the

1 pendency of the action, threatens or is about to remove or
2 to dispose of his property with intent to defraud the
3 applicant, an injunction order may be granted to restrain
4 the removal or disposition;

5 (5) when it appears the applicant has suffered or may
6 suffer physical abuse, verbal intimidation, or verbal
7 harassment under the provisions of 40-4-121."

-End-