

1 *HOUSE* BILL NO. *675*
 2 INTRODUCED BY *James L. ...*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TEMPORARY
 5 INJUNCTION PROCEDURES IN DOMESTIC CASES; ALLOWING ISSUANCE
 6 OF A TEMPORARY INJUNCTION UPON THE THREAT OF PHYSICAL ABUSE,
 7 HARM, OR BODILY INJURY; AND AMENDING SECTION 40-4-121, 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 or
 21 the threat of physical abuse, harm, or bodily injury against
 22 the petitioner by a family or household member that causes
 23 the petitioner to reasonably believe that the offender has
 24 the present ability to execute the threat; and

25 (b) requesting relief under Title 27, chapter 19, part

-2- INTRODUCED BILL
 HB 675



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

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL NO. *675*
James Holt

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TEMPORARY
INJUNCTION PROCEDURES IN DOMESTIC CASES; ALLOWING ISSUANCE
OF A TEMPORARY INJUNCTION UPON THE THREAT OF PHYSICAL ABUSE,
HARM, OR BODILY INJURY; AND AMENDING SECTION 40-4-121, MCA."

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

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

"40-4-121. Temporary order or temporary injunction. (1)

In a proceeding for dissolution of marriage or for legal
separation or in a proceeding for disposition of property or
for maintenance or support following dissolution of the
marriage by a court which lacked personal jurisdiction over
the absent spouse, either party may move for temporary
maintenance or temporary support of a child of the marriage
entitled to support. The motion shall be accompanied by an
affidavit setting forth the factual basis for the motion and
the amounts requested.

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

(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 or
21 the threat of physical abuse, harm, or bodily injury against
22 the petitioner by a family or household member that causes
23 the petitioner to reasonably believe that the offender has
24 the present ability to execute the threat; and

25 (b) requesting relief under Title 27, chapter 19, part

SECOND READING

HB 675



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

-End-

1 *HOUSE* BILL NO. *675*
 2 INTRODUCED BY *James Scott Miller*
 3 _____

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TEMPORARY
 5 INJUNCTION PROCEDURES IN DOMESTIC CASES; ALLOWING ISSUANCE
 6 OF A TEMPORARY INJUNCTION UPON THE THREAT OF PHYSICAL ABUSE,
 7 HARM, OR BODILY INJURY; AND AMENDING SECTION 40-4-121, 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 or
 21 the threat of physical abuse, harm, or bodily injury against
 22 the petitioner by a family or household member that causes
 23 the petitioner to reasonably believe that the offender has
 24 the present ability to execute the threat; and

25 (b) requesting relief under Title 27, chapter 19, part

-2- THIRD READING
 HB 675



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

-End-

1 HOUSE BILL NO. 675

2 INTRODUCED BY SQUIRES, TOOLE, HALLIGAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TEMPORARY
5 INJUNCTION PROCEDURES IN DOMESTIC CASES; ALLOWING ISSUANCE
6 OF A TEMPORARY INJUNCTION UPON THE THREAT OF PHYSICAL ABUSE,
7 HARM, OR BODILY INJURY; AND AMENDING SECTION 40-4-121, 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; and13 (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 or
21 the threat of physical abuse, harm, or bodily injury against
22 the petitioner by a family or household member that causes
23 the petitioner to reasonably believe that the offender has
24 the present ability to execute the threat; and

25 (b) requesting relief under Title 27, chapter 19, part

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

-End-