

CHAPTER NO. 399

SENATE BILL NO. 243

INTRODUCED BY TOWE

BY REQUEST OF THE ATTORNEY GENERAL

IN THE SENATE

January 24, 1979	Introduced and referred to Committee on Judiciary.
February 19, 1979	Committee recommend bill do pass as amended. Report adopted.
February 21, 1979	Printed and placed on members' desks.
February 22, 1979	Second reading, do pass.
February 23, 1979	Considered correctly engrossed.  On motion rules suspended. Bill placed on calendar for third reading this day.  Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill be concurred in. Report adopted.
March 20, 1979	Motion pass consideration.
March 21, 1979	Second reading, concurred in.
March 23, 1979	Third reading, concurred in.

IN THE SENATE

March 24, 1979

Returned from second house.  
Concurred in. Sent to enrolling.

Reported correctly enrolled.

1 Smith BILL NO. 243  
 2 INTRODUCED BY Smith  
 3 BY REQUEST OF THE ATTORNEY GENERAL

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE STATUTES  
 6 REGARDING THE PROCEDURE FOR OBTAINING AND DISSOLVING OR  
 7 MODIFYING PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING  
 8 ORDERS; PROVIDING THAT TEMPORARY RESTRAINING ORDERS WILL  
 9 EXPIRE WITHIN 10 DAYS UNLESS RENEWED; PROVIDING FOR THE FORM  
 10 AND SCOPE OF PRELIMINARY INJUNCTIONS AND TEMPORARY  
 11 RESTRAINING ORDERS; AND AMENDING SECTIONS 27-19-301,  
 12 27-19-305, 27-19-306, 27-19-401, and 27-19-406, MCA."

13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 15 Section 1. Section 27-19-301, MCA, is amended to read:  
 16 "27-19-301. When notice of application required. ~~The~~  
 17 ~~order may be granted upon or without notice, in the~~  
 18 ~~discretion of the court or judge, unless the defendant has~~  
 19 ~~answered, in which case it can be granted only upon notice~~  
 20 ~~or an order to show cause, in no case shall an injunction~~  
 21 ~~order be issued without notice unless it appears to the~~  
 22 ~~court or judge that irreparable injury would result by the~~  
 23 ~~delay of giving notice. Except as provided in 27-19-302, no~~  
 24 ~~preliminary injunction may be issued without reasonable~~  
 25 ~~notice to the adverse party of the time and place of the~~

1 making of the application therefor."  
 2 Section 2. Section 27-19-305, MCA, is amended to read:  
 3 "27-19-305. ~~Restraining Temporary restraining~~ order.  
 4 Where an application for an injunction is made upon notice  
 5 or an order to show cause, either before or after answer,  
 6 the court or judge may enjoin the defendant, until the  
 7 hearing and decision of the application, by an order which  
 8 is called a ~~temporary~~ restraining order. ~~in no case shall a~~  
 9 ~~restraining order be issued without notice unless it appears~~  
 10 ~~to the court or judge that irreparable injury would result~~  
 11 ~~by the delay of giving notice."~~

12 NEW SECTION. Section 3. Form and scope of injunction  
 13 or restraining order. An order granting an injunction or a  
 14 restraining order shall:

- 15 (1) set forth the reasons for its issuance;
- 16 (2) be specific in its terms;
- 17 (3) describe in reasonable detail, and not by  
 18 reference to the complaint or any other document, the act or  
 19 acts sought to be restrained; and
- 20 (4) be binding only upon the parties to the action;  
 21 their officers, agents, employees, and attorneys; and those  
 22 persons in active concert or participation with them who  
 23 receive actual notice of the order by personal service or  
 24 otherwise.

25 NEW SECTION. Section 4. When restraining order may

1 be granted without notice. A temporary restraining order may  
2 be granted without written or oral notice to the adverse  
3 party or his attorney only if:

4 (1) it clearly appears from specific facts shown by  
5 affidavit or by the verified complaint that a delay would  
6 cause immediate and irreparable injury to the applicant  
7 before the adverse party or his attorney could be heard in  
8 opposition; and

9 (2) the applicant's attorney certifies to the court in  
10 writing the efforts, if any, which have been made to give  
11 notice and the reasons supporting his claim that notice  
12 should not be required.

13 Section 5. Section 27-19-306, MCA, is amended to read:

14 "27-19-306. Security for damages. (1) On granting an  
15 injunction or restraining order, the court or judge may  
16 shall require, except when the state, a county, or any  
17 subdivision thereof or a municipal corporation or a married  
18 person in a suit for divorce against his or her spouse is a  
19 party plaintiff, a written undertaking on the part of the  
20 plaintiff, with sufficient sureties, to the effect that the  
21 plaintiff will pay to the party enjoined such damages, not  
22 exceeding an amount to be specified, as such party may  
23 sustain by reason of the injunction if the court finally  
24 decide that the plaintiff was not entitled thereto to be  
25 given by the plaintiff, in such sum as the court considers

1 proper, for the payment of such costs and damages as may be  
2 incurred or suffered by any party who is found to have been  
3 wrongfully enjoined or restrained. The undertaking may not  
4 be required in domestic disputes or when the state or a  
5 state agency, a county or subdivision thereof, or a  
6 municipal corporation is the party seeking the injunction or  
7 restraining order. In any case, the court in its discretion  
8 may waive the undertaking in the interest of justice.

9 (2) Within 5 days after the service of the injunction,  
10 the defendant may except to the sufficiency of the sureties.  
11 If the plaintiff fails to do so, such plaintiff is deemed to  
12 have waived all objections to them. When excepted to, the  
13 plaintiff's sureties, upon notice to the defendant of not  
14 less than 2 or more than 5 days, must justify before a judge  
15 or clerk in the same manner as upon bail on arrest, and upon  
16 failure to justify or if others in their place fail to  
17 justify at the time and place appointed, the order granting  
18 an injunction shall be dissolved."

19 NEW SECTION. Section 6. Contents and filing of  
20 restraining order granted without notice. Each temporary  
21 restraining order granted without notice must:

22 (1) be indorsed with the date and hour of its  
23 issuance;

24 (2) be filed immediately in the clerk's office and  
25 entered in the record;

1 (3) define the injury and state why such injury is  
2 irreparable and why the order was granted without notice;  
3 and

4 (4) expire by its terms within such time after entry,  
5 not to exceed 10 days, as the court or judge fixes.

6 NEW SECTION. Section 7. Extension of expiration date.  
7 The time fixed in the order for its expiration may be  
8 extended, for good cause shown, for a like period or, if the  
9 party against whom the order is directed consents, for a  
10 longer period. The reasons for the extension must be entered  
11 in the record.

12 NEW SECTION. Section 8. Application for injunction to  
13 be heard without delay. Whenever a temporary restraining  
14 order is granted without notice, the application for an  
15 injunction must be set for hearing at the earliest possible  
16 time and takes precedence over all matters except older  
17 matters of the same character. At the hearing the party who  
18 obtained the temporary restraining order shall proceed with  
19 the application for an injunction, or if he does not do so,  
20 the court or judge shall dissolve the temporary restraining  
21 order.

22 NEW SECTION. Section 9. Motion to dissolve or modify  
23 restraining order. On 2 days' notice to the party who  
24 obtained the temporary restraining order without notice or  
25 on such shorter notice as the court or judge may prescribe,

1 the adverse party may appear and move that the order be  
2 dissolved or modified. The court shall hear and determine  
3 such motion as expeditiously as the ends of justice require.

4 Section 10. Section 27-19-401, MCA, is amended to  
5 read:

6 "27-19-401. Application to dissolve or modify  
7 injunction granted without notice a hearing. If an  
8 injunction order be granted without notice a hearing, the  
9 defendant, at any time before the trial, may apply, upon  
10 reasonable notice or upon order to show cause returnable at  
11 a specified time or forthwith after service thereof, to the  
12 judge who granted the injunction order or to the court in  
13 which the action is brought to dissolve or modify the same.  
14 The application may be made upon the complaint and affidavit  
15 on which the injunction order was granted or upon affidavit  
16 on part of defendant, with or without the answer."

17 Section 11. Section 27-19-406, MCA, is amended to  
18 read:

19 "27-19-406. Costs upon dissolution. Where an  
20 injunction order is granted without notice a hearing and the  
21 same is afterward dissolved upon application of the party  
22 enjoined thereby, the court or judge to whom the application  
23 to dissolve is made may award as costs of the application,  
24 against the plaintiff and in favor of the party applying,  
25 such sum as to the court or judge may appear just, not less

LC 0441/01

1    than \$10 or more than \$100."

-End-

SENATE BILL NO. 243

INTRODUCED BY TOME

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE STATUTES REGARDING THE PROCEDURE FOR OBTAINING AND DISSOLVING OR MODIFYING PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS; PROVIDING THAT TEMPORARY RESTRAINING ORDERS WILL EXPIRE WITHIN 10 DAYS UNLESS RENEWED; PROVIDING FOR THE FORM AND SCOPE OF PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS; AND AMENDING SECTIONS ~~27-19-201, 27-19-301, 27-19-303, 27-19-305, 27-19-306, 27-19-313, 27-19-401, 27-19-403, 27-19-405,~~ AND 27-19-406, MCA; AND REPEALING SECTIONS ~~27-19-302, 27-19-304, 27-19-311, AND 27-19-402, MCA."~~

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

~~SECTION 1. SECTION 27-19-201, MCA, IS AMENDED TO READ:~~

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

~~(1) when it shall appear by--the--complaint that the plaintiff applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either~~

for a limited period or perpetually;

~~(2) when it shall appear by--the--complaint--or--affidavit that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the plaintiff applicant;~~

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

~~(4) when it appears by--affidavit that the defendant adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the plaintiff applicant, an injunction order may be granted to restrain the removal or disposition."~~

Section 2. Section 27-19-301, MCA, is amended to read:

~~"27-19-301. When notice of application required. The order--may--be--granted--upon--or--without--notice--in--the discretion--of--the--court--or--judge--unless--the--defendant--has answered--in--which--case--it--can--be--granted--only--upon--notice or--an--order--to--show--cause--in--no--case--shall--an--injunction order--be--issued--without--notice--unless--it--appears--to--the court--or--judge--that--irreparable--injury--would--result--by--the~~

~~delay-of-giving-notice. Except-as-provided-in-27-19-302--no  
 NO preliminary injunction may be issued without reasonable  
 notice to the adverse party of the time and place of the  
 making of the application therefor."~~

SECTION 3. THERE IS A NEW MCA SECTION THAT READS:

When hearing on application required. Before granting  
 an injunction order, the court or judge shall make an order  
 requiring cause to be shown, at a specified time and place,  
 why the injunction should not be granted, and the adverse  
 party may in the meantime be restrained as provided in  
 27-19-305.

SECTION 4. SECTION 27-19-303, MCA, IS AMENDED TO READ:

"26-19-303. Time of granting injunction, evidence  
 required. The injunction order may be granted at-the-time-of  
~~issuing--the-summons-upon-the-complaint-or~~ after the hearing  
 at any time afterward before judgment ~~upon--affidavits. In~~  
~~the--one--case--the-complaint--with-or-without-affidavits-to~~  
~~support-it--and--in-the-other--the--affidavits--shall--show~~  
~~satisfactorily--that-sufficient-grounds-exist-therefor. Upon~~  
the hearing each party may present affidavits or oral  
~~testimony.~~ An injunction order shall not be granted on the  
 complaint-~~alone~~ affidavits unless:

- (1) ~~it-be~~ they are duly verified;
- (2) the material allegations of the complaint  
affidavits setting forth the grounds therefor for the order

be made positively and not upon information and belief."

Section 5. Section 27-19-305, MCA, is amended to read:

"27-19-305. Restraining Temporary restraining order.

Where an application for an injunction is made upon notice  
 or an order to show cause, either before or after answer,  
 the court or judge may enjoin the defendant ADVERSE PARTY,  
 until the hearing and decision of the application, by an  
 order which is called a temporary restraining order. ~~In no~~  
~~case shall a restraining order be issued without notice~~  
~~unless it appears to the court or judge that irreparable~~  
~~injury would result by the delay of giving notice."~~

NEW SECTION. Section 6. Form and scope of injunction  
 or restraining order. An order granting an injunction or a  
 restraining order shall:

- (1) set forth the reasons for its issuance;
- (2) be specific in its terms;
- (3) describe in reasonable detail, and not by  
 reference to the complaint or any other document, the act or  
 acts sought to be restrained; and
- (4) be binding only upon the parties to the action;  
 their officers, agents, employees, and attorneys; and those  
 persons in active concert or participation with them who  
 receive actual notice of the order by personal service or  
 otherwise.

NEW SECTION. Section 7. When restraining order may be



1 granted without notice. A temporary restraining order may be  
2 granted without written or oral notice to the adverse party  
3 or his attorney only if:

4 (1) it clearly appears from specific facts shown by  
5 affidavit or by the verified complaint that a delay would  
6 cause immediate and irreparable injury to the applicant  
7 before the adverse party or his attorney could be heard in  
8 opposition; and

9 (2) the applicant's attorney certifies to the court in  
10 writing the efforts, if any, which have been made to give  
11 notice and the reasons supporting his claim that notice  
12 should not be required.

13 Section 8. Section 27-19-306, MCA, is amended to read:

14 "27-19-306. Security for damages. (1) On granting an  
15 injunction or restraining order, the court or judge may  
16 shall require ~~except when the state or county or any~~  
17 ~~subdivision thereof or a municipal corporation or a married~~  
18 ~~person in a suit for divorce against his or her spouse is a~~  
19 ~~party plaintiff~~ a written undertaking ~~on the part of the~~  
20 ~~plaintiff with sufficient sureties to the effect that the~~  
21 ~~plaintiff will pay to the party enjoined such damages not~~  
22 ~~exceeding an amount to be specified as such party may~~  
23 ~~sustain by reason of the injunction if the court finally~~  
24 ~~decide that the plaintiff was not entitled thereto~~ to be  
25 given by the plaintiff APPLICANT, in such sum as the court

1 considers proper for the payment of such costs and damages  
2 as may be incurred or suffered by any party who is found to  
3 have been wrongfully enjoined or restrained. The undertaking  
4 may not be required in domestic disputes or when the state  
5 or a state agency, a county or subdivision thereof, or a  
6 municipal corporation is the party seeking the injunction or  
7 restraining order. In any case, the court in its discretion  
8 may waive the undertaking in the interest of justice.

9 (2) Within 5 days after the service of the injunction,  
10 the defendant PARTY ENJOINED may except to the sufficiency  
11 of the sureties. If ~~the plaintiff HE~~ fails to do so, such  
12 ~~plaintiff HE~~ is deemed to have waived all objections to  
13 them. When excepted to, the plaintiff's APPLICANT'S  
14 sureties, upon notice to the defendant PARTY ENJOINED of not  
15 less than 2 or more than 5 days, must justify before a judge  
16 or clerk in the same manner as upon bail on arrest, and upon  
17 failure to justify or if others in their place fail to  
18 justify at the time and place appointed, the order granting  
19 an injunction shall be dissolved.\*

20 NEW SECTION. Section 9. Contents and filing of  
21 restraining order granted without notice. Each temporary  
22 restraining order granted without notice must:

23 (1) be indorsed with the date and hour of its  
24 issuance;

25 (2) be filed immediately in the clerk's office and

1 entered in the record;

2 (3) define the injury and state why such injury is  
3 irreparable and why the order was granted without notice;  
4 and

5 (4) expire by its terms within such time after entry,  
6 not to exceed 10 days, as the court or judge fixes.

7 NEW SECTION. Section 10. Extension of expiration  
8 date. The time fixed in the order for its expiration may be  
9 extended, for good cause shown, for a like period or, if the  
10 party against whom the order is directed consents, for a  
11 longer period. The reasons for the extension must be entered  
12 in the record.

13 NEW SECTION. Section 11. Application for injunction  
14 to be heard without delay. Whenever a temporary restraining  
15 order is granted without notice, the application for an  
16 injunction must be set for hearing at the earliest possible  
17 time and takes precedence over all matters except older  
18 matters of the same character. At the hearing the party who  
19 obtained the temporary restraining order shall proceed with  
20 the application for an injunction, or if he does not do so,  
21 the court or judge shall dissolve the temporary restraining  
22 order.

23 NEW SECTION. Section 12. Motion to dissolve or modify  
24 restraining order. On 2 days' notice to the party who  
25 obtained the temporary restraining order without notice or

1 on such shorter notice as the court or judge may prescribe,  
2 the adverse party may appear and move that the order be  
3 dissolved or modified. The court shall hear and determine  
4 such motion as expeditiously as the ends of justice require.

5 SECTION 13, SECTION 27-19-313, MCA, IS AMENDED TO  
6 READ:

7 "27-19-313. New undertaking for security following  
8 hearing. On a hearing to show cause, the court or judge may  
9 require a new undertaking, in the same or a different sum,  
10 to be given by the plaintiff party who obtained the order,  
11 with like sureties and to the like effect as upon granting  
12 of the original order. The persons executing the new  
13 undertaking become liable thereon as if they had executed it  
14 upon the granting of the original order. The persons who  
15 executed the original undertaking remain liable thereon  
16 until the new undertaking is given and approved, and no  
17 longer."

18 Section 14. Section 27-19-401, MCA, is amended to  
19 read:

20 "27-19-401. Application to dissolve or modify  
21 injunction granted--without--notice a--hearing. If--an  
22 injunction--order--be--granted--without--notice a--hearing, the  
23 defendant--at--any--time--before--the--trial, THE PARTY ENJOINED  
24 may apply--upon--reasonable--notice--or--upon--order--to--show  
25 cause--returnable--at--a--specified--time--or--forthwith--after

1 service--thereof, to the judge who granted the injunction  
 2 order or to the court in which the action is brought to  
 3 dissolve or modify the same. The application may be made  
 4 upon the ~~complaint and affidavit on which the injunction~~  
 5 ~~order was granted or upon affidavit on part of defendant~~  
 6 with or without the answer. REASONABLE NOTICE OR UPON AN  
 7 ORDER TO SHOW CAUSE RETURNABLE AT A SPECIFIED TIME OR  
 8 IMMEDIATELY AFTER SERVICE THEREOF, THE APPLICATION MUST BE  
 9 SUPPORTED BY AN AFFIDAVIT SHOWING THAT THERE IS NOT  
 10 SUFFICIENT GROUND FOR THE INJUNCTION TO CONTINUE OR THAT THE  
 11 SCOPE OF THE INJUNCTION IS TOO BROAD."

12 SECTION 15, SECTION 27-19-403, MCA, IS AMENDED TO

13 READ:

14 "27-19-403. New undertaking for security following  
 15 hearing. Upon the hearing of an application to vacate or  
 16 modify an injunction order, the court or judge may require a  
 17 new undertaking, in the same or a different sum, to be given  
 18 by the plaintiff party who obtained the order, with like  
 19 sureties and to the like effect as upon granting of the  
 20 original order. The persons executing the new undertaking  
 21 become liable thereon as if they had executed it upon the  
 22 granting of the original order. The persons who executed  
 23 the original undertaking remain liable thereon until the new  
 24 undertaking is given and approved, and no longer."

25 SECTION 16, SECTION 27-19-405, MCA, IS AMENDED TO

1 READ:

2 "27-19-405. Defendant's Enjoined party's undertaking  
 3 for security upon dissolution. Upon the hearing mentioned in  
 4 27-19-403, the court or judge may vacate the injunction  
 5 order upon the defendant's enjoined party's executing an  
 6 undertaking in such form and amount and with such sureties  
 7 as the court or judge shall direct, conditioned to indemnify  
 8 the plaintiff party who obtained the injunction order  
 9 against loss sustained by reason of vacating such injunction  
 10 order."

11 Section 17. Section 27-19-406, MCA, is amended to  
 12 read:

13 "27-19-406. Costs upon dissolution. Where an  
 14 injunction order is granted without notice a hearing and the  
 15 same is afterward dissolved upon application of the party  
 16 enjoined thereby, the court or judge to whom the application  
 17 to dissolve is made may award as costs of the application,  
 18 against the plaintiff PARTY WHO OBTAINED THE INJUNCTION and  
 19 in favor of the party applying, such sum as to the court or  
 20 judge may appear just, not less than \$10 or more than \$100."

21 SECTION 18, REPEALER, SECTIONS 27-19-302, 27-19-304,  
 22 27-19-311, AND 27-19-402, MCA, ARE REPEALED.

-End-

SENATE BILL NO. 243

INTRODUCED BY TOWE

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE STATUTES REGARDING THE PROCEDURE FOR OBTAINING AND DISSOLVING OR MODIFYING PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS; PROVIDING THAT TEMPORARY RESTRAINING ORDERS WILL EXPIRE WITHIN 10 DAYS UNLESS RENEWED; PROVIDING FOR THE FORM AND SCOPE OF PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS; AND AMENDING SECTIONS ~~27-19-201, 27-19-301, 27-19-302, 27-19-305, 27-19-306, 27-19-311, 27-19-401, 27-19-403, 27-19-405~~ AND 27-19-406, MCA, AND REPEALING SECTIONS ~~27-19-302, 27-19-304, 27-19-311, AND 27-19-402, MCA.~~"

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

SECTION 1. SECTION 27-19-201, MCA, IS AMENDED TO READ:

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

(1) when it shall appear by the complaint that the plaintiff applicant is entitled to the relief demanded and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either

for a limited period or perpetually;

(2) when it shall appear by the complaint or affidavit that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the plaintiff applicant;

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

(4) when it appears by affidavit that the defendant adverse party, during the pendency of the action, threatens or is about to remove or to dispose of his property with intent to defraud the plaintiff applicant, an injunction order may be granted to restrain the removal or disposition."

Section 2. Section 27-19-301, MCA, is amended to read:

"27-19-301. When notice of application required. The order may be granted upon or without notice in the discretion of the court or judge, unless the defendant has answered, in which case it can be granted only upon notice or an order to show cause, in no case shall an injunction order be issued without notice unless it appears to the court or judge that irreparable injury would result by the

1 ~~delay of giving notice. Except as provided in 27-19-302, no~~  
 2 ~~NO preliminary injunction may be issued without reasonable~~  
 3 ~~notice to the adverse party of the time and place of the~~  
 4 ~~making of the application therefor."~~

5 SECTION 3. THERE IS A NEW MCA SECTION THAT READS:

6 When hearing on application required. Before granting  
 7 an injunction order, the court or judge shall make an order  
 8 requiring cause to be shown, at a specified time and place,  
 9 why the injunction should not be granted, and the adverse  
 10 party may in the meantime be restrained as provided in  
 11 27-19-305.

12 SECTION 4. SECTION 27-19-303, MCA, IS AMENDED TO READ:

13 "28-19-303. Time of granting injunction, evidence  
 14 required. The injunction order may be granted ~~at the time of~~  
 15 ~~issuing the summons upon the complaint or after the hearing~~  
 16 ~~at any time afterward before judgment upon affidavits. In~~  
 17 ~~the one case, the complaint, with or without affidavits to~~  
 18 ~~support it, and in the other, the affidavits shall show~~  
 19 ~~satisfactorily that sufficient grounds exist therefor. Upon~~  
 20 ~~the hearing each party may present affidavits or oral~~  
 21 ~~testimony. An injunction order shall not be granted on the~~  
 22 ~~complaint alone affidavits unless:~~

23 (1) ~~it be they are~~ duly verified;

24 (2) the material allegations of the complaint  
 25 ~~affidavits~~ setting forth the grounds therefor ~~for the order~~

1 be made positively and not upon information and belief."

2 Section 5. Section 27-19-305, MCA, is amended to read:

3 "27-19-305. Restraining Temporary restraining order.

4 Where an application for an injunction is made upon notice  
 5 or an order to show cause, either before or after answer,  
 6 the court or judge may enjoin the defendant ADVERSE PARTY,  
 7 until the hearing and decision of the application, by an  
 8 order which is called a temporary restraining order. ~~In no~~  
 9 ~~case shall a restraining order be issued without notice~~  
 10 ~~unless it appears to the court or judge that irreparable~~  
 11 ~~injury would result by the delay of giving notice."~~

12 NEW SECTION. Section 6. Form and scope of injunction  
 13 or restraining order. An order granting an injunction or a  
 14 restraining order shall:

15 (1) set forth the reasons for its issuance;

16 (2) be specific in its terms;

17 (3) describe in reasonable detail, and not by  
 18 reference to the complaint or any other document, the act or  
 19 acts sought to be restrained; and

20 (4) be binding only upon the parties to the action;  
 21 their officers, agents, employees, and attorneys; and those  
 22 persons in active concert or participation with them who  
 23 receive actual notice of the order by personal service or  
 24 otherwise.

25 NEW SECTION. Section 7. When restraining order may be

1 granted without notice. A temporary restraining order may be  
2 granted without written or oral notice to the adverse party  
3 or his attorney only if:

4 (1) it clearly appears from specific facts shown by  
5 affidavit or by the verified complaint that a delay would  
6 cause immediate and irreparable injury to the applicant  
7 before the adverse party or his attorney could be heard in  
8 opposition; and

9 (2) the applicant's attorney certifies to the court in  
10 writing the efforts, if any, which have been made to give  
11 notice and the reasons supporting his claim that notice  
12 should not be required.

13 Section 8. Section 27-19-306, MCA, is amended to read:

14 "27-19-306. Security for damages. (1) On granting an  
15 injunction or restraining order, the court or judge may  
16 shall require ~~except when the state or county or any~~  
17 ~~subdivision thereof or a municipal corporation or a married~~  
18 ~~person in a suit for divorce against his or her spouse is a~~  
19 ~~party plaintiff a written undertaking on the part of the~~  
20 ~~plaintiff with sufficient sureties to the effect that the~~  
21 ~~plaintiff will pay to the party enjoined such damages not~~  
22 ~~exceeding an amount to be specified as such party may~~  
23 ~~sustain by reason of the injunction if the court finally~~  
24 ~~decide that the plaintiff was not entitled thereto to be~~  
25 given by the plaintiff APPLICANT, in such sum as the court

1 considers proper, for the payment of such costs and damages  
2 as may be incurred or suffered by any party who is found to  
3 have been wrongfully enjoined or restrained. The undertaking  
4 may not be required in domestic disputes or when the state  
5 or a state agency, a county or subdivision thereof, or a  
6 municipal corporation is the party seeking the injunction or  
7 restraining order. In any case, the court in its discretion  
8 may waive the undertaking in the interest of justice.

9 (2) Within 5 days after the service of the injunction,  
10 the defendant PARTY ENJOINED may except to the sufficiency  
11 of the sureties. If the plaintiff HE fails to do so, such  
12 plaintiff HE is deemed to have waived all objections to  
13 them. When excepted to, the plaintiff's APPLICANT'S  
14 sureties, upon notice to the defendant PARTY ENJOINED of not  
15 less than 2 or more than 5 days, must justify before a judge  
16 or clerk in the same manner as upon bail on arrest, and upon  
17 failure to justify or if others in their place fail to  
18 justify at the time and place appointed, the order granting  
19 an injunction shall be dissolved."

20 NEW SECTION. Section 9. Contents and filing of  
21 restraining order granted without notice. Each temporary  
22 restraining order granted without notice must:

23 (1) be indorsed with the date and hour of its  
24 issuance;

25 (2) be filed immediately in the clerk's office and

1 entered in the record;

2 (3) define the injury and state why such injury is

3 irreparable and why the order was granted without notice;

4 and

5 (4) expire by its terms within such time after entry,

6 not to exceed 10 days, as the court or judge fixes.

7 NEW SECTION. Section 10. Extension of expiration

8 date. The time fixed in the order for its expiration may be

9 extended, for good cause shown, for a like period or, if the

10 party against whom the order is directed consents, for a

11 longer period. The reasons for the extension must be entered

12 in the record.

13 NEW SECTION. Section 11. Application for injunction

14 to be heard without delay. Whenever a temporary restraining

15 order is granted without notice, the application for an

16 injunction must be set for hearing at the earliest possible

17 time and takes precedence over all matters except older

18 matters of the same character. At the hearing the party who

19 obtained the temporary restraining order shall proceed with

20 the application for an injunction, or if he does not do so,

21 the court or judge shall dissolve the temporary restraining

22 order.

23 NEW SECTION. Section 12. Motion to dissolve or modify

24 restraining order. On 2 days' notice to the party who

25 obtained the temporary restraining order without notice or

1 on such shorter notice as the court or judge may prescribe;

2 the adverse party may appear and move that the order be

3 dissolved or modified. The court shall hear and determine

4 such motion as expeditiously as the ends of justice require.

5 SECTION 13. SECTION 27-19-313, MCA, IS AMENDED TO

6 READ:

7 \*27-19-313. New undertaking for security following

8 hearing. On a hearing to show cause, the court or judge may

9 require a new undertaking, in the same or a different sum,

10 to be given by the plaintiff party who obtained the order,

11 with like sureties and to the like effect as upon granting

12 of the original order. The persons executing the new

13 undertaking become liable thereon as if they had executed it

14 upon the granting of the original order. The persons who

15 executed the original undertaking remain liable thereon

16 until the new undertaking is given and approved, and no

17 longer."

18 Section 14. Section 27-19-401, MCA, is amended to

19 read:

20 \*27-19-401. Application to dissolve or modify

21 injunction granted--without--notice ~~a--hearing.~~ if--an

22 injunction--order--be--granted--without--notice ~~a--hearing~~--the

23 ~~defendants--at--any--time--before--the--trial~~ THE PARTY ENJOINED

24 ~~may apply--upon--reasonable--notice--or--upon--order--to--show~~

25 ~~cause--returnable--at--a--specified--time--or--forthwith--after~~

1 service--thereof to the judge who granted the injunction  
 2 order or to the court in which the action is brought to  
 3 dissolve or modify the same. The application may be made  
 4 upon the ~~complaint and affidavit on which the injunction~~  
 5 ~~order was granted or upon affidavit on part of defendant,~~  
 6 with or without the answer, REASONABLE NOTICE OR UPON AN  
 7 ORDER TO SHOW CAUSE RETURNABLE AT A SPECIFIED TIME OR  
 8 IMMEDIATELY AFTER SERVICE THEREOF. THE APPLICATION MUST BE  
 9 SUPPORTED BY AN AFFIDAVIT SHOWING THAT THERE IS NOT  
 10 SUFFICIENT GROUND FOR THE INJUNCTION TO CONTINUE OR THAT THE  
 11 SCOPE OF THE INJUNCTION IS TOO BROAD."

12 SECTION 15. SECTION 27-19-403, MCA, IS AMENDED TO  
 13 READ:

14 "27-19-403. New undertaking for security following  
 15 hearing. Upon the hearing of an application to vacate or  
 16 modify an injunction order, the court or judge may require a  
 17 new undertaking, in the same or a different sum, to be given  
 18 by the plaintiff party who obtained the order, with like  
 19 sureties and to the like effect as upon granting of the  
 20 original order. The persons executing the new undertaking  
 21 become liable thereon as if they had executed it upon the  
 22 granting of the original order. The persons who executed  
 23 the original undertaking remain liable thereon until the new  
 24 undertaking is given and approved, and no longer."

25 SECTION 16. SECTION 27-19-405, MCA, IS AMENDED TO

1 READ:

2 "27-19-405. Defendant's enjoined party's undertaking  
 3 for security upon dissolution. Upon the hearing mentioned in  
 4 27-19-403, the court or judge may vacate the injunction  
 5 order upon the defendant's enjoined party's executing an  
 6 undertaking in such form and amount and with such sureties  
 7 as the court or judge shall direct, conditioned to indemnify  
 8 the plaintiff party who obtained the injunction order  
 9 against loss sustained by reason of vacating such injunction  
 10 order."

11 Section 17. Section 27-19-406, MCA, is amended to  
 12 read:

13 "27-19-406. Costs upon dissolution. Where an  
 14 injunction order is granted without notice a hearing and the  
 15 same is afterward dissolved upon application of the party  
 16 enjoined thereby, the court or judge to whom the application  
 17 to dissolve is made may award as costs of the application,  
 18 against the plaintiff PARTY WHO OBTAINED THE INJUNCTION and  
 19 in favor of the party applying, such sum as to the court or  
 20 judge may appear just, not less than \$10 or more than \$100."

21 SECTION 18. REPEALER. SECTIONS 27-19-302, 27-19-304,  
 22 27-19-311, AND 27-19-302, MCA, ARE REPEALED.

-End-