HOUSE BILL NO. 405

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INTRODUCED BY KEEDY

IN THE HOUSE

January 21, 1981	Introduced and referred to Committee on Judiciary.
February 2, 1981	Committee recommend bill do pass. Report adopted.
February 3, 1981	Bill printed and placed on members' deaks.
February 5, 1981	Second reading, do pass.
February 6, 1981	Considered correctly engrossed.
February 7, 1981	Third reading, passed. Transmitted to Senate.
	IN THE SENATE
February 9, 1981	Introduced and referred to Committee on Judiciary.
March 9, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 11, 1981	Second reading, concurred in.
March 13, 1981	Third reading, concurred in as amended. Ayes, 45; Noes, 2.

IN THE BOUSE

March 14, 1981 March 18, 1981 March 18, 1981 Second reading, amendments concurred in.

March 20, 1981

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Third reading, amendments concurred in. Ayes, 93; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

BILL NO. 405 1 INTRODUCED BY 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR 4

5 PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS TO 6 PROTECT A PERSON FROM ABUSE BY A SPOUSE; AMENDING SECTIONS 7 27-19-201 AND 40-4-106, MCA.**

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9 WHEREAS, former Governor Judge appointed a task force
10 to recommend ways in which spouse abuse could be stopped;
11 and

12 WHEREAS, spouse abuse weakens the oignity and integrity 13 of the family unit, and the state therefore has a 14 substantial interest in aiding spouse abuse victims through 15 the enforcement of state laws; and

16 WHEREAS, the task force recognized that the state's 17 current laws on obtaining injunctions and restraining orders 18 are not providing adequate protection to some spouse abuse 19 victims and their families.

20 THEREFORE, it is the intent of this act to grant spouse 21 abuse victims extraordinary relief in the form of 22 preliminary injunctions and temporary restraining orders. 23

243E IT ENACTED BY THE LEGISLATURE UF THE STATE OF MONTANA:25Section 1. Section 40-4-106, MCA, is amended to read:

1 "40-4-106. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal 2 3 separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the 4 marriage by a court which lacked personal jurisdiction over 5 the absent spouse, either party may move for temporary 6 maintenance or temporary support of a child of the marriage 7 8 entitled to support. The motion shall be accompanied by an 9 affidavit setting forth the factual basis for the motion and 10 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:

15 (a) restraining any person from transferring, 16 encumbering, concealing, or otherwise disposing of any 17 property except in the usual course of business or for the 18 necessities of life and, if so restrained, requiring him to 19 notify the moving party of any proposed extraordinary 20 expenditures made after the order is issued;

21 (b) enjoining a party from molesting or disturbing the

22 peace of the other party or of any child;

23 (c) excluding a party from the family home or from the
24 home of the other party upon a showing that physical or
25 emotional harm would otherwise result;

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1 1 (d) enjoining a party from removing a child from the 2 2 jurisdiction of the court; and 3 3 (e) providing other injunctive relief proper in the 4 4 circumstances. 5 5 (3) A person may seek the relief provided for in 6 6 subsection (21 of this section without filing a petition 7 7 under_this_part_for_a_dissolution_of_marriage_or_legal 8 8 separation. by filing a verified petition alleging physical 9 9 abuse against the petitioner by a spouse and requesting 10 10 injunctive_relief_under_Title_27, chapter_19, part_ 3, Any 11 11 preliginary in junction_entered_under_this_subsection_must_be 12 12 for a fixed period of times not to exceed 1 years and may be 13 13 modified as provided in Title 27, chapter 19, part 4, and 14 14 40-4-208-15 15 (3)(4) The court may issue a temporary restraining 16 order without requiring notice to the other party only if it 16 17 cases: 17 finds on the basis of the moving affidavit or other evidence 18 18 that irreparable injury will result to the moving party if 19 no order is issued until the time for responding has 19 20 20 elapsed. 21 21 (4)(5) A response may be filed within 20 days after 22 22 service of notice of motion or at the time specified in the 23 23 temporary restraining order. 24 24 (5)(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a 25 25

temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance. t6)[7] A temporary order or temporary injunction: (a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding; (b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208; and (c) terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed." Section 2. 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 (1) when it shall appear that the 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 that the commission or

24 continuance of some act during the litigation would produce 25 a great or irreparable injury to the applicant;

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(3) when it shall appear during the litigation that 1 2 the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation 3 of the applicant's rights, respecting the subject of the 4 action, and tending to render the judgment ineffectual; 5 6 (4) when it appears that the adverse party, during the 7 pendency of the action, threatens or is about to remove or 8 to dispose of his property with intent to defraud the applicant, an injunction order may be granted to restrain 9 the removal or dispositions; 10 11 (5) when the applicant alleges physical abuse by a

12 spouse under the provisions of 40-4-106.*

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-End-

HB405

47th Legislature

LC 1034/01

Approved by Committee on Judiciary

HOUSE BILL NO. 405 1 INTRODUCED BY 1000 2 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR 5 PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS TO 6 PROTECT A PERSON FROM ABUSE BY A SPOUSE; AMENDING SECTIONS 7 27-19-201 AND 40-4-106, MCA."

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9 WHEREAS, former Governor Judge appointed a task force
 10 to recommend ways in which spouse abuse could be stopped;
 11 and

12 WHEREAS, spouse abuse weakens the dignity and integrity 13 of the family unit, and the state therefore has a 14 substantial interest in aiding spouse abuse victims through 15 the enforcement of state laws; and

16 WHEREAS, the task force recognized that the state's 17 current laws on obtaining injunctions and restraining orders 18 are not providing adequate protection to some spouse abuse 19 victims and their families.

20 THEREFORE, it is the intent of this act to grant spouse 21 abuse victims extraordinary relief in the form of 22 preliminary injunctions and temporary restraining orders.

243E IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:25Section 1. Section 40-4-106, MCA, is amended to read:

LC 1034/01

1	"40-4-106. Temporary order or temporary injunction.
2	(1) In a proceeding for dissolution of marriage or for legal
3	separation or in a proceeding for disposition of property or
4	for maintenance or support following dissolution of the
5	marriage by a court which lacked personal jurisdiction over
6.	the absent spouse, either party may move for temporary
7	maintenance or temporary support of a child of the marriage
8	entitled to support. The motion shall be accompanied by an
9	affidavit setting forth the factual basis for the motion and
10	the amounts requested.
11	(2) As a part of a motion for temporary maintenance or
12	support or by independent motion accompanied by affidavit,
13	either party may request the court to issue a temporary
14	injunction for any of the following relief:
15	(a) restraining any person from transferring,
16	encumbering, concealing, or otherwise disposing of any
17	property except in the usual course of business or for the
18	necessities of life and, if so restrained, requiring him to
19	notify the moving party of any proposed extraordinary
20	expenditures made after the order is issued;
21	(b) enjoining a party from molesting or disturbing the
22	peace of the other party or of any child;
23	{c} excluding a party from the family home or from the
24	home of the other party upon a showing that physical or
25	emotional harm would otherwise result;

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SECOND READ

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

3 (e) providing other injunctive relief proper in the4 circumstances.

5 (3) A person may seek the relief provided for in 6 subsection (2) of this section without filing a petition 7 under this part for a dissolution of marriage or legal 8 separation. by filing a verified petition alleging physical 9 abuse against the petitioner by a spouse and requesting 10 injunctive relief under Title 27. chapter 19. part 3. Any 11 preliminary injunction entered under this subsection must be 12 for a fixed period of times not to exceed 1 years and may be 13 modified as provided in Title 27. chapter 19. part 4. and 14 40-4-208.

15 (3)(4) The court may issue a temporary restraining 16 order without requiring notice to the other party only if it 17 finds on the basis of the moving affidavit or other evidence 18 that irreparable injury will result to the moving party if 19 no order is issued until the time for responding has 20 elapsed.

21 (4)(5) A response may be filed within 20 days after
22 service of notice of motion or at the time specified in the
23 temporary restraining order.

24 (57(6) On the basis of the showing made and in 25 conformity with 40-4-203 and 40-4-204, the court may issue a 1 temporary injunction and an order for temporary maintenance
2 or support in amounts and on terms just and proper in the
3 circumstance.

4 t6+171 A temporary order or temporary injunction: 5 (a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings 6 7 in the proceeding; A (b) may be revoked or modified before final decree on 9 a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208; and 10 11 (c) terminates when the final decree is entered or when the petition for dissolution or legal separation is 12 voluntarily dismissed." 13 14 Section 2. Section 27-19-201, MCA, is amended to read:

15 "27-19-201. When preliminary injunction may be
16 granted. An injunction order may be granted in the following
17 cases:

18 (1) when it shall appear that the applicant is 19 entitled to the relief demanded and such relief or any part 20 thereof consists in restraining the commission or 21 continuance of the act complained of, either for a limited 22 period or perpetually;

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

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1 (3) when it shall appear during the litigation that 2 the adverse party is doing or threatens or is about to do or 3 is procuring or suffering to be done some act in violation 4 of the applicant's rights, respecting the subject of the 5 action, and tending to render the judgment ineffectual;

6 (4) when it appears that the adverse party, during the 7 pendency of the action, threatens or is about to remove or 8 to dispose of his property with intent to defraud the 9 applicant, an injunction order may be granted to restrain 10 the removal or disposition*i

 11
 (5)_when_the_applicant_alleges_physical_abuse_by_a

 12
 spouse_under_the_provisions_of_40-4-106**

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HOUSE BILL NO. 405 1 INTRODUCED BY Killer 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR 4 PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS TO 5 PROTECT A PERSON FROM ABUSE BY A SPOUSE; AMENDING SECTIONS 6 27-19-201 AND 40-4-106, MCA.* 7 8

9 WHEREAS, former Governor Judge appointed a task force
10 to recommend ways in which spouse abuse could be stopped;
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12 WHEREAS, spouse abuse weakens the dignity and integrity 13 of the family unit, and the state therefore has a 14 substantial interest in aiding spouse abuse victims through 15 the enforcement of state laws; and

16 WHEREAS, the task force recognized that the state's 17 current laws on obtaining injunctions and restraining orders 18 are not providing adequate protection to some spouse abuse 19 victims and their families.

20 THEREFORE, it is the intent of this act to grant spouse
21 abuse victims extraordinary relief in the form of
22 preliminary injunctions and temporary restraining orders.
23

24BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KONTANA:25Section 1. Section 40-4-106, MCA, is amended to read:

1 #40-4-106. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal 2 3 separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the 4 5 marriage by a court which lacked personal jurisdiction over 6 the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage 7 8 entitled to support. The motion shall be accompanied by an 9 affidavit setting forth the factual basis for the motion and 10 the amounts requested.

11 (2) As a part of a motion for temporary maintenance or 12 support or by independent motion accompanied by affidavit, 13 either party may request the court to issue a temporary 14 injunction for any of the following relief:

15 (a) restraining any person from transferring, 16 encumbering, concealing, or otherwise disposing of any 17 property except in the usual course of business or for the 18 necessities of life and, if so restrained, requiring him to 19 notify the moving party of any proposed extraordinary 20 expenditures made after the order is issued:

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

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

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

3 (e) providing other injunctive relief proper in the
4 circumstances.

5 (3) A person may seek the relief provided for in 6 subsection (2) of this section without filing a petition 7 under this part for a dissolution of marriage or legal 8 separation, by filing a verified petition alleging physical 9 abuse_ against_ the __petitioner__by__a_spouse_and_requesting 10 injunctive_relief_under_litle_27. chapter_19. part_3. Any 11 preliminary in junction entered under this subsection must be 12 for a fixed period of times not to exceed 1 years and may be 13 modified as provided in Title 27. chapter 19. part 4. and 40-4-208. 14

15 (3714) The court may issue a temporary restraining 16 order without requiring notice to the other party only if it 17 finds on the basis of the moving affidavit or other evidence 18 that irreparable injury will result to the moving party if 19 no order is issued until the time for responding has 20 elapsed.

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 22 service of notice of motion or at the time specified in the
 23 temporary restraining order.

24 (57(6) On the basis of the showing made and in 25 conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance
 or support in amounts and on terms just and proper in the
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4 t6)[1] A temporary order or temporary injunction:

5 (a) does not prejudice the rights of the parties or 6 the child which are to be adjudicated at subsequent hearings 7 in the proceeding;

8 (b) may be revoked or modified before final decree on
9 a showing by affidavit of the facts necessary to revocation
10 or modification of a final decree under 40-4-208; and

11 (c) terminates when the final decree is entered or 12 when the petition for dissolution or legal separation is 13 voluntarily dismissed."

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18 (1) when it shall appear that the applicant is 19 entitled to the relief demanded and such relief or any part 20 thereof consists in restraining the commission or 21 continuance of the act complained of, either for a limited 22 period or perpetually;

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

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1 (3) when it shall appear during the litigation that 2 the adverse party is doing or threatens or is about to do or 3 is procuring or suffering to be done some act in violation 4 of the applicant's rights, respecting the subject of the 5 action, and tending to render the judgment ineffectual;

6 (4) when it appears that the adverse party, during the 7 pendency of the action, threatens or is about to remove or 8 to dispose of his property with intent to defraud the 9 applicant, an injunction order may be granted to restrain 10 the removal or dispositionvi

11 (5)_when_the_applicant_alleges_physical_abuse_by_a

12 spouse under the provisions of 40-4-106.*

-End-

- HB 405

HB 0405/02

1 HOUSE BILL NO. 405 INTRODUCED BY KEEDY 2 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR 5 PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS TO 6 PROTECT A PERSON FROM ABUSE BY A SPOUSE: AMENDING SECTIONS 7 27-19-201 AND 40-4-106+ MCA+* 8 9 WHEREAS, former Governor Judge appointed a task force 10 to recommend ways in which spouse abuse could be stopped; 11 and 12 WHEREAS, spouse abuse weakens the dignity and integrity 13 of the family unit, and the state therefore has a 14 substantial interest in aiding spouse abuse victims through the enforcement of state laws; and 15 WHEREAS, the task force recognized that the state's 16 current laws on obtaining injunctions and restraining orders 17 18 are not providing adequate protection to some spouse abuse victims and their families. 19 THEREFORE, it is the intent of this act to grant spouse 20 21 abuse victims extraordinary relief in the form of preliminary injunctions and temporary restraining orders. 22 23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 24 Section 1. Section 40-4-106, MCA, is amended to read: 25

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#40+4-106. Temporary order or temporary injunction. 1 (1) In a proceeding for dissolution of marriage or for legal 2 з separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the 4 5 marriage by a court which lacked personal jurisdiction over 6 the absent spouse, either party may move for temporary 7 maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an 8 9 affidavit setting forth the factual basis for the motion and 10 the amounts requested.

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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:

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21 (b) enjoining a party from molesting or disturbing the

22 peace of the other party or of any child;

23 (c) excluding a party from the family home or from the
24 home of the other party upon a showing that physical or
25 emotional harm would otherwise result;

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REFERENCE BILL

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1 1 (d) enjoining a party from removing a child from the 2 2 jurisdiction of the court; and 3 3 (e) providing other injunctive relief proper in the 4 4 circumstances. 5 5 (3) A person may seek the relief provided for in 6 subsection (2) of this section, without, filing _a_ petition - 6 7 7 under this part for a dissolution of marriage or legal 8 8 separation, by filing a verified petition alleging physical 9 9 abuse against the petitioner by a spouse and requesting 10 10 injunctive relief under Title 27, chapter 19, part 3. Any 11 11 preliminary injunction entered under this subsection must be 12 12 for a fixed period of time, not to exceed 1 year, and may be 13 13 modified as provided in Title 27, chapter 19, part 4, and 14 14 40-4-208. 15 15 +3+(4) The court may issue a temporary restraining 16 order without requiring notice to the other party only if it 16 17 finds on the basis of the moving affidavit or other evidence 17 18 that irreparable injury will result to the moving party if 18 19 no order is issued until the time for responding has 19 20 20 etapsed. 21 (5) A response may be filed within 20 days after 21 22 service of notice of motion or at the time specified in the 22 23 23 temporary restraining order. 24 (5)(6) On the basis of the showing made and in 24 25 conformity with 40-4-203 and 40-4-204, the court may issue a 25

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temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance. +6+(7) A temporary order or temporary injunction: (a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding: (b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208; and (c) terminates when the Final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.* Section 2. 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 that the 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 that the commission or continuance of some act during the litigation would produce

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1 (3) when it shall appear during the litigation that 2 the adverse party is doing or threatens or is about to do or 3 is procuring or suffering to be done some act in violation 4 of the applicant's rights, respecting the subject of the 5 action, and tending to render the judgment ineffectual;

6 (4) when it appears that the adverse party, during the 7 pendency of the action, threatens or is about to remove or 8 to dispose of his property with intent to defraud the 9 applicant, an injunction order may be granted to restrain 10 the removal or disposition<u>*</u>:

11 (5) when IT APPEARS the applicant alleges HAS SUFFERED

12 OR MAY SUFFER physical abuse by a spouse under the

13 provisions of 40-4-106."

-End-

SENATE STANDING COMMITTEE REPORT (Judiciary)

That House Bill No. 405 be amended as follows:

1. Page 5, line 11. Following: "when" Insert: "it appears" Following: "applicant" Strike: "alleges" Insert: "has suffered or may suffer"