

HOUSE BILL NO. 405

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' desks.
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 HOUSE

March 14, 1981	Returned from Senate with amendments.
March 18, 1981	Second reading, amendments concurred in.

March 20, 1981

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

Reported correctly enrolled.

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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;
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12 WHEREAS, spouse abuse weakens the dignity and integrity
13 of the family unit, and the state therefore has a
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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.

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

25 Section 1. Section 40-4-106, MCA, is amended to read:

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;

1 (d) enjoining a party from removing a child from the
2 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 Title 27, chapter 19, part 3. Any~~
11 ~~preliminary injunction entered under this subsection must be~~
12 ~~for a fixed period of time, not to exceed 1 year, 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 ~~(5)(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 ~~(6)(7)~~ 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."

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;

23 (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;

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;

11 ~~(5) when the applicant alleges physical abuse by a~~
12 ~~spouse under the provisions of 40-4-106."~~

-End-

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Approved by Committee on Judiciary

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9 WHEREAS, former Governor Judge appointed a task force
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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
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17 current laws on obtaining injunctions and restraining orders
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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.

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12 support or by independent motion accompanied by affidavit,
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14 injunction for any of the following relief:

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19 notify the moving party of any proposed extraordinary
20 expenditures made after the order is issued;

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22 peace of the other party or of any child;

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24 home of the other party upon a showing that physical or
25 emotional harm would otherwise result;

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2 jurisdiction of the court; and

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4 circumstances.

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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
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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.

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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;

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-

March 9, 1981

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"