

## 1 SENATE BILL NO. 32

2 INTRODUCED BY HALLIGAN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A PARTY, AS A PART OF A MOTION FOR  
 5 TEMPORARY MAINTENANCE OR SUPPORT OR BY INDEPENDENT MOTION, TO REQUEST A TEMPORARY  
 6 RESTRAINING ORDER PROVIDING THAT INSURANCE COVERAGE NOT BE MODIFIED; REQUIRING THAT  
 7 A SUMMONS ISSUED IN A MARRIAGE DISSOLUTION, MAINTENANCE, CHILD CUSTODY, CHILD  
 8 SUPPORT, OR FAMILY LAW MEDIATION ACTION CONTAIN A TEMPORARY RESTRAINING ORDER  
 9 PREVENTING A PARTY FROM DISPOSING OF MARITAL PROPERTY WITHOUT A COURT ORDER OR THE  
 10 CONSENT OF THE OTHER PARTY, EXCEPT IN THE USUAL COURSE OF BUSINESS, FOR NECESSITIES OF  
 11 LIFE, OR FOR THE PAYMENT OF ATTORNEY FEES; SETTING OUT THE TERMS OF THE TEMPORARY  
 12 RESTRAINING ORDER; AND AMENDING SECTION 40-4-121, MCA."

13

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

15

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

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

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

26 (a) restraining ~~any~~ a person from transferring, encumbering, concealing, or otherwise disposing of  
 27 any property, except in the usual course of business or for the necessities of life, and, if so restrained,  
 28 requiring the person to notify the moving party of any proposed extraordinary expenditures made after the  
 29 order is issued;

30 (b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of,

1 or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and  
2 disability coverage held for the benefit of a party or a child of a party for whom support may be ordered;

3 (c) enjoining a party from molesting or disturbing the peace of the other party or of any family  
4 member or from stalking, as defined in 45-5-220;

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

7 (e) enjoining a party from removing a child from the jurisdiction of the court;

8 (f) ordering a party to complete counseling, including alcohol or chemical dependency counseling  
9 or treatment;

10 (g) providing other injunctive relief proper in the circumstances; and

11 (h) providing additional relief available under Title 40, chapter 15.

12 (3) In addition to the contents required by the Montana Rules of Civil Procedure, any summons  
13 issued pursuant to this chapter must contain a temporary restraining order:

14 (a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any  
15 way disposing of any property, real or personal, whether jointly or separately held, without either the  
16 consent of the other party or an order of the court, except in the usual course of business or for the  
17 necessities of life. The restraining order must require each party to notify the other party of any proposed  
18 extraordinary expenditures at least 5 business days before incurring the expenditures and to account to the  
19 court for all extraordinary expenditures made after service of the summons. However, the restraining may  
20 not order preclude either party from using any property to pay reasonable attorney fees in order to retain  
21 counsel in the proceeding.

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23 or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and  
24 disability coverage held for the benefit of a party or a child of a party for whom support may be ordered.  
25 However, nothing in this subsection (3) adversely affects the rights, title, or interest of a purchaser,  
26 encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual  
27 knowledge of the restraining order.

28 (4) A person may seek the relief provided for in subsection (2) without filing a petition under this  
29 part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title  
30 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period

1 of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and  
2 40-4-208, as appropriate.

3 ~~(4)~~(5) The court may issue a temporary restraining order for a period not to exceed 20 days without  
4 requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that  
5 irreparable injury will result to the moving party if ~~no~~ an order is not issued until the time for responding  
6 has elapsed.

7 ~~(5)~~(6) A response may be filed within 20 days after service of notice of motion or at the time  
8 specified in the temporary restraining order.

9 ~~(6)~~(7) At the time of the hearing, the court shall determine whether good cause exists for the  
10 injunction to continue for 1 year.

11 ~~(7)~~(8) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court  
12 may issue a temporary injunction and an order for temporary maintenance or support in amounts and on  
13 terms just and proper in the circumstance.

14 ~~(8)~~(9) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

15 (a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or  
16 modification of a final decree under 40-4-208;

17 (b) terminates upon order of the court or when the petition is voluntarily dismissed; and

18 (c) when issued under this section, must conspicuously bear the following: "Violation of this order  
19 is a criminal offense under 45-5-220 or 45-5-626."

20 ~~(9)~~(10) When the petitioner has fled the parties' residence, notice of the petitioner's new residence  
21 must be withheld except by order of the court for good cause shown."

22 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0032, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:


An act allowing a party, as a part of a motion for temporary maintenance or support or by independent motion, to request a temporary restraining order providing that insurance coverage not be modified; requiring that a summons issued in a marriage dissolution, maintenance, child custody, child support, or family law mediation action contain a temporary restraining order preventing a party from disposing of marital property without a court order or the consent of the other party, except in the usual course of business, for necessities of life, or for the payment of attorney fees; setting out the terms of the temporary restraining order.


ASSUMPTIONS:

1. There is no fiscal impact on the Departments of Justice or Public Health and Human Services or on the Judiciary.

FISCAL IMPACT:

There is no fiscal impact to the state.

 1-7-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 1-9-97  
MIKE HALLIGAN, PRIMARY SPONSOR      DATE  
Fiscal Note for SB0032, as introduced

APPROVED BY COM  
ON JUDICIARY

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18 restraining order. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding  
19 for disposition of property or for maintenance or support following dissolution of the marriage by a court  
20 that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance  
21 or temporary support of a child of the marriage entitled to support. The motion must be accompanied by  
22 an affidavit setting forth the factual basis for the motion and the amounts requested.**

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

26 (a) restraining ~~any a~~ person from transferring, encumbering, concealing, or otherwise disposing of  
27 any property, except in the usual course of business or for the necessities of life, and, if so restrained,  
28 requiring the person to notify the moving party of any proposed extraordinary expenditures made after the  
29 order is issued;

30 (b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of,

1 or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and  
 2 disability coverage held for the benefit of a party or a child of a party for whom support may be ordered;

3 (c) enjoining a party from molesting or disturbing the peace of the other party or of any family  
 4 member or from stalking, as defined in 45-5-220;

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

7 (e) enjoining a party from removing a child from the jurisdiction of the court;

8 (f) ordering a party to complete counseling, including alcohol or chemical dependency counseling  
 9 or treatment;

10 (g) providing other injunctive relief proper in the circumstances; and

11 (h) providing additional relief available under Title 40, chapter 15.

12 (3) ~~In addition to the contents required by the Montana Rules of Civil Procedure, any~~ WHEN THE  
 13 CLERK OF THE DISTRICT COURT ISSUES A summons issued pursuant to this chapter must contain, THE  
 14 CLERK SHALL ISSUE AND INCLUDE WITH THE SUMMONS a temporary restraining order:

15 (a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any  
 16 way disposing of any property, real or personal, whether jointly or separately held, without either the  
 17 consent of the other party or an order of the court, except in the usual course of business or for the  
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 24 or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and  
 25 disability coverage held for the benefit of a party or a child of a party for whom support may be ordered.  
 26 However, nothing in this subsection (3) adversely affects the rights, title, or interest of a purchaser,  
 27 encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual  
 28 knowledge of the restraining order.

29 (4) A person may seek the relief provided for in subsection (2) without filing a petition under this  
 30 part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title

1 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period  
2 of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and  
3 40-4-208, as appropriate.

4 ~~(4)~~(5) The court may issue a temporary restraining order for a period not to exceed 20 days without  
5 requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that  
6 irreparable injury will result to the moving party if ~~no~~ an order is not issued until the time for responding  
7 has elapsed.

8 ~~(5)~~(6) A response may be filed within 20 days after service of notice of motion or at the time  
9 specified in the temporary restraining order.

10 ~~(6)~~(7) At the time of the hearing, the court shall determine whether good cause exists for the  
11 injunction to continue for 1 year.

12 ~~(7)~~(8) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court  
13 may issue a temporary injunction and an order for temporary maintenance or support in amounts and on  
14 terms just and proper in the circumstance.

15 ~~(8)~~(9) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

16 (a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or  
17 modification of a final decree under 40-4-208;

18 (b) terminates upon order of the court or when the petition is voluntarily dismissed; and

19 (c) when issued under this section, must conspicuously bear the following: "Violation of this order  
20 is a criminal offense under 45-5-220 or 45-5-626."

21 ~~(9)~~(10) When the petitioner has fled the parties' residence, notice of the petitioner's new residence  
22 must be withheld except by order of the court for good cause shown."

23 -END-

## SENATE BILL NO. 32

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A PARTY, AS A PART OF A MOTION FOR TEMPORARY MAINTENANCE OR SUPPORT OR BY INDEPENDENT MOTION, TO REQUEST A TEMPORARY RESTRAINING ORDER PROVIDING THAT INSURANCE COVERAGE NOT BE MODIFIED; REQUIRING THAT A SUMMONS ISSUED IN A MARRIAGE DISSOLUTION, MAINTENANCE, CHILD CUSTODY, CHILD SUPPORT, OR FAMILY LAW MEDIATION ACTION CONTAIN A TEMPORARY RESTRAINING ORDER PREVENTING A PARTY FROM DISPOSING OF MARITAL PROPERTY WITHOUT A COURT ORDER OR THE CONSENT OF THE OTHER PARTY, EXCEPT IN THE USUAL COURSE OF BUSINESS, FOR NECESSITIES OF LIFE, OR FOR THE PAYMENT OF ATTORNEY FEES; SETTING OUT THE TERMS OF THE TEMPORARY RESTRAINING ORDER; 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 for maintenance or support, or temporary injunction, or temporary restraining order.** (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 that 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 must 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~~ a person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and, if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of,



1 or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and  
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8 ~~(f)~~ (f) ordering a party to complete counseling, including alcohol or chemical dependency counseling  
 9 or treatment;

10 ~~(g)~~ (g) providing other injunctive relief proper in the circumstances; and

11 ~~(h)~~ (h) providing additional relief available under Title 40, chapter 15.

12 ~~(3) In addition to the contents required by the Montana Rules of Civil Procedure, any~~ WHEN THE  
 13 CLERK OF THE DISTRICT COURT ISSUES A summons issued pursuant to this chapter must contain, THE  
 14 CLERK SHALL ISSUE AND INCLUDE WITH THE SUMMONS a temporary restraining order:

15 (a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any  
 16 way disposing of any property, real or personal, whether jointly or separately held, without either the  
 17 consent of the other party or an order of the court, except in the usual course of business or for the  
 18 necessities of life. The restraining order must require each party to notify the other party of any proposed  
 19 extraordinary expenditures at least 5 business days before incurring the expenditures and to account to the  
 20 court for all extraordinary expenditures made after service of the summons. However, the restraining  
 21 ORDER may not order preclude either party from using any property to pay reasonable attorney fees in  
 22 order to retain counsel in the proceeding.

23 (b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of,  
 24 or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and  
 25 disability coverage held for the benefit of a party or a child of a party for whom support may be ordered.  
 26 However, nothing in this subsection (3) adversely affects the rights, title, or interest of a purchaser,  
 27 encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual  
 28 knowledge of the restraining order.

29 (4) A person may seek the relief provided for in subsection (2) without filing a petition under this  
 30 part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title

1 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period  
2 of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and  
3 40-4-208, as appropriate.

4 ~~(4)~~(5) The court may issue a temporary restraining order for a period not to exceed 20 days without  
5 requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that  
6 irreparable injury will result to the moving party if ~~an~~ an order is not issued until the time for responding  
7 has elapsed.

8 ~~(5)~~(6) A response may be filed within 20 days after service of notice of motion or at the time  
9 specified in the temporary restraining order.

10 ~~(6)~~(7) At the time of the hearing, the court shall determine whether good cause exists for the  
11 injunction to continue for 1 year.

12 ~~(7)~~(8) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court  
13 may issue a temporary injunction and an order for temporary maintenance or support in amounts and on  
14 terms just and proper in the circumstance.

15 ~~(8)~~(9) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

16 (a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or  
17 modification of a final decree under 40-4-208;

18 (b) terminates upon order of the court or when the petition is voluntarily dismissed; and

19 (c) when issued under this section, must conspicuously bear the following: "Violation of this order  
20 is a criminal offense under 45-5-220 or 45-5-626."

21 ~~(9)~~(10) When the petitioner has fled the parties' residence, notice of the petitioner's new residence  
22 must be withheld except by order of the court for good cause shown."

23 -END-