

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE SECURITY FOR DAMAGES LAW; REQUIRING
5 A WRITTEN UNDERTAKING OR SURETY TO BE PROVIDED IN THE EVENT THAT AN AGENCY
6 IMPLEMENTING TITLE 75 OR 82, MCA, IS RESTRAINED, ENJOINED, OR PROHIBITED FROM ACTING IN
7 A MANNER THAT CAUSES ECONOMIC INJURY TO OTHERS; REQUIRING A 30-DAY NOTICE OF INTENT
8 TO SUE; AND AMENDING SECTION 27-19-306, MCA."

9

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

11

12 **Section 1.** Section 27-19-306, MCA, is amended to read:

13 **"27-19-306. Security for damages.** (1) Subject to 25-1-402, on granting an injunction or
14 restraining order, the judge shall require a written undertaking to be given by the applicant for the payment
15 of the costs and damages that may be incurred or suffered by any party who is found to have been
16 wrongfully enjoined or restrained. Except as provided in subsection (2), the undertaking:

17 (a) must be fixed at a sum that the judge considers proper; and

18 (b) may be waived:

19 (i) in domestic disputes; or

20 (ii) in the interest of justice.

21 (2) (a) If a party seeks an injunction or restraining order against an industrial operation or activity,
22 the judge shall require a written undertaking to be filed by the applicant. Except as provided under
23 subsection (5), the ~~The~~ amount of the written undertaking must be set in an amount that includes all of
24 the wages, salaries, and benefits of the employees of the party enjoined or restrained during the
25 anticipated time that the injunction or restraining order will be in effect. The amount of the written
26 undertaking may not exceed \$50,000 unless the interests of justice require. The written undertaking must
27 be conditioned to indemnify the employees of the party enjoined or restrained against lost wages, salaries,
28 and benefits sustained by reason of the injunction or restraining order.

29 (b) As used in subsection (2)(a), "industrial operation or activity" includes but is not limited to
30 construction, mining, timber, and grazing operations.

1 (3) Within 30 days after the service of the injunction, the party enjoined may object to the
2 sufficiency of the sureties. If the party enjoined fails to object, all objections to the sufficiency of the
3 sureties are waived. When objected to, the applicant's sureties, upon notice to the party enjoined of not
4 less than 2 or more than 5 days, shall justify before a judge or clerk in the same manner as upon bail on
5 arrest. If the sureties fail to justify or if others in their place fail to justify at the time and place appointed,
6 the order granting the injunction must be dissolved.

7 (4) This section does not prohibit a person who is wrongfully enjoined from filing an action for any
8 claim for relief otherwise available to that person in law or equity and does not limit the recovery that may
9 be obtained in that action.

10 (5) In addition to the requirements of subsections (1) through (4), if a party seeks an injunction,
11 restraining order, or other prohibition against a state agency or department, the amount of the written
12 undertaking required under subsection (2) must be set in an amount that also includes all of the wages,
13 salaries, and benefits of any other person or entity that will suffer economic injury as a direct result of the
14 injunction, restraining order, or other prohibition during the anticipated time that the injunction, restraining
15 order, or other prohibition will be in effect."

16

17 NEW SECTION. Section 2. Notice of intent to sue. Except for actions for an injunction or
18 restraining order brought pursuant to Title 27, chapter 19, a person may not bring an action against a state
19 agency for any cause of action arising under this chapter without providing to the agency at least 30-days
20 notice of the intent to bring the action.

21

22 NEW SECTION. Section 3. Codification instruction. [Section 2] is intended to be codified as an
23 integral part of Title 75, chapters 1, 2, 3, 5, 6, 7, 10, 11, 15, 16, and 20; and Title 82, chapters 1, 2,
24 4, 10, 11, and 15, and the provisions of Title 75, chapters 1, 2, 3, 5, 6, 7, 10, 11, 15, 16, and 20; and
25 Title 82, chapters 1, 2, 4, 10, 11, and 15 apply to [section 2].

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