

SENATE BILL NO. 410

INTRODUCED BY TAYLOR

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW GOVERNING SECURITY FOR DAMAGES
5 IN AN ACTION FOR AN INJUNCTION OR RESTRAINING ORDER; INCLUDING ATTORNEY FEES AS A
6 COST; INCLUDING ADDITIONAL ITEMS TO BE CONSIDERED IN ESTABLISHING THE AMOUNT OF THE
7 WRITTEN UNDERTAKING FOR SECURITY; ~~REDUCING THE MANDATORY~~ REMOVING THE MAXIMUM
8 AMOUNT OF A WRITTEN UNDERTAKING AND PROVIDING A MINIMUM AMOUNT OF A WRITTEN
9 UNDERTAKING; REVISING THE DEFINITION OF "INDUSTRIAL OPERATION OR ACTIVITY"; AMENDING
10 SECTION 27-19-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY
11 DATE."

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

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

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

- 20 (a) must be fixed at a sum that the judge considers proper; and
- 21 (b) may be waived:
 - 22 (i) in domestic disputes; or
 - 23 (ii) in the interest of justice.

24 (2) (a) If a party seeks an injunction or restraining order against an industrial operation or activity that
25 has all legally required licenses or permits, the judge shall require a written undertaking to be filed by the
26 applicant. The amount of the written undertaking must be set in an amount that includes all of the wages,
27 salaries, and benefits of the employees of the party enjoined or restrained, together with all of the equipment
28 costs, property lease expenses, and loss of income directly resulting from the action or occurring during the
29 anticipated time that the injunction or restraining order will be in effect. The amount of the written undertaking
30 may not ~~exceed \$50,000 unless the interests of justice require~~ be less than \$10,000 unless it is established to



1 the satisfaction of the court that the expenses and income loss incurred by the party sought to be enjoined will
 2 be less than \$10,000. If the court determines that the expenses and income loss will be less than \$10,000, the
 3 court ~~may~~ SHALL establish the amount of the written undertaking AT THE AMOUNT OF THE ANTICIPATED EXPENSES
 4 AND INCOME LOSS. The written undertaking must be conditioned to indemnify the employees of the party enjoined
 5 or restrained and the party against lost wages, salaries, ~~and~~ benefits, equipment costs, property lease expenses,
 6 and loss of income sustained by reason of the injunction or restraining order.

7 (b) As used in subsection (2)(a), "industrial operation or activity" includes but is not limited to agricultural
 8 or agricultural-related activities, grazing, construction, oil or gas activities, power generation, mining,
 9 technology-based activities, and timber, ~~and grazing~~ operations.

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

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

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20 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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22 NEW SECTION. Section 3. Applicability. [This act] applies to actions filed on or after [the effective
 23 date of this act].

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