

SENATE BILL NO. 410
INTRODUCED BY M. TAYLOR

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

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

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

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

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

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

the party enjoined or restrained and the party against lost wages, salaries, ~~and~~ benefits, equipment costs, property lease expenses, and loss of income sustained by reason of the injunction or restraining order.

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

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

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

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

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

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