

1 HOUSE BILL NO. 164

2 INTRODUCED BY C. KEOGH

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING TEMPORARY AUTOMATIC
5 DOMESTIC RELATIONS ORDERS IN INVALIDITY OF MARRIAGE, DISSOLUTION OF MARRIAGE, AND
6 LEGAL SEPARATION PROCEEDINGS; PROVIDING FOR THE ISSUANCE OF AUTOMATIC ECONOMIC
7 RESTRAINING ORDERS; AND AMENDING SECTIONS 19-2-801, 40-4-105, AND 40-4-121, MCA."

8

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

10

11 NEW SECTION. **Section 1. Automatic economic restraining order.** (1) On the filing of a petition for
12 declaration of invalidity of marriage, a petition for dissolution of marriage, or a petition for legal separation, the
13 clerk of the district court shall issue a summons and shall include with the summons an automatic economic
14 restraining order that provides as follows:

15

"AUTOMATIC ECONOMIC RESTRAINING ORDER

16

It is hereby ordered:

17 (1) The parties are restrained from transferring, encumbering, concealing, or in any way disposing of,
18 without the written consent of the other party or an order of the court, any marital property, except:

19 (a) for expenses necessary to reasonably maintain the marital standard of living or for the necessities
20 of life, such as food, clothing, shelter, necessary health care expenses, transportation to and from work, and
21 child care, taking into consideration additional living expenses arising out of a party obtaining a second
22 household and current available income;

23

(b) in the customary and usual course of operating an existing business; or

24

(c) for the purpose of paying a reasonable amount for professional fees and costs relating to a
25 proceeding under Title 40, chapter 1, part 4, Title 40, chapter 4, or Title 40, chapter 15.

26

(2) Each party shall file a notice with the court of any proposed extraordinary expenditure, proposed
27 revocation of a nonprobate transfer, or proposed elimination of a right of survivorship to property at least 14
28 days before the action is taken.

1 (a) The notice must include:

2 (i) the proposed action and when the action is intended to occur;

3 (ii) how the proposed action may impact the marital estate; and

4 (iii) why the proposed action is necessary at that time.

5 (b) The notice is not sufficient unless the notice contains the following statement: "The moving party's
6 proposed action will be permitted without further proceedings or order of the court unless within 14 days of the
7 date of filing of the notice you file with the court and serve on all persons entitled to notice a response objecting
8 to the proposed action, which states the reasons for your objection."

9 (c) If the other party files an objection to the proposed action before the expiration of the 14-day
10 period, the party proposing to take the action is prohibited from taking the proposed action until the court rules
11 on the proposed action.

12 (d) The burden of justifying the proposed action is on the party proposing the action. The court may
13 award reasonable attorney fees if a party makes an unreasonable request for or an unreasonable objection to
14 the proposed action.

15 (e) A "nonprobate transfer" means an instrument, other than a will, that makes a transfer of property
16 on death, including a revocable trust, a pay-on-death account in a financial institution, a transfer on death
17 registration of personal property, or a revocable transfer on death deed.

18 (3) The parties are restrained from:

19 (a) canceling jointly held credit cards or terminating signatory authority of the other party on a credit
20 card;

21 (b) incurring unreasonable debt, including but not limited to further borrowing against any credit line
22 secured by the family residence, further encumbrancing of any assets, or unreasonably using credit cards or
23 cash advances against credit cards, except as provided for in subsections (1)(a) through (1)(c) or subsection
24 (2);

25 (c) except as allowed by subsections (1)(a) through (1)(c) or subsection (2), making any withdrawal
26 for any purpose or borrowing from any deferred compensation, retirement, profit-sharing, pension, death, or
27 other employee benefit plan or employee savings plan or from any individual retirement account or Keogh
28 account;

1 (d) except as allowed by subsections (1)(a) through (1)(c) or subsection (2), withdrawing or borrowing
2 in any manner all or any part of the cash surrender value of any life insurance policies on either party or any of
3 their children;

4 (e) changing or in any manner altering the beneficiary designation on any life insurance policies on
5 either party or their children or changing or in any manner altering the beneficiary on any other account or
6 asset;

7 (f) canceling, altering, or allowing to lapse any existing property, life, automobile, or health insurance
8 policies insuring the parties' or children's property or persons;

9 (g) negotiating any instrument, check, draft, income tax refund, insurance payment, or dividends
10 payable jointly to the parties or individually to the other party without the personal signature or prior written
11 consent of the other party;

12 (h) opening, diverting, or withholding mail addressed to the other party, except a party may open mail
13 addressed to both parties or file a notice of change of the party's individual mailing address; and

14 (i) without objectively reasonable justification, intentionally or knowingly damaging or destroying the
15 property of the parties or of either party during the pendency of this action, specifically including but not limited
16 to any electronically stored materials, electronic communications, or financial records, without order of the court
17 or written consent of the other party.

18 (4) Unless otherwise ordered by the court, a party is not restrained from:

19 (a) creating, modifying, or revoking a will;

20 (b) revoking or changing a power of attorney; or

21 (c) creating an unfunded revocable or irrevocable trust.

22 (5) This order does not adversely affect the rights, title, or interest of a purchaser, encumbrancer, or
23 lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of this order.

24 (6) The court may expand, limit, modify, or revoke this order, and nothing prevents either party from
25 requesting such relief. Furthermore, the parties, with joint agreement, may waive in writing some or all of the
26 provisions of this order.

27 (7) The parties shall serve preliminary financial disclosures within 60 days of service of the petition for
28 dissolution, declaration of invalidity of marriage, or legal separation pursuant to 40-4-252.

1 (8) This order is binding on the petitioner on filing of the petition, and this order is binding on the
2 respondent on service of the petition.

3 (9) In issuing any temporary orders or in a final decree, the court may consider any action taken by
4 the petitioner within a reasonable time prior to filing of the petition that would otherwise have constituted a
5 violation of this order had this order been issued at the time.

6 (10) Except as otherwise ordered by the court, this order is dissolved on dismissal of the action or
7 granting of the declaration of invalidity, dissolution of marriage, legal separation, or other final order.

8 (11) Failure to follow this automatic economic restraining order is subject to enforcement by the court,
9 on a motion to the court. The court may issue any appropriate enforcement order as set forth in [section 1(4)],
10 including, if appropriate, sanctions and all remedies for contempt of court."

11 (2) An automatic economic restraining order entered pursuant to this section, unless otherwise
12 ordered by the court, is dissolved upon dismissal of the action or granting of the petition for declaration of
13 invalidity, dissolution of marriage, legal separation, or other final order.

14 (3) Nothing in this section precludes a party from applying to the court for an order to expand, limit,
15 modify, or revoke the automatic economic restraining order.

16 (4) If a party fails to comply with the automatic economic restraining order, the other party may move
17 the court to grant an appropriate order, including, if appropriate, sanctions and all remedies for contempt of
18 court.

19

20 **Section 2.** Section 19-2-801, MCA, is amended to read:

21 **"19-2-801. Designation of beneficiary.** (1) In the absence of any statutory beneficiaries, designated
22 beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the
23 benefit of natural living persons that the member or payment recipient designates on the membership form
24 provided by the board.

25 (2) Unless otherwise provided by this title or by a valid temporary restraining order issued pursuant to
26 40-4-121, an order issued pursuant to [section 1], or an order issued pursuant to Title 40, chapter 15, a member
27 or payment recipient may revoke the designation and name different designated beneficiaries by filing with the
28 board a new membership form provided by the board.

1 (3) If a person returns to covered employment in the same retirement system pursuant to 19-2-603,
2 the person shall complete a new membership form and file it as provided in subsection (2). However, until the
3 new membership form is filed, the board shall reference the membership form executed by the person prior to
4 initial termination of membership for the same purposes as prior to termination. Beneficiaries designated on that
5 membership form continue to be beneficiaries until the new membership form is filed.

6 (4) (a) Except as provided in subsections (4)(b) and (4)(c), the beneficiary designation on the most
7 recent membership form filed with the board is effective for all purposes until the member retires.

8 (b) A member may elect to either override or retain the member's existing beneficiary designation
9 when completing a membership form for temporary or secondary employment with another employer within the
10 same Title 19 retirement system.

11 (c) When a member retires, the designated beneficiaries or contingent annuitants named on the
12 retirement application become effective.

13 (5) If a statutory or designated beneficiary predeceases the member or payment recipient, the
14 predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts
15 proportional to each remaining statutory or designated beneficiary's original share.

16 (6) A statutory or designated beneficiary who renounces an interest in the payment rights of a
17 member or payment recipient will be considered, with respect to that interest, as having predeceased the
18 member or payment recipient.

19 (7) A contingent annuitant of a retired member who elected option 2, 3, or 4 pursuant to 19-3-1501,
20 19-5-701, 19-7-1001, or 19-8-801 may not renounce the contingent annuitant's interest in the payment rights of
21 the member."

22

23 **Section 3.** Section 40-4-105, MCA, is amended to read:

24 **"40-4-105. Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The
25 verified petition in a proceeding for dissolution of marriage or legal separation must allege that the marriage is
26 irretrievably broken and must set forth:

27 (a) the age, occupation, and residence of each party and the party's length of residence in this state;

28 (b) the date of the marriage and the place at which it was registered;

1 (c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in
2 that either:

3 (i) the parties have lived separate and apart for a period of more than 180 days preceding the
4 commencement of this proceeding; or

5 (ii) there is serious marital discord that adversely affects the attitude of one or both of the parties
6 towards the marriage, and there is no reasonable prospect of reconciliation;

7 (d) the names, ages, and addresses of all living children of the marriage and whether the wife is
8 pregnant;

9 (e) any arrangements as to support of the children and maintenance of a spouse;

10 (f) a proposed parenting plan, if applicable; ~~and~~

11 (g) the relief sought; and

12 (h) the petitioner's acknowledgment that the automatic economic restraining order provided for in

13 [section 1] applies to the petitioner on filing of the petition with the clerk of the district court.

14 (2) Either or both parties to the marriage may initiate the proceeding.

15 (3) If a proceeding is commenced by one of the parties, the other party must be served in the manner
16 provided by the Montana Rules of Civil Procedure and may within 21 days after the date of service file a verified
17 response. A decree may not be entered until 21 days after the date of service.

18 (4) Previously existing defenses to divorce and legal separation, including but not limited to
19 condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

20 (5) The court may join additional parties proper for the exercise of its authority to implement this
21 chapter.

22 [(6) The social security number, if known, of a person subject to a decree of dissolution or a support
23 order must be recorded in the records relating to the matter. The social security number may be included in the
24 state case registry and vital statistics reporting form filed pursuant to 40-5-908(1). The recordkeeper shall keep
25 the social security number from this source confidential, except that the number may be provided to the
26 department of public health and human services for use in administering Title IV-D of the Social Security Act.]

27 (7) Documents filed before the court containing financial account information must comply with the
28 privacy protection requirements of Rule 5.2 of the Montana Rules of Civil Procedure. (Bracketed language

1 terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999; sec. 12, Ch. 88, L. 2013.)"

2

3 **Section 4.** Section 40-4-121, MCA, is amended to read:

4 **"40-4-121. Temporary order for maintenance or support, temporary injunction, or temporary**
5 **restraining order.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for
6 disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked
7 personal jurisdiction over the absent spouse, either party may move for temporary maintenance, temporary
8 support of a child of the marriage entitled to support, or a temporary family support order. When a party is
9 receiving public assistance, as defined in 40-5-201, for the minor children at issue or when a party receives
10 public assistance during the life of a temporary family support order, the temporary family support order must
11 designate separately the amounts of temporary child support and temporary maintenance, if any. The
12 temporary child support order or the designated child support portion of the family support order must be
13 determined as required in 40-4-204. The motion must be accompanied by an affidavit setting forth the factual
14 basis for the motion, the amounts requested, a list of marital estate liabilities, a statement of sources of income
15 of the parties and of a child of the marriage entitled to support, and, in the case of a motion for a temporary
16 family support order, a proposal designating the party responsible for paying each liability. If ordered by a court,
17 a temporary family support order must, without prejudice, direct one or both parties to pay, out of certain
18 income sources, liabilities of the marital estate during the pendency of the action, including maintenance
19 liabilities for a party or support of a child of the marriage entitled to support. If income sources are insufficient to
20 meet the marital estate periodic liabilities, the temporary family support order may direct that certain liabilities
21 be paid from assets of the marital estate. At any time during the proceedings, the court may order any
22 temporary family support payments to be designated as temporary maintenance, temporary child support, or
23 partial property distribution, retroactive to the date of the motion for a temporary family support order. When a
24 party obtains public assistance, as defined in 40-5-201, or applies for services under Title IV-D of the Social
25 Security Act, after the court has issued a temporary family support order, the petitioner shall promptly move the
26 court for designation of the parts, if any, of the temporary family support order that are maintenance and child
27 support and the court shall promptly so designate, determining the child support obligation as required in 40-4-
28 204.

1 (2) As a part of a motion for temporary maintenance, temporary support of a child, or a temporary
 2 family support order or by independent motion accompanied by affidavit, either party may request that the court
 3 issue a temporary injunction for any of the following relief:

4 ~~(a) restraining a person from transferring, encumbering, concealing, or otherwise disposing of any~~
 5 ~~property, except in the usual course of business or for the necessities of life, and if so restrained, requiring the~~
 6 ~~person to notify the moving party of any proposed extraordinary expenditures made after the order is~~
 7 ~~issued~~restricting, enhancing, ordering, or otherwise modifying or reaffirming the restrained or permitted
 8 provisions of the temporary economic restraining order pursuant to [section 1];

9 ~~(b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or~~
 10 ~~changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability~~
 11 ~~coverage held for the benefit of a party or a child of a party for whom support may be ordered;~~

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

14 ~~(d)~~(c) excluding a party from the family home or from the home of the other party upon a showing that
 15 physical or emotional harm would otherwise result;

16 ~~(e)~~(d) enjoining a party from removing a child from the jurisdiction of the court;

17 ~~(f)~~(e) ordering a party to complete counseling, including alcohol or chemical dependency counseling
 18 or treatment;

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

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

21 ~~(3) When the clerk of the district court issues a summons pursuant to this chapter, the clerk shall~~
 22 ~~issue and include with the summons a temporary restraining order:~~

23 ~~(a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way~~
 24 ~~disposing of any property, real or personal, whether jointly or separately held, without either the consent of the~~
 25 ~~other party or an order of the court, except in the usual course of business or for the necessities of life. The~~
 26 ~~restraining order must require each party to notify the other party of any proposed extraordinary expenditures at~~
 27 ~~least 5 business days before incurring the expenditures and to account to the court for all extraordinary~~
 28 ~~expenditures made after service of the summons. However, the restraining order may not preclude either party~~

1 from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.

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

8 ~~(4)(3)~~ A person may seek the relief provided for in subsection (2) without filing a petition under this
 9 part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27,
 10 chapter 19, part 3. Any temporary injunction entered under this subsection ~~(3)~~ must be for a fixed period of
 11 time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as
 12 appropriate.

13 ~~(5)(4)~~ The court may issue a temporary restraining order for a period not to exceed 21 days without
 14 requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that
 15 irreparable injury will result to the moving party if an order is not issued until the time for responding has
 16 elapsed.

17 ~~(6)(5)~~ The party against whom a temporary injunction is sought must be served with notice and a
 18 copy of the motion and is entitled to a hearing on the motion. A response may be filed within 21 days after
 19 service of notice of motion or at the time specified in the temporary restraining order.

20 ~~(7)(6)~~ At the time of the hearing, the court shall:

21 (a) inform both parties that the temporary injunction may contain a provision or provisions that limit
 22 the rights of one or both parties relating to firearms under state law or a provision or provisions that may subject
 23 one or both parties to state or federal laws that limit their rights relating to firearms; and

24 (b) determine whether good cause exists for the injunction to continue for 1 year.

25 ~~(8)(7)~~ On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may
 26 issue a temporary injunction and an order for temporary maintenance, temporary child support, or temporary
 27 family support in amounts and on terms just and proper in the circumstance.

28 ~~(9)(8)~~ A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

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

3 (b) terminates upon order of the court or when the petition is voluntarily dismissed and, in the case of
4 a temporary family support order, upon entry of the decree of dissolution; and

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

7 ~~(10)~~(9) When the petitioner has fled the parties' residence, notice of the petitioner's new residence
8 must be withheld except by order of the court for good cause shown.

9 ~~(11)~~(10) The court shall seal any qualified domestic relations order, as defined in section 414(p) of the
10 Internal Revenue Code, 26 U.S.C. 414(p), that is issued under this part except for access by the pension plan
11 administrator of the plan for which benefits are being distributed by the order, the child support enforcement
12 division, the parties, and each party's counsel of record."

13
14 NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an
15 integral part of Title 40, chapter 4, part 1, and the provisions of Title 40, chapter 4, part 1, apply to [section 1].

16 - END -