

HOUSE BILL NO. 419

INTRODUCED BY J. HINKLE, P. FIELDER, M. BINKLEY, B. LER, E. BUTTREY, L. JONES, M. HOPKINS, T. MANZELLA, B. BROWN, S. HINEBAUCH, D. LENZ, J. ELLSWORTH, R. MINER, B. PHALEN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SECURITY FOR DAMAGES WHEN AN INJUNCTION OR RESTRAINING ORDER IS GRANTED; REQUIRING A JUDGE TO COLLECT SECURITIES FOR INJUNCTIONS OR RESTRAINING ORDERS THAT DIMINISH THE PROTECTIONS PROVIDED IN ARTICLE IX, SECTION 7, OF THE MONTANA CONSTITUTION TO HARVEST WILD FISH AND WILD GAME ANIMALS; AMENDING SECTIONS 27-19-306 AND 87-1-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, Article IX, section 7, of the Montana Constitution protects the opportunity of the citizens of Montana to harvest wild fish and wild game animals; and

WHEREAS, organizations purporting to support the environment or animal rights have succeeded in persuading the judiciary to issue unlawful injunctive relief; and

WHEREAS, injunctions and restraining orders that diminish the opportunities protected by Article IX, section 7, of the Montana Constitution irreparably harm the citizens of Montana since each day that an unlawful injunction or restraining order is in force is a day in which Montana citizens are denied their harvest heritage and is a day that can never be recovered.

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 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

1 (b) may be waived:

2 (i) in domestic disputes; or

3 (ii) in the interest of justice.

4 (2) (a) If a party seeks an injunction or restraining order against an industrial operation or activity,  
5 the judge shall require a written undertaking to be filed by the applicant. The amount of the written undertaking  
6 must be set in an amount that includes all of the wages, salaries, and benefits of the employees of the party  
7 enjoined or restrained during the anticipated time that the injunction or restraining order will be in effect. The  
8 amount of the written undertaking may not exceed \$50,000 unless the interests of justice require. The written  
9 undertaking must be conditioned to indemnify the employees of the party enjoined or restrained against lost  
10 wages, salaries, and benefits sustained by reason of the injunction or restraining order.

11 (b) If a party or other person seeks an injunction or restraining order that diminishes any of the  
12 opportunities protected by Article IX, section 7, of the Montana constitution or by 87-1-107, the judge shall  
13 require a written undertaking to be filed by the applicant. The amount of the written undertaking must be the  
14 greater of \$50,000 or a reasonable estimation of the aggregate losses to all persons whose opportunities are  
15 diminished by the injunction or restraining order. The judge may not impose a written undertaking of less than  
16 \$50,000 unless good cause is shown and the reasons are set forth in an order.

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

19 (3) (a) Within 30 days after the service of the an injunction pursuant to subsection (2)(a), the party  
20 enjoined may object to the sufficiency of the sureties. Any person may object at any time to the sufficiency of an  
21 injunction or restraining order served pursuant to subsection (2)(b).

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

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

1 obtained in that action."

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3 **Section 2.** Section 87-1-107, MCA, is amended to read:

4 **"87-1-107. Right to harvest -- legislative intent -- security for damages.** (1) The legislature,  
5 mindful of its constitutional obligations under Article II, section 3, of the Montana constitution protecting the  
6 inalienable rights of a person to pursue life's basic necessities, enjoy the person's life and liberties, and pursue  
7 happiness in all lawful ways, and Article IX, section 7, of the Montana constitution protecting the opportunity for  
8 a person to harvest wild fish and wild game animals while not diminishing other private rights, has enacted the  
9 laws of this title pertaining to the lawful means of hunting, fishing, and trapping, as defined in 87-2-101 and 87-  
10 6-101, as adequate remedies for the preservation of the harvest heritage of the individual citizens of this state.

11 (2) If a party or other person seeks an injunction or restraining order that diminishes any of the  
12 opportunities protected by Article IX, section 7, of the Montana constitution or this section, securities for  
13 damages must be sought pursuant to 27-19-306."

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15 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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