



1 HOUSE BILL NO. 922  
 2 INTRODUCED BY Marko D. Brown  
 3 BY REQUEST OF THE DEPARTMENT OF  
 4 SOCIAL AND REHABILITATION SERVICES

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE AN  
 7 ADMINISTRATIVE PROCEDURE FOR PERIODICALLY MODIFYING CHILD  
 8 SUPPORT ORDERS; AND AMENDING SECTIONS 40-4-204, 40-5-201,  
 9 40-5-226, AND 40-6-116, MCA."

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

12 NEW SECTION. Section 1. Registration of support  
 13 orders. (1) The department shall establish and maintain a  
 14 support order registry.

15 (2) The registry must contain the support orders issued  
 16 by the department.

17 (3) In an IV-D case, the department shall, upon the  
 18 request of the obligor or the obligee, or may register a  
 19 support order of a district court of this state or a support  
 20 order of a court or administrative agency of another state  
 21 with jurisdiction to enter the order. A certified copy of  
 22 the order to be registered must accompany the written  
 23 request for registration.

24 (4) Upon registration, the support order must be  
 25 treated in the same manner and have the same effect as a

1 support order issued by the department, and an abstract of  
 2 the order may be filed under the provisions of 40-5-227.  
 3 Review of the order under [section 2] is available only when  
 4 the department is providing child support enforcement  
 5 services for the order.

6 NEW SECTION. Section 2. Application for review of  
 7 child support orders. (1) Upon the application of the  
 8 department, the obligor, or the obligee, a hearing officer  
 9 appointed pursuant to [section 3] shall review support  
 10 orders filed with the support order registry. The purpose of  
 11 the review is to determine whether the support order should  
 12 be modified in accordance with the guidelines.

13 (2) Jurisdiction to conduct the review and to issue a  
 14 modifying order under [section 3] is authorized when:

15 (a) the obligor and the obligee reside in this state;

16 (b) jurisdiction can be obtained as provided under  
 17 40-4-210; or

18 (c) the obligor resides in this state and the  
 19 department is providing IV-D enforcement services for the  
 20 order.

21 (3) Jurisdiction to review a child support order under  
 22 this section does not confer jurisdiction for any other  
 23 purpose, such as custody or visitation disputes.

24 (4) Criteria constituting sufficient grounds for review  
 25 of a child support order include:

1 (a) inconsistency with this state's guidelines, unless  
2 the inconsistency is considered negligible under department  
3 rules; or

4 (b) availability of health insurance coverage to the  
5 obligor's child through the obligor's employment or other  
6 group insurance.

7 (5) The department shall make available procedures and  
8 forms that allow the obligor or the obligee to complete the  
9 review process without legal counsel.

10 **NEW SECTION. Section 3. Administrative review of child**  
11 **support orders -- modifying orders.** (1) A review application  
12 setting forth facts meeting any of the criteria for review  
13 of a child support order established in [section 2] must be  
14 scheduled for an administrative hearing, and a hearing  
15 officer must be appointed by the department. Unless the  
16 hearing officer determines under rules of the department  
17 that an in-person hearing is necessary, the hearing must be  
18 conducted by telephone conference. The order scheduling the  
19 hearing must be served on the obligor and the obligee at  
20 least 60 days before the hearing. The order must include the  
21 following information as an exception to 2-4-601:

22 (a) the date and time for the hearing and, if  
23 appropriate, the place for the hearing;

24 (b) a statement of the purpose, objectives, and  
25 possible consequences of the review;

1 (c) a statement of the right of the obligor and the  
2 obligee to request the hearing officer to issue subpoenas  
3 compelling the appearance of witnesses and the production of  
4 documents for the hearing; and

5 (d) a requirement that the obligor and the obligee  
6 provide the hearing officer with telephone numbers at which  
7 they and their witnesses may be contacted for the hearing.

8 (2) The hearing officer may issue an order commanding  
9 the obligor or the obligee, or both, to produce financial  
10 information. The order must be personally served with the  
11 order scheduling the hearing. The hearing officer may also  
12 issue subpoenas ordering the department or other parties to  
13 produce information in their possession about the obligor  
14 and the obligee that may be reasonably necessary for  
15 application of the guidelines. Any information so obtained  
16 by the hearing officer must be provided to the department  
17 and other parties prior to the hearing.

18 (3) The requested modification of the order must be  
19 determined on the evidence submitted to the hearing officer  
20 under the following conditions:

21 (a) If an applicant other than the department fails to  
22 provide a telephone number for the hearing or fails to be at  
23 the number provided when telephoned for the hearing, the  
24 failure is considered a withdrawal of the application.

25 (b) If a party other than the applicant fails to

1 provide a telephone number for the hearing or fails to be at  
 2 the number provided when telephoned for the hearing, the  
 3 failure is considered to mean that the party does not oppose  
 4 the modification.

5 (c) If the department is the applicant and if either  
 6 the obligor or the obligee, or both, fails to provide a  
 7 telephone number for the hearing or fails to be at the  
 8 number provided when telephoned for the hearing, the failure  
 9 is considered an admission that the party or parties do not  
 10 oppose the modification.

11 (4) An order entered under the circumstances described  
 12 in subsection (3)(a), (3)(b), or (3)(c) becomes final within  
 13 10 days of issuance unless a party provides the hearing  
 14 officer an affidavit showing good cause for failure to  
 15 provide a telephone number or failure to be available for  
 16 the hearing when telephoned.

17 (5) A provision of law may not be construed to mean  
 18 that an obligor or an obligee is a client of the department,  
 19 and the department is not considered a party to the action.

20 (6) (a) In addition to the powers and duties provided  
 21 by other law, the hearing officer shall, to ensure the  
 22 equitable determination of a support obligation, during a  
 23 review hearing:

24 (i) question witnesses in a nonadversarial manner to  
 25 elicit full disclosure of all pertinent facts;

1 (ii) introduce evidence on behalf of the parties;  
 2 (iii) apply the guidelines to the facts elicited from  
 3 the hearing; and  
 4 (iv) inquire as to any circumstances that may require  
 5 variance from the guidelines.

6 (b) If a party is represented by legal counsel, the  
 7 hearing officer may allow the counsel to present that  
 8 party's case.

9 (7) The hearing officer shall determine a support  
 10 obligation in accordance with the guidelines and shall issue  
 11 a modifying order. If the hearing officer determines that  
 12 the difference between the existing support order and the  
 13 amount determined under the guidelines is negligible under  
 14 rules issued by the department, the modifying order may not  
 15 change the amount of the support obligation. Even though the  
 16 review may indicate that a modification of the support  
 17 obligation is appropriate, the department may not modify the  
 18 support order if the hearing officer determines, after the  
 19 review hearing, that to do so would not be in the best  
 20 interests of the child under the rules issued by the  
 21 department. An increase in child support is presumed to be  
 22 in the best interests of the child unless, after a review  
 23 hearing, either the obligor or the obligee demonstrates it  
 24 would not be in the best interests of the child. The  
 25 modifying order must prospectively modify the underlying

1 support order from the date of service of the order  
2 scheduling the hearing.

3 (8) The hearing officer shall make a written  
4 determination whether health insurance is available to the  
5 child of the obligor through the obligor's employment or  
6 other group insurance. If the hearing officer determines  
7 health insurance is available to the child of the obligor,  
8 the hearing officer shall issue a modifying order that  
9 requires the obligor to obtain and keep health insurance for  
10 the child. If the hearing officer determines that health  
11 insurance is not available to the child of the obligor, he  
12 shall issue a modifying order containing the notices  
13 provided in subsection (9). An order to provide health  
14 insurance is presumed to be in the best interests of the  
15 child unless, after a review hearing, either the obligor or  
16 the obligee demonstrates it would not be in the best  
17 interests of the child.

18 (9) In addition to complying with other requirements of  
19 law, the modifying order must include the following notices  
20 and warnings:

21 (a) that the obligor shall keep the department informed  
22 of the name and address of his current employer and  
23 information on health insurance available to the obligor  
24 through the obligor's employment or other group insurance;

25 (b) that the obligor shall obtain and keep health

1 insurance for the child of the obligor whenever it is  
2 available through the obligor's employment or other group  
3 insurance; and

4 (c) that the modifying order is subject to future  
5 administrative review and modification by the department  
6 upon the request of the department or a party under  
7 [sections 1 through 3] when the department is providing  
8 services under IV-D.

9 (10) Orders entered under this section are final agency  
10 decisions, subject to judicial review pursuant to the  
11 Montana Administrative Procedure Act. All orders entered  
12 under this section must notify the parties that the order is  
13 subject to judicial review under Title 2, chapter 4, part 7.

14 (11) The parties to the support order and the department  
15 when it is providing services under IV-D may enforce the  
16 support order or modify that order independently, as  
17 provided in 40-4-208 and 53-2-613(4)(d).

18 **Section 4.** Section 40-4-204, MCA, is amended to read:

19 **"40-4-204. Child support -- orders to address health**  
20 **insurance -- automatic withholding of child support.** (1) In  
21 a proceeding for dissolution of marriage, legal separation,  
22 maintenance, or child support, the court shall order either  
23 or both parents owing a duty of support to a child to pay an  
24 amount reasonable or necessary for his support, without  
25 regard to marital misconduct.

1 (2) The court shall consider all relevant factors,  
 2 including:  
 3 (a) the financial resources of the child;  
 4 (b) the financial resources of the custodial parent;  
 5 (c) the standard of living the child would have enjoyed  
 6 had the marriage not been dissolved;  
 7 (d) the physical and emotional condition of the child  
 8 and his educational and medical needs;  
 9 (e) the financial resources and needs of the  
 10 noncustodial parent;  
 11 (f) the age of the child;  
 12 (g) the cost of day care for the child;  
 13 (h) any custody arrangement that is ordered or decided  
 14 upon; and  
 15 (i) the needs of any person, other than the child, whom  
 16 either parent is legally obligated to support.  
 17 (3) (a) Whenever a court issues or modifies an order  
 18 concerning child support, the court shall determine the  
 19 child support obligation by applying the standards in this  
 20 section and the uniform child support guidelines adopted by  
 21 the department of social and rehabilitation services  
 22 pursuant to 40-5-209, unless the court finds by clear and  
 23 convincing evidence that the application of the standards  
 24 and guidelines is unjust to the child or to any of the  
 25 parties or is inappropriate in that particular case.

1 (b) If the court does not apply these standards and  
 2 guidelines to determine child support, it shall state its  
 3 reasons for finding that the application of such standards  
 4 and guidelines is unjust to the child or a party or is  
 5 inappropriate in that particular case.  
 6 (c) If the court does not order a parent owing a duty  
 7 of support to a child to pay any amount for the child's  
 8 support, the court shall state its reasons for not ordering  
 9 child support.  
 10 (4) Each district court judgment, decree, or order  
 11 establishing a final child support obligation under this  
 12 title and each modification of a final order for child  
 13 support must include a provision addressing health insurance  
 14 coverage in the following cases:  
 15 (a) If either party has available through an employer  
 16 or other organization health insurance coverage for the  
 17 child or children for which the premium is partially or  
 18 entirely paid by the employer or organization, the judgment,  
 19 decree, or order may contain a provision requiring that  
 20 coverage for the child or children be continued or obtained.  
 21 (b) In the event that health insurance required in a  
 22 child support judgment, decree, or order becomes unavailable  
 23 to the party who is to provide it, through loss or change of  
 24 employment or otherwise, that party must, in the absence of  
 25 an agreement to the contrary, obtain comparable insurance or

1 request that the court modify the requirement.

2 (c) All temporary child support orders must contain a  
3 provision requiring the party who has health insurance in  
4 effect for the child or children of the parties to continue  
5 the insurance coverage pending final disposition of the  
6 case.

7 (d) The parties may by written agreement provide for  
8 the health care coverage required by this section, subject  
9 to the approval of the court.

10 (e) Unless otherwise provided in the decree, the health  
11 care coverage required by this section is in addition to and  
12 not in substitution, in whole or in part, for the child  
13 support obligation.

14 (5) (a) Except as provided in subsection (5)(b), each  
15 district court judgment, decree, or order establishing a  
16 child support obligation under this title, whether temporary  
17 or final, and each modification of an existing child support  
18 order must:

19 (i) provide that the amount of child support must be  
20 withheld from the obligor's income and paid to the  
21 department pursuant to procedures established by the  
22 department under Title 40, chapter 5, part 4; and

23 (ii) include the obligor's social security number and  
24 the name and address of the obligor's employer and of any  
25 other payor of income to the obligor.

1 (b) Income is not subject to automatic withholding if:

2 (i) the obligee or obligor demonstrates and the court  
3 finds that there is good cause not to require automatic  
4 income withholding; or

5 (ii) the obligee and obligor agree in writing to an  
6 alternative arrangement regarding the payment of child  
7 support that provides sufficient security to ensure  
8 compliance with their agreement. The security is in addition  
9 to the child support obligation.

10 (c) When a judgment, decree, or order for child support  
11 is entered or modified and automatic income withholding is  
12 ordered, an obligee who is not a recipient of public  
13 assistance shall apply for the support enforcement services  
14 of the department pursuant to Title IV-D of the Social  
15 Security Act for the collection of support through automatic  
16 income withholding under Title 40, chapter 5, part 4. The  
17 department shall accept the application. Pending an  
18 application, the department shall immediately implement  
19 automatic income withholding and hold any amounts collected  
20 in trust for the obligee until the obligee makes  
21 application.

22 (d) When automatic income withholding is ordered under  
23 subsection (5)(a), the clerk of court shall immediately  
24 forward a copy of the order to the department.

25 (e) If an obligor is not subject to income withholding

1 or is exempted from income withholding, the district court  
 2 judgment or order must include a warning statement that if  
 3 the obligor is delinquent in the payment of support, the  
 4 obligor's income may be subject to income withholding  
 5 procedures under Title 40, chapter 5, part 3 or 4. Failure  
 6 to include a warning statement in a judgment or order does  
 7 not preclude the use of withholding procedures.

8 (6) If the department of social and rehabilitation  
 9 services is providing or later provides support enforcement  
 10 services under Title IV-D of the Social Security Act, each  
 11 district court order or modification of an order must  
 12 contain a statement providing that the noncustodial parent,  
 13 without further order of the court, is required to obtain  
 14 and maintain health insurance coverage as provided in  
 15 40-5-208. Failure to include a warning statement in the  
 16 judgment or order does not preclude the imposition of  
 17 sanctions under 40-5-208.

18 (7) Each district court judgment, decree, or order  
 19 establishing a final child support obligation under this  
 20 part and each modification of a final order for child  
 21 support must contain a statement that the order is subject  
 22 to review and modification by the department of social and  
 23 rehabilitation services upon the request of the department  
 24 or a party under [sections 1 through 3] when the department  
 25 is providing services under Title IV-D of the Social

1 Security Act for the enforcement of the order."

2 **Section 5.** Section 40-5-201, MCA, is amended to read:

3 "40-5-201. Definitions. As used in this part, the  
 4 following definitions apply:

5 (1) "Alleged father" means a man who is alleged to have  
 6 engaged in sexual intercourse with a child's mother during a  
 7 possible time of conception of the child or a man who is  
 8 presumed to be a child's father under the provisions of  
 9 40-6-105.

10 (2) "Child" means any person under 18 years of age who  
 11 is not otherwise emancipated, self-supporting, married, or a  
 12 member of the armed forces of the United States and for  
 13 whom:

14 (a) support rights are assigned under 53-2-613;

15 (b) a public assistance payment has been made;

16 (c) the department is providing support enforcement  
 17 services under 40-5-203; or

18 (d) the department has received a referral for  
 19 interstate services from an agency of another state under  
 20 the provisions of the Uniform Reciprocal Enforcement of  
 21 Support Act or under Title IV-D of the Social Security Act.

22 (3) "Department" means the department of social and  
 23 rehabilitation services.

24 (4) "Director" means the director of the department of  
 25 social and rehabilitation services or his authorized



1 representative.

2 {5} "Guidelines" means the child support guidelines  
3 adopted pursuant to 40-5-209.

4 {6} "Hearing officer" or "hearing examiner" means the  
5 hearing officer appointed by the department for the purposes  
6 of this chapter.

7 {5}{7} "Need" means the necessary costs of food,  
8 clothing, shelter, and medical care for the support of a  
9 child or children.

10 {6}{8} "Obligee" means:

11 (a) a person to whom a duty of support is owed and who  
12 is receiving support enforcement services under this part;  
13 or

14 (b) a public agency of this or another state having the  
15 right to receive current or accrued support payments.

16 {7}{9} "Obligor" means a person, including an alleged  
17 father, who owes a duty of support.

18 {8}{10} "Parent" means the natural or adoptive parent of  
19 a child.

20 {9}{11} "Paternity blood test" means a test that  
21 demonstrates through examination of genetic markers either  
22 that an alleged father is not the natural father of a child  
23 or that there is a probability that an alleged father is the  
24 natural father of a child. Paternity blood tests may include  
25 but are not limited to the human leukocyte antigen test and

1 DNA probe technology.

2 {10}{12} "Public assistance" means any type of monetary  
3 or other assistance for a child, including medical and  
4 foster care benefits. The term includes payments to meet the  
5 needs of a relative with whom the child is living, if  
6 assistance has been furnished with respect to the child by a  
7 state or county agency of this state or any other state.

8 {11}{13} "Support debt" or "support obligation" means  
9 the amount created by:

10 (a) the failure to provide support to a child under the  
11 laws of this or any other state or a support order; or

12 (b) a support order for spousal maintenance if the  
13 judgment or order requiring payment of maintenance also  
14 contains a judgment or order requiring payment of child  
15 support for a child of whom the person awarded maintenance  
16 is the custodial parent.

17 {12}{14} "Support order" means an order providing a  
18 determinable amount for temporary or final periodic payment  
19 of funds for the support of a child, that is issued by:

20 (a) a district court of this state;

21 (b) a court of appropriate jurisdiction of another  
22 state;

23 (c) an administrative agency pursuant to proceedings  
24 under this part; or

25 (d) an administrative agency of another state with a

1 hearing function and process similar to those of the  
2 department under this part.

3 ~~{13}~~(15) "IV-D" means the provisions of Title IV-D of  
4 the Social Security Act and the regulations promulgated  
5 thereunder."

6 **Section 6.** Section 40-5-226, MCA, is amended to read:

7 "40-5-226. Administrative hearing -- nature -- place --  
8 time -- determinations -- failure to appear -- entry of  
9 final decision and order. (1) The administrative hearing is  
10 defined as a "contested case".

11 (2) At the discretion of the hearing officer, the  
12 administrative hearing may be held:

13 (a) in the county of residence or other county  
14 convenient to the obligor or obligee; or

15 (b) in the county in which the department or any of its  
16 offices are located.

17 (3) If a hearing is requested, it must be scheduled  
18 within 20 days.

19 (4) The hearing officer shall determine the liability  
20 and responsibility, if any, of the obligor under the notice  
21 and shall enter a final decision and order in accordance  
22 with such determination.

23 (5) If the obligor fails to appear at the hearing or  
24 fails to timely request a hearing, the hearing officer, upon  
25 a showing of valid service, shall enter a decision and order

1 declaring the amount stated in the notice to be final.

2 (6) In a hearing to determine financial responsibility,  
3 the monthly support responsibility must be determined in  
4 accordance with the evidence presented and with reference to  
5 the scale of suggested minimum contributions under 40-5-214.  
6 The hearing officer is not limited to the amounts stated in  
7 the notice.

8 (7) Within 20 days of the hearing, the hearing officer  
9 shall enter a final ~~decison~~ decision and order. The  
10 determination of the hearing officer constitutes a final  
11 agency decision, subject to judicial review under 40-5-253  
12 and the provisions of the Montana Administrative Procedure  
13 Act.

14 ~~{8}--If--a--support--order--is--established--under--this--part,  
15 any--party--may--file--a--verified--petition--with--the--department  
16 alleging---facts---constituting---a---material---change---of  
17 circumstances,---Upon--the--filing--of--such--petition,--the  
18 department--shall--issue--an--order--to--the--nonpetitioning--party  
19 to--appear--and--show--cause--why--the--decision--previously--entered  
20 should--not--be--prospectively--modified.---The--order--to--appear  
21 and--show--cause,---together---with---a---copy---of---the---verified  
22 petition,---must--be--served--by--the--petitioner--upon--all--other  
23 parties--in--the--manner--provided--by--this--part,---Upon--receipt--of  
24 proof--of--service,---the--department--shall--schedule--a--hearing  
25 not--less--than--15--or--more--than--30--days--from--the--date--of~~

~~service, unless extended for good cause--shown--Prospective  
modification--may be ordered but only upon a showing of good  
cause and material change of circumstances.~~

(8) A support order entered under this part must  
contain a statement that the order is subject to review and  
modification by the department upon the request of the  
department or a party under [sections 1 through 3] when the  
department is providing services under IV-D for the  
enforcement of the order.

(9) A support debt determined pursuant to this section  
is subject to collection action without further necessity of  
action by the hearing officer.

(10) A support debt or a support responsibility  
determined under this part by reason of the obligor's  
failure to request a hearing under this part or failure to  
appear at a scheduled hearing may be vacated, upon the  
motion of an obligor, by the hearing officer within the time  
provided and upon a showing of any of the grounds enumerated  
in the Montana Rules of Civil Procedure."

**Section 7.** Section 40-6-116, MCA, is amended to read:

**\*40-6-116. Judgment or order.** (1) The judgment or order  
of the court determining the existence or nonexistence of  
the parent and child relationship is determinative for all  
purposes.

(2) If the judgment or order of the court is at

variance with the child's birth certificate, the court shall  
order that a substitute birth certificate be issued under  
40-6-123.

(3) (a) The judgment or order may contain any other  
provision directed against the appropriate party to the  
proceeding concerning the custody and guardianship of the  
child, visitation privileges with the child, the furnishing  
of bond or other security for the payment of the judgment,  
or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a  
responsible parent is in the process of being determined  
pursuant to the administrative procedure provided in  
40-5-225, the judgment or order must contain a provision  
concerning the duty of child support.

(c) The judgment or order may direct the father to pay  
the reasonable expenses of the mother's pregnancy and  
confinement.

(4) (a) Support judgments or orders ordinarily shall be  
for periodic payments which may vary in amount.

(b) In the best interest of the child, a lump-sum  
payment or the purchase of an annuity may be ordered in lieu  
of periodic payments of support.

(c) The court may limit the father's liability for past  
support of the child to the proportion of the expenses  
already incurred that the court deems just.

1 (5) In determining the amount to be paid by a parent  
2 for support of the child and the period during which the  
3 duty of support is owed, a court enforcing the obligation of  
4 support shall consider all relevant facts, including:  
5 (a) the needs of the child, including his medical  
6 needs;  
7 (b) the standard of living and circumstances of the  
8 parents;  
9 (c) the relative financial means of the parents;  
10 (d) the earning ability of the parents;  
11 (e) the need and capacity of the child for education,  
12 including higher education;  
13 (f) the age of the child;  
14 (g) the financial resources and the earning ability of  
15 the child;  
16 (h) the responsibility of the parents for the support  
17 of others;  
18 (i) the value of services contributed by the custodial  
19 parent;  
20 (j) the cost of day care for the child; and  
21 (k) any custody arrangement that is ordered or decided  
22 upon.  
23 (6) (a) Whenever a court issues or modifies an order  
24 concerning child support, the court shall determine the  
25 child support obligation by applying the standards in this

1 section and the uniform child support guidelines adopted by  
2 the department of social and rehabilitation services  
3 pursuant to 40-5-209, unless the court finds by clear and  
4 convincing evidence that the application of the standards  
5 and guidelines is unjust to the child or to any of the  
6 parties or is inappropriate in that particular case.  
7 (b) If the court does not apply these standards and  
8 guidelines to determine child support, it shall state its  
9 reasons for finding that the application of such standards  
10 and guidelines is unjust to the child or a party or is  
11 inappropriate in that particular case.  
12 (c) If the court does not order a parent owing a duty  
13 of support to a child to pay any amount for the child's  
14 support, the court shall state its reasons for not ordering  
15 child support.  
16 (7) The judgment or order concerning child support and  
17 each modification of a judgment or order for child support  
18 must include a provision addressing health insurance  
19 coverage in the following cases:  
20 (a) If either party has available through an employer  
21 or other organization health insurance coverage for the  
22 child or children for which the premium is partially or  
23 entirely paid by the employer or organization, the judgment  
24 or order may contain a provision requiring that coverage for  
25 the child or children be continued or obtained.

1 (b) In the event that health insurance required in a  
 2 child support judgment or order becomes unavailable to the  
 3 party who is to provide it, through loss or change of  
 4 employment or otherwise, that party shall, in the absence of  
 5 an agreement to the contrary, obtain comparable insurance or  
 6 request that the court modify the requirement.

7 (c) The parties may by written agreement provide for  
 8 the health care coverage required by this section, subject  
 9 to the approval of the court.

10 (d) Unless otherwise provided in the decree, the health  
 11 care coverage required by this section is in addition to and  
 12 not in substitution, in whole or in part, for the child  
 13 support obligation.

14 (8) (a) Except as provided in subsection (8)(b), each  
 15 district court judgment or order establishing a child  
 16 support obligation under this part, whether temporary or  
 17 final, and each modification of an existing child support  
 18 order must:

19 (i) provide that the amount of child support must be  
 20 withheld from the obligor's income and paid to the  
 21 department pursuant to procedures established by the  
 22 department under Title 40, chapter 5, part 4; and

23 (ii) include the obligor's social security number and  
 24 the name and address of the obligor's employer and of any  
 25 other payor of income to the obligor.

1 (b) Income is not subject to automatic withholding if:

2 (i) the obligee or obligor demonstrates and the court  
 3 finds that there is good cause not to require automatic  
 4 income withholding; or

5 (ii) the obligee and obligor agree in writing to an  
 6 alternative arrangement regarding the payment of child  
 7 support that provides sufficient security to ensure  
 8 compliance with their agreement. The security is in addition  
 9 to the child support obligation.

10 (c) When a judgment or order for child support is  
 11 entered or modified and automatic income withholding is  
 12 ordered, an obligee who is not a recipient of public  
 13 assistance shall apply for the support enforcement services  
 14 of the department pursuant to Title IV-D of the Social  
 15 Security Act for the collection of support through automatic  
 16 income withholding under Title 40, chapter 5, part 4. The  
 17 department shall accept the application. Pending an  
 18 application, the department shall immediately implement  
 19 automatic income withholding and hold any amounts collected  
 20 in trust for the obligee until the obligee makes  
 21 application.

22 (d) When automatic income withholding is ordered under  
 23 subsection (8)(a), the clerk of court shall immediately  
 24 forward a copy of the order to the department.

25 (9) If the department of social and rehabilitation

1 services is providing or later provides support enforcement  
2 services under Title IV-D of the Social Security Act, each  
3 district court order or modification of an order must  
4 contain a statement providing that the noncustodial parent,  
5 without further order of the court, is required to obtain  
6 and maintain health insurance coverage as provided in  
7 40-5-208. Failure to include a warning statement in the  
8 judgment or order does not preclude the imposition of  
9 sanctions under 40-5-208.

10 (10) Each district court judgment, decree, or order  
11 establishing a final child support obligation under this  
12 part and each modification of a final order for child  
13 support must contain a statement that the order is subject  
14 to review and modification by the department of social and  
15 rehabilitation services upon the request of the department  
16 or a party under [sections 1 through 3] when the department  
17 is providing services under Title IV-D of the Social  
18 Security Act for the enforcement of the order."

19 NEW SECTION. Section 8. Codification instruction.  
20 [Sections 1 through 3] are intended to be codified as an  
21 integral part of Title 40, chapter 5, part 2, and the  
22 provisions of Title 40, chapter 5, part 2, apply to  
23 [sections 1 through 3].

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0922, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to create an administrative procedure for periodically modifying child support orders.

ASSUMPTIONS:

1. The executive budget recommendation for the Child Support Enforcement Division (CSED) includes funding needed to proceed with this proposed legislation.
2. The number of cases to be reviewed for modification prior to Oct. 1, 1993, is based upon the number of open IV-D cases with current support orders as of Dec. 30, 1990 (6,789). The federal Office of Child Support Enforcement has required review of all cases for modification be complete by Oct. 1, 1993, and all cases be reviewed every three years after that date. Additional reviews will be made at the request of the obligor, obligee, or any time CSED finds conditions requiring modification.
3. Approximately 65% of cases reviewed will require a modification of the support order.
4. The state of the economy will directly affect obligation amounts set through modification. The current recession will be of short duration followed by reasonable economic growth.
5. About 60% of the orders modified will result in an upward modification averaging \$60 per month. Approximately 40% of the orders modified will result in a downward modification averaging \$40 per month.
6. Amounts in the CSED propriety fund in excess of \$500,000 are placed in the general fund at the end of each fiscal year.

FISCAL IMPACT:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Revenues:</u>						
Increased CS Collection	0	91,790	91,790	0	229,221	229,221
Incentives on Collections	0	5,507	5,507	0	5,507	5,507
Total	0	97,297	97,297	0	234,728	234,728
<u>Revenue Distribution:</u>						
Federal Revenue	0	75,508	75,508	0	187,536	187,536
CS Proprietary Fund	0	16,282	16,282	0	41,685	41,685
Total	0	91,790	91,790	0	229,221	229,221
Impact to General Fund			0			16,282

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The long-term fiscal effect of this legislation on the general fund will be revenue neutral or slightly revenue positive.

Rod Sundsted 2/25/91  
 ROD SUNDSTED, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

Paula A. Darko  
 PAULA A. DARKO, PRIMARY SPONSOR

2/25/91  
 DATE

Fiscal Note for HB0922, as introduced

HB 922

APPROVED BY COMMITTEE  
ON JUDICIARY

1 House BILL NO. 922  
2 INTRODUCED BY Mark D. Brown  
3 BY REQUEST OF THE DEPARTMENT OF  
4 SOCIAL AND REHABILITATION SERVICES  
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE AN  
7 ADMINISTRATIVE PROCEDURE FOR PERIODICALLY MODIFYING CHILD  
8 SUPPORT ORDERS; AND AMENDING SECTIONS 40-4-204, 40-5-201,  
9 40-5-226, AND 40-6-116, MCA."  
10

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

12 NEW SECTION. Section 1. Registration of support  
13 orders. (1) The department shall establish and maintain a  
14 support order registry.

15 (2) The registry must contain the support orders issued  
16 by the department.

17 (3) In an IV-D case, the department shall, upon the  
18 request of the obligor or the obligee, or may register a  
19 support order of a district court of this state or a support  
20 order of a court or administrative agency of another state  
21 with jurisdiction to enter the order. A certified copy of  
22 the order to be registered must accompany the written  
23 request for registration.

24 (4) Upon registration, the support order must be  
25 treated in the same manner and have the same effect as a

1 support order issued by the department, and an abstract of  
2 the order may be filed under the provisions of 40-5-227.  
3 Review of the order under [section 2] is available only when  
4 the department is providing child support enforcement  
5 services for the order.

6 NEW SECTION. Section 2. Application for review of  
7 child support orders. (1) Upon the application of the  
8 department, the obligor, or the obligee, a hearing officer  
9 appointed pursuant to [section 3] shall review support  
10 orders filed with the support order registry. The purpose of  
11 the review is to determine whether the support order should  
12 be modified in accordance with the guidelines.

13 (2) Jurisdiction to conduct the review and to issue a  
14 modifying order under [section 3] is authorized when:

15 (a) the obligor and the obligee reside in this state;

16 (b) jurisdiction can be obtained as provided under  
17 40-4-210; or

18 (c) the obligor resides in this state and the  
19 department is providing IV-D enforcement services for the  
20 order.

21 (3) Jurisdiction to review a child support order under  
22 this section does not confer jurisdiction for any other  
23 purpose, such as custody or visitation disputes.

24 (4) Criteria constituting sufficient grounds for review  
25 of a child support order include:

SECOND READING  
HB 922





1 (a) inconsistency with this state's guidelines, unless  
2 the inconsistency is considered negligible under department  
3 rules; or

4 (b) availability of health insurance coverage to the  
5 obligor's child through the obligor's employment or other  
6 group insurance.

7 (5) The department shall make available procedures and  
8 forms that allow the obligor or the obligee to complete the  
9 review process without legal counsel.

10 NEW SECTION. **Section 3. Administrative review of child**  
11 **support orders -- modifying orders.** (1) A review application  
12 setting forth facts meeting any of the criteria for review  
13 of a child support order established in [section 2] must be  
14 scheduled for an administrative hearing, and a hearing  
15 officer must be appointed by the department. Unless the  
16 hearing officer determines under rules of the department  
17 that an in-person hearing is necessary, the hearing must be  
18 conducted by telephone conference. The order scheduling the  
19 hearing must be served on the obligor and the obligee at  
20 least 60 days before the hearing. The order must include the  
21 following information as an exception to 2-4-601:

22 (a) the date and time for the hearing and, if  
23 appropriate, the place for the hearing;

24 (b) a statement of the purpose, objectives, and  
25 possible consequences of the review;

1 (c) a statement of the right of the obligor and the  
2 obligee to request the hearing officer to issue subpoenas  
3 compelling the appearance of witnesses and the production of  
4 documents for the hearing; and

5 (d) a requirement that the obligor and the obligee  
6 provide the hearing officer with telephone numbers at which  
7 they and their witnesses may be contacted for the hearing.

8 (2) The hearing officer may issue an order commanding  
9 the obligor or the obligee, or both, to produce financial  
10 information. The order must be personally served with the  
11 order scheduling the hearing. The hearing officer may also  
12 issue subpoenas ordering the department or other parties to  
13 produce information in their possession about the obligor  
14 and the obligee that may be reasonably necessary for  
15 application of the guidelines. Any information so obtained  
16 by the hearing officer must be provided to the department  
17 and other parties prior to the hearing.

18 (3) The requested modification of the order must be  
19 determined on the evidence submitted to the hearing officer  
20 under the following conditions:

21 (a) If an applicant other than the department fails to  
22 provide a telephone number for the hearing or fails to be at  
23 the number provided when telephoned for the hearing, the  
24 failure is considered a withdrawal of the application.

25 (b) If a party other than the applicant fails to

1 provide a telephone number for the hearing or fails to be at  
 2 the number provided when telephoned for the hearing, the  
 3 failure is considered to mean that the party does not oppose  
 4 the modification.

5 (c) If the department is the applicant and if either  
 6 the obligor or the obligee, or both, fails to provide a  
 7 telephone number for the hearing or fails to be at the  
 8 number provided when telephoned for the hearing, the failure  
 9 is considered an admission that the party or parties do not  
 10 oppose the modification.

11 (4) An order entered under the circumstances described  
 12 in subsection (3)(a), (3)(b), or (3)(c) becomes final within  
 13 10 days of issuance unless a party provides the hearing  
 14 officer an affidavit showing good cause for failure to  
 15 provide a telephone number or failure to be available for  
 16 the hearing when telephoned.

17 (5) A provision of law may not be construed to mean  
 18 that an obligor or an obligee is a client of the department,  
 19 and the department is not considered a party to the action.

20 (6) (a) In addition to the powers and duties provided  
 21 by other law, the hearing officer shall, to ensure the  
 22 equitable determination of a support obligation, during a  
 23 review hearing:

24 (i) question witnesses in a nonadversarial manner to  
 25 elicit full disclosure of all pertinent facts;

1 (ii) introduce evidence on behalf of the parties;  
 2 (iii) apply the guidelines to the facts elicited from  
 3 the hearing; and  
 4 (iv) inquire as to any circumstances that may require  
 5 variance from the guidelines.

6 (b) If a party is represented by legal counsel, the  
 7 hearing officer may allow the counsel to present that  
 8 party's case.

9 (7) The hearing officer shall determine a support  
 10 obligation in accordance with the guidelines and shall issue  
 11 a modifying order. If the hearing officer determines that  
 12 the difference between the existing support order and the  
 13 amount determined under the guidelines is negligible under  
 14 rules issued by the department, the modifying order may not  
 15 change the amount of the support obligation. Even though the  
 16 review may indicate that a modification of the support  
 17 obligation is appropriate, the department may not modify the  
 18 support order if the hearing officer determines, after the  
 19 review hearing, that to do so would not be in the best  
 20 interests of the child under the rules issued by the  
 21 department. An increase in child support is presumed to be  
 22 in the best interests of the child unless, after a review  
 23 hearing, either the obligor or the obligee demonstrates it  
 24 would not be in the best interests of the child. The  
 25 modifying order must prospectively modify the underlying

1 support order from the date of service of the order  
2 scheduling the hearing.

3 (8) The hearing officer shall make a written  
4 determination whether health insurance is available to the  
5 child of the obligor through the obligor's employment or  
6 other group insurance. If the hearing officer determines  
7 health insurance is available to the child of the obligor,  
8 the hearing officer shall issue a modifying order that  
9 requires the obligor to obtain and keep health insurance for  
10 the child. If the hearing officer determines that health  
11 insurance is not available to the child of the obligor, he  
12 shall issue a modifying order containing the notices  
13 provided in subsection (9). An order to provide health  
14 insurance is presumed to be in the best interests of the  
15 child unless, after a review hearing, either the obligor or  
16 the obligee demonstrates it would not be in the best  
17 interests of the child.

18 (9) In addition to complying with other requirements of  
19 law, the modifying order must include the following notices  
20 and warnings:

21 (a) that the obligor shall keep the department informed  
22 of the name and address of his current employer and  
23 information on health insurance available to the obligor  
24 through the obligor's employment or other group insurance;

25 (b) that the obligor shall obtain and keep health

1 insurance for the child of the obligor whenever it is  
2 available through the obligor's employment or other group  
3 insurance; and

4 (c) that the modifying order is subject to future  
5 administrative review and modification by the department  
6 upon the request of the department or a party under  
7 [sections 1 through 3] when the department is providing  
8 services under IV-D.

9 (10) Orders entered under this section are final agency  
10 decisions, subject to judicial review pursuant to the  
11 Montana Administrative Procedure Act. All orders entered  
12 under this section must notify the parties that the order is  
13 subject to judicial review under Title 2, chapter 4, part 7.

14 (11) The parties to the support order and the department  
15 when it is providing services under IV-D may enforce the  
16 support order or modify that order independently, as  
17 provided in 40-4-208 and 53-2-613(4)(d).

18 **Section 4.** Section 40-4-204, MCA, is amended to read:

19 **"40-4-204. Child support -- orders to address health**  
20 **insurance -- automatic withholding of child support.** (1) In  
21 a proceeding for dissolution of marriage, legal separation,  
22 maintenance, or child support, the court shall order either  
23 or both parents owing a duty of support to a child to pay an  
24 amount reasonable or necessary for his support, without  
25 regard to marital misconduct.

1 (2) The court shall consider all relevant factors,  
 2 including:  
 3 (a) the financial resources of the child;  
 4 (b) the financial resources of the custodial parent;  
 5 (c) the standard of living the child would have enjoyed  
 6 had the marriage not been dissolved;  
 7 (d) the physical and emotional condition of the child  
 8 and his educational and medical needs;  
 9 (e) the financial resources and needs of the  
 10 noncustodial parent;  
 11 (f) the age of the child;  
 12 (g) the cost of day care for the child;  
 13 (h) any custody arrangement that is ordered or decided  
 14 upon; and  
 15 (i) the needs of any person, other than the child, whom  
 16 either parent is legally obligated to support.

17 (3) (a) Whenever a court issues or modifies an order  
 18 concerning child support, the court shall determine the  
 19 child support obligation by applying the standards in this  
 20 section and the uniform child support guidelines adopted by  
 21 the department of social and rehabilitation services  
 22 pursuant to 40-5-209, unless the court finds by clear and  
 23 convincing evidence that the application of the standards  
 24 and guidelines is unjust to the child or to any of the  
 25 parties or is inappropriate in that particular case.

1 (b) If the court does not apply these standards and  
 2 guidelines to determine child support, it shall state its  
 3 reasons for finding that the application of such standards  
 4 and guidelines is unjust to the child or a party or is  
 5 inappropriate in that particular case.

6 (c) If the court does not order a parent owing a duty  
 7 of support to a child to pay any amount for the child's  
 8 support, the court shall state its reasons for not ordering  
 9 child support.

10 (4) Each district court judgment, decree, or order  
 11 establishing a final child support obligation under this  
 12 title and each modification of a final order for child  
 13 support must include a provision addressing health insurance  
 14 coverage in the following cases:

15 (a) If either party has available through an employer  
 16 or other organization health insurance coverage for the  
 17 child or children for which the premium is partially or  
 18 entirely paid by the employer or organization, the judgment,  
 19 decree, or order may contain a provision requiring that  
 20 coverage for the child or children be continued or obtained.

21 (b) In the event that health insurance required in a  
 22 child support judgment, decree, or order becomes unavailable  
 23 to the party who is to provide it, through loss or change of  
 24 employment or otherwise, that party must, in the absence of  
 25 an agreement to the contrary, obtain comparable insurance or

1 request that the court modify the requirement.

2 (c) All temporary child support orders must contain a  
3 provision requiring the party who has health insurance in  
4 effect for the child or children of the parties to continue  
5 the insurance coverage pending final disposition of the  
6 case.

7 (d) The parties may by written agreement provide for  
8 the health care coverage required by this section, subject  
9 to the approval of the court.

10 (e) Unless otherwise provided in the decree, the health  
11 care coverage required by this section is in addition to and  
12 not in substitution, in whole or in part, for the child  
13 support obligation.

14 (5) (a) Except as provided in subsection (5)(b), each  
15 district court judgment, decree, or order establishing a  
16 child support obligation under this title, whether temporary  
17 or final, and each modification of an existing child support  
18 order must:

19 (i) provide that the amount of child support must be  
20 withheld from the obligor's income and paid to the  
21 department pursuant to procedures established by the  
22 department under Title 40, chapter 5, part 4; and

23 (ii) include the obligor's social security number and  
24 the name and address of the obligor's employer and of any  
25 other payor of income to the obligor.

1 (b) Income is not subject to automatic withholding if:

2 (i) the obligee or obligor demonstrates and the court  
3 finds that there is good cause not to require automatic  
4 income withholding; or

5 (ii) the obligee and obligor agree in writing to an  
6 alternative arrangement regarding the payment of child  
7 support that provides sufficient security to ensure  
8 compliance with their agreement. The security is in addition  
9 to the child support obligation.

10 (c) When a judgment, decree, or order for child support  
11 is entered or modified and automatic income withholding is  
12 ordered, an obligee who is not a recipient of public  
13 assistance shall apply for the support enforcement services  
14 of the department pursuant to Title IV-D of the Social  
15 Security Act for the collection of support through automatic  
16 income withholding under Title 40, chapter 5, part 4. The  
17 department shall accept the application. Pending an  
18 application, the department shall immediately implement  
19 automatic income withholding and hold any amounts collected  
20 in trust for the obligee until the obligee makes  
21 application.

22 (d) When automatic income withholding is ordered under  
23 subsection (5)(a), the clerk of court shall immediately  
24 forward a copy of the order to the department.

25 (e) If an obligor is not subject to income withholding

1 or is exempted from income withholding, the district court  
 2 judgment or order must include a warning statement that if  
 3 the obligor is delinquent in the payment of support, the  
 4 obligor's income may be subject to income withholding  
 5 procedures under Title 40, chapter 5, part 3 or 4. Failure  
 6 to include a warning statement in a judgment or order does  
 7 not preclude the use of withholding procedures.

8 (6) If the department of social and rehabilitation  
 9 services is providing or later provides support enforcement  
 10 services under Title IV-D of the Social Security Act, each  
 11 district court order or modification of an order must  
 12 contain a statement providing that the noncustodial parent,  
 13 without further order of the court, is required to obtain  
 14 and maintain health insurance coverage as provided in  
 15 40-5-208. Failure to include a warning statement in the  
 16 judgment or order does not preclude the imposition of  
 17 sanctions under 40-5-208.

18 (7) Each district court judgment, decree, or order  
 19 establishing a final child support obligation under this  
 20 part and each modification of a final order for child  
 21 support must contain a statement that the order is subject  
 22 to review and modification by the department of social and  
 23 rehabilitation services upon the request of the department  
 24 or a party under [sections 1 through 3] when the department  
 25 is providing services under Title IV-D of the Social

1 Security Act for the enforcement of the order."

2 **Section 5.** Section 40-5-201, MCA, is amended to read:

3 **"40-5-201. Definitions.** As used in this part, the  
 4 following definitions apply:

5 (1) "Alleged father" means a man who is alleged to have  
 6 engaged in sexual intercourse with a child's mother during a  
 7 possible time of conception of the child or a man who is  
 8 presumed to be a child's father under the provisions of  
 9 40-6-105.

10 (2) "Child" means any person under 18 years of age who  
 11 is not otherwise emancipated, self-supporting, married, or a  
 12 member of the armed forces of the United States and for  
 13 whom:

14 (a) support rights are assigned under 53-2-613;

15 (b) a public assistance payment has been made;

16 (c) the department is providing support enforcement  
 17 services under 40-5-203; or

18 (d) the department has received a referral for  
 19 interstate services from an agency of another state under  
 20 the provisions of the Uniform Reciprocal Enforcement of  
 21 Support Act or under Title IV-D of the Social Security Act.

22 (3) "Department" means the department of social and  
 23 rehabilitation services.

24 (4) "Director" means the director of the department of  
 25 social and rehabilitation services or his authorized

1 representative.

2 {5} "Guidelines" means the child support guidelines  
3 adopted pursuant to 40-5-209.

4 {6} "Hearing officer" or "hearing examiner" means the  
5 hearing officer appointed by the department for the purposes  
6 of this chapter.

7 {5}{7} "Need" means the necessary costs of food,  
8 clothing, shelter, and medical care for the support of a  
9 child or children.

10 {6}{8} "Obligee" means:

11 (a) a person to whom a duty of support is owed and who  
12 is receiving support enforcement services under this part;  
13 or

14 (b) a public agency of this or another state having the  
15 right to receive current or accrued support payments.

16 {7}{9} "Obligor" means a person, including an alleged  
17 father, who owes a duty of support.

18 {8}{10} "Parent" means the natural or adoptive parent of  
19 a child.

20 {9}{11} "Paternity blood test" means a test that  
21 demonstrates through examination of genetic markers either  
22 that an alleged father is not the natural father of a child  
23 or that there is a probability that an alleged father is the  
24 natural father of a child. Paternity blood tests may include  
25 but are not limited to the human leukocyte antigen test and

1 DNA probe technology.

2 {10}{12} "Public assistance" means any type of monetary  
3 or other assistance for a child, including medical and  
4 foster care benefits. The term includes payments to meet the  
5 needs of a relative with whom the child is living, if  
6 assistance has been furnished with respect to the child by a  
7 state or county agency of this state or any other state.

8 {11}{13} "Support debt" or "support obligation" means  
9 the amount created by:

10 (a) the failure to provide support to a child under the  
11 laws of this or any other state or a support order; or

12 (b) a support order for spousal maintenance if the  
13 judgment or order requiring payment of maintenance also  
14 contains a judgment or order requiring payment of child  
15 support for a child of whom the person awarded maintenance  
16 is the custodial parent.

17 {12}{14} "Support order" means an order providing a  
18 determinable amount for temporary or final periodic payment  
19 of funds for the support of a child, that is issued by:

20 (a) a district court of this state;

21 (b) a court of appropriate jurisdiction of another  
22 state;

23 (c) an administrative agency pursuant to proceedings  
24 under this part; or

25 (d) an administrative agency of another state with a

1 hearing function and process similar to those of the  
2 department under this part.

3 ~~{13}~~(15) "IV-D" means the provisions of Title IV-D of  
4 the Social Security Act and the regulations promulgated  
5 thereunder."

6 **Section 6.** Section 40-5-226, MCA, is amended to read:

7 "40-5-226. Administrative hearing -- nature -- place --  
8 time -- determinations -- failure to appear -- entry of  
9 final decision and order. (1) The administrative hearing is  
10 defined as a "contested case".

11 (2) At the discretion of the hearing officer, the  
12 administrative hearing may be held:

13 (a) in the county of residence or other county  
14 convenient to the obligor or obligee; or

15 (b) in the county in which the department or any of its  
16 offices are located.

17 (3) If a hearing is requested, it must be scheduled  
18 within 20 days.

19 (4) The hearing officer shall determine the liability  
20 and responsibility, if any, of the obligor under the notice  
21 and shall enter a final decision and order in accordance  
22 with such determination.

23 (5) If the obligor fails to appear at the hearing or  
24 fails to timely request a hearing, the hearing officer, upon  
25 a showing of valid service, shall enter a decision and order

1 declaring the amount stated in the notice to be final.

2 (6) In a hearing to determine financial responsibility,  
3 the monthly support responsibility must be determined in  
4 accordance with the evidence presented and with reference to  
5 the scale of suggested minimum contributions under 40-5-214.  
6 The hearing officer is not limited to the amounts stated in  
7 the notice.

8 (7) Within 20 days of the hearing, the hearing officer  
9 shall enter a final ~~decison~~ decision and order. The  
10 determination of the hearing officer constitutes a final  
11 agency decision, subject to judicial review under 40-5-253  
12 and the provisions of the Montana Administrative Procedure  
13 Act.

14 ~~{8}--If--a--support--order--is--established--under--this--part,  
15 any--party--may--file--a--verified--petition--with--the--department  
16 alleging--facts--constituting--a--material--change--of  
17 circumstances,--Upon--the--filing--of--such--petition,--the  
18 department--shall--issue--an--order--to--the--nonpetitioning--party  
19 to--appear--and--show--cause--why--the--decision--previously--entered  
20 should--not--be--prospectively--modified,--The--order--to--appear  
21 and--show--cause,--together--with--a--copy--of--the--verified  
22 petition,--must--be--served--by--the--petitioner--upon--all--other  
23 parties--in--the--manner--provided--by--this--part,--Upon--receipt--of  
24 proof--of--service,--the--department--shall--schedule--a--hearing  
25 not--less--than--15--or--more--than--30--days--from--the--date--of~~



1 ~~service, unless extended for good cause--shown--Prospective~~  
 2 ~~modification--may be ordered but only upon a showing of good~~  
 3 ~~cause and material change of circumstances:~~

4 (8) A support order entered under this part must  
 5 contain a statement that the order is subject to review and  
 6 modification by the department upon the request of the  
 7 department or a party under [sections 1 through 3] when the  
 8 department is providing services under IV-D for the  
 9 enforcement of the order.

10 (9) A support debt determined pursuant to this section  
 11 is subject to collection action without further necessity of  
 12 action by the hearing officer.

13 (10) A support debt or a support responsibility  
 14 determined under this part by reason of the obligor's  
 15 failure to request a hearing under this part or failure to  
 16 appear at a scheduled hearing may be vacated, upon the  
 17 motion of an obligor, by the hearing officer within the time  
 18 provided and upon a showing of any of the grounds enumerated  
 19 in the Montana Rules of Civil Procedure."

20 **Section 7.** Section 40-6-116, MCA, is amended to read:

21 **"40-6-116. Judgment or order.** (1) The judgment or order  
 22 of the court determining the existence or nonexistence of  
 23 the parent and child relationship is determinative for all  
 24 purposes.

25 (2) If the judgment or order of the court is at

1 variance with the child's birth certificate, the court shall  
 2 order that a substitute birth certificate be issued under  
 3 40-6-123.

4 (3) (a) The judgment or order may contain any other  
 5 provision directed against the appropriate party to the  
 6 proceeding concerning the custody and guardianship of the  
 7 child, visitation privileges with the child, the furnishing  
 8 of bond or other security for the payment of the judgment,  
 9 or any other matter in the best interest of the child.

10 (b) Except when the financial responsibility of a  
 11 responsible parent is in the process of being determined  
 12 pursuant to the administrative procedure provided in  
 13 40-5-225, the judgment or order must contain a provision  
 14 concerning the duty of child support.

15 (c) The judgment or order may direct the father to pay  
 16 the reasonable expenses of the mother's pregnancy and  
 17 confinement.

18 (4) (a) Support judgments or orders ordinarily shall be  
 19 for periodic payments which may vary in amount.

20 (b) In the best interest of the child, a lump-sum  
 21 payment or the purchase of an annuity may be ordered in lieu  
 22 of periodic payments of support.

23 (c) The court may limit the father's liability for past  
 24 support of the child to the proportion of the expenses  
 25 already incurred that the court deems just.

1 (5) In determining the amount to be paid by a parent  
 2 for support of the child and the period during which the  
 3 duty of support is owed, a court enforcing the obligation of  
 4 support shall consider all relevant facts, including:  
 5 (a) the needs of the child, including his medical  
 6 needs;  
 7 (b) the standard of living and circumstances of the  
 8 parents;  
 9 (c) the relative financial means of the parents;  
 10 (d) the earning ability of the parents;  
 11 (e) the need and capacity of the child for education,  
 12 including higher education;  
 13 (f) the age of the child;  
 14 (g) the financial resources and the earning ability of  
 15 the child;  
 16 (h) the responsibility of the parents for the support  
 17 of others;  
 18 (i) the value of services contributed by the custodial  
 19 parent;  
 20 (j) the cost of day care for the child; and  
 21 (k) any custody arrangement that is ordered or decided  
 22 upon.  
 23 (6) (a) Whenever a court issues or modifies an order  
 24 concerning child support, the court shall determine the  
 25 child support obligation by applying the standards in this

1 section and the uniform child support guidelines adopted by  
 2 the department of social and rehabilitation services  
 3 pursuant to 40-5-209, unless the court finds by clear and  
 4 convincing evidence that the application of the standards  
 5 and guidelines is unjust to the child or to any of the  
 6 parties or is inappropriate in that particular case.  
 7 (b) If the court does not apply these standards and  
 8 guidelines to determine child support, it shall state its  
 9 reasons for finding that the application of such standards  
 10 and guidelines is unjust to the child or a party or is  
 11 inappropriate in that particular case.  
 12 (c) If the court does not order a parent owing a duty  
 13 of support to a child to pay any amount for the child's  
 14 support, the court shall state its reasons for not ordering  
 15 child support.  
 16 (7) The judgment or order concerning child support and  
 17 each modification of a judgment or order for child support  
 18 must include a provision addressing health insurance  
 19 coverage in the following cases:  
 20 (a) If either party has available through an employer  
 21 or other organization health insurance coverage for the  
 22 child or children for which the premium is partially or  
 23 entirely paid by the employer or organization, the judgment  
 24 or order may contain a provision requiring that coverage for  
 25 the child or children be continued or obtained.

1 (b) In the event that health insurance required in a  
 2 child support judgment or order becomes unavailable to the  
 3 party who is to provide it, through loss or change of  
 4 employment or otherwise, that party shall, in the absence of  
 5 an agreement to the contrary, obtain comparable insurance or  
 6 request that the court modify the requirement.

7 (c) The parties may by written agreement provide for  
 8 the health care coverage required by this section, subject  
 9 to the approval of the court.

10 (d) Unless otherwise provided in the decree, the health  
 11 care coverage required by this section is in addition to and  
 12 not in substitution, in whole or in part, for the child  
 13 support obligation.

14 (8) (a) Except as provided in subsection (8)(b), each  
 15 district court judgment or order establishing a child  
 16 support obligation under this part, whether temporary or  
 17 final, and each modification of an existing child support  
 18 order must:

19 (i) provide that the amount of child support must be  
 20 withheld from the obligor's income and paid to the  
 21 department pursuant to procedures established by the  
 22 department under Title 40, chapter 5, part 4; and

23 (ii) include the obligor's social security number and  
 24 the name and address of the obligor's employer and of any  
 25 other payor of income to the obligor.

1 (b) Income is not subject to automatic withholding if:

2 (i) the obligee or obligor demonstrates and the court  
 3 finds that there is good cause not to require automatic  
 4 income withholding; or

5 (ii) the obligee and obligor agree in writing to an  
 6 alternative arrangement regarding the payment of child  
 7 support that provides sufficient security to ensure  
 8 compliance with their agreement. The security is in addition  
 9 to the child support obligation.

10 (c) When a judgment or order for child support is  
 11 entered or modified and automatic income withholding is  
 12 ordered, an obligee who is not a recipient of public  
 13 assistance shall apply for the support enforcement services  
 14 of the department pursuant to Title IV-D of the Social  
 15 Security Act for the collection of support through automatic  
 16 income withholding under Title 40, chapter 5, part 4. The  
 17 department shall accept the application. Pending an  
 18 application, the department shall immediately implement  
 19 automatic income withholding and hold any amounts collected  
 20 in trust for the obligee until the obligee makes  
 21 application.

22 (d) When automatic income withholding is ordered under  
 23 subsection (8)(a), the clerk of court shall immediately  
 24 forward a copy of the order to the department.

25 (9) If the department of social and rehabilitation

1 services is providing or later provides support enforcement  
2 services under Title IV-D of the Social Security Act, each  
3 district court order or modification of an order must  
4 contain a statement providing that the noncustodial parent,  
5 without further order of the court, is required to obtain  
6 and maintain health insurance coverage as provided in  
7 40-5-208. Failure to include a warning statement in the  
8 judgment or order does not preclude the imposition of  
9 sanctions under 40-5-208.

10 (10) Each district court judgment, decree, or order  
11 establishing a final child support obligation under this  
12 part and each modification of a final order for child  
13 support must contain a statement that the order is subject  
14 to review and modification by the department of social and  
15 rehabilitation services upon the request of the department  
16 or a party under [sections 1 through 3] when the department  
17 is providing services under Title IV-D of the Social  
18 Security Act for the enforcement of the order."

19 **NEW SECTION. Section 8.** Codification instruction.  
20 [Sections 1 through 3] are intended to be codified as an  
21 integral part of Title 40, chapter 5, part 2, and the  
22 provisions of Title 40, chapter 5, part 2, apply to  
23 [sections 1 through 3].

-End-

1                                    House BILL NO. 922  
 2 INTRODUCTION BY Marko - Owen  
 3                                    BY REQUEST OF THE DEPARTMENT OF  
 4                                    SOCIAL AND REHABILITATION SERVICES

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE AN  
 7 ADMINISTRATIVE PROCEDURE FOR PERIODICALLY MODIFYING CHILD  
 8 SUPPORT ORDERS; AND AMENDING SECTIONS 40-4-204, 40-5-201,  
 9 40-5-226, AND 40-6-116, MCA."

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

12        NEW SECTION.    **Section 1.** Registration    of    support  
 13 orders. (1) The department shall establish and maintain a  
 14 support order registry.

15            (2) The registry must contain the support orders issued  
 16 by the department.

17            (3) In an IV-D case, the department shall, upon the  
 18 request of the obligor or the obligee, or may register a  
 19 support order of a district court of this state or a support  
 20 order of a court or administrative agency of another state  
 21 with jurisdiction to enter the order. A certified copy of  
 22 the order to be registered must accompany the written  
 23 request for registration.

24            (4) Upon registration, the support order must be  
 25 treated in the same manner and have the same effect as a

There are no changes in this bill,  
 and will not be reprinted until  
 reference copy. Please refer to  
 introduced or second reading copy  
 for complete text.



1                   HOUSE BILL NO. 922  
 2                   INTRODUCED BY DARKO, J. BROWN  
 3                   BY REQUEST OF THE DEPARTMENT OF  
 4                   SOCIAL AND REHABILITATION SERVICES

5  
 6   A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE AN  
 7   ADMINISTRATIVE PROCEDURE FOR PERIODICALLY MODIFYING CHILD  
 8   SUPPORT ORDERS; AND AMENDING SECTIONS 40-4-204, 40-5-201,  
 9   40-5-226, AND 40-6-116, MCA."

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

12       NEW SECTION.   **Section 1.**   Registration   of   support  
 13   orders. (1) The department shall establish and maintain a  
 14   support order registry.

15       (2) The registry must contain the support orders issued  
 16   by the department.

17       (3) In an IV-D case, the department shall, upon the  
 18   request of the obligor or the obligee, or may register a  
 19   support order of a district court of this state or a support  
 20   order of a court or administrative agency of another state  
 21   with jurisdiction to enter the order. A certified copy of  
 22   the order to be registered must accompany the written  
 23   request for registration.

24       (4) Upon registration, the support order must be  
 25   treated in the same manner and have the same effect as a

1   support order issued by the department, and an abstract of  
 2   the order may be filed under the provisions of 40-5-227.  
 3   Review of the order under [section 2] is available only when  
 4   the department is providing child support enforcement  
 5   services for the order.

6       NEW SECTION.   **Section 2.**   Application   for   review   of  
 7   child support orders. (1) Upon the application of the  
 8   department, the obligor, or the obligee, a hearing officer  
 9   appointed pursuant to [section 3] shall review support  
 10   orders filed with the support order registry. The purpose of  
 11   the review is to determine whether the support order should  
 12   be modified in accordance with the guidelines.

13       (2) Jurisdiction to conduct the review and to issue a  
 14   modifying order under [section 3] is authorized when:

15       (a) the obligor and the obligee reside in this state;

16       (b) jurisdiction can be obtained as provided under  
 17   40-4-210; or

18       (c) the obligor resides in this state and the  
 19   department is providing IV-D enforcement services for the  
 20   order.

21       (3) Jurisdiction to review a child support order under  
 22   this section does not confer jurisdiction for any other  
 23   purpose, such as custody or visitation disputes.

24       (4) Criteria constituting sufficient grounds for review  
 25   of a child support order include:

1 (a) inconsistency with this state's guidelines, unless  
 2 the inconsistency is considered negligible under department  
 3 rules; or

4 (b) availability of health insurance coverage to the  
 5 obligor's child through the obligor's employment or other  
 6 group insurance.

7 (5) The department shall make available procedures and  
 8 forms that allow the obligor or the obligee to complete the  
 9 review process without legal counsel.

10 NEW SECTION. **Section 3. Administrative review of child**

11 **support orders -- modifying orders.** (1) A review application  
 12 setting forth facts meeting any of the criteria for review  
 13 of a child support order established in [section 2] must be  
 14 scheduled for an administrative hearing, and a hearing  
 15 officer must be appointed by the department. Unless the  
 16 hearing officer determines under rules of the department  
 17 that an in-person hearing is necessary, the hearing must be  
 18 conducted by telephone conference. The order scheduling the  
 19 hearing must be served on the obligor and the obligee at  
 20 least 60 days before the hearing. The order must include the  
 21 following information as an exception to 2-4-601:

22 (a) the date and time for the hearing and, if  
 23 appropriate, the place for the hearing;

24 (b) a statement of the purpose, objectives, and  
 25 possible consequences of the review;

1 (c) a statement of the right of the obligor and the  
 2 obligee to request the hearing officer to issue subpoenas  
 3 compelling the appearance of witnesses and the production of  
 4 documents for the hearing; and

5 (d) a requirement that the obligor and the obligee  
 6 provide the hearing officer with telephone numbers at which  
 7 they and their witnesses may be contacted for the hearing.

8 (2) The hearing officer may issue an order commanding  
 9 the obligor or the obligee, or both, to produce financial  
 10 information. The order must be personally served with the  
 11 order scheduling the hearing. The hearing officer may also  
 12 issue subpoenas ordering the department or other parties to  
 13 produce information in their possession about the obligor  
 14 and the obligee that may be reasonably necessary for  
 15 application of the guidelines. Any information so obtained  
 16 by the hearing officer must be provided to the department  
 17 and other parties prior to the hearing.

18 (3) The requested modification of the order must be  
 19 determined on the evidence submitted to the hearing officer  
 20 under the following conditions:

21 (a) If an applicant other than the department fails to  
 22 provide a telephone number for the hearing or fails to be at  
 23 the number provided when telephoned for the hearing, the  
 24 failure is considered a withdrawal of the application.

25 (b) If a party other than the applicant fails to

1 provide a telephone number for the hearing or fails to be at  
 2 the number provided when telephoned for the hearing, the  
 3 failure is considered to mean that the party does not oppose  
 4 the modification.

5 (c) If the department is the applicant and if either  
 6 the obligor or the obligee, or both, fails to provide a  
 7 telephone number for the hearing or fails to be at the  
 8 number provided when telephoned for the hearing, the failure  
 9 is considered an admission that the party or parties do not  
 10 oppose the modification.

11 (4) An order entered under the circumstances described  
 12 in subsection (3)(a), (3)(b), or (3)(c) becomes final within  
 13 10 days of issuance unless a party provides the hearing  
 14 officer an affidavit showing good cause for failure to  
 15 provide a telephone number or failure to be available for  
 16 the hearing when telephoned.

17 (5) A provision of law may not be construed to mean  
 18 that an obligor or an obligee is a client of the department,  
 19 and the department is not considered a party to the action.

20 (6) (a) In addition to the powers and duties provided  
 21 by other law, the hearing officer shall, to ensure the  
 22 equitable determination of a support obligation, during a  
 23 review hearing:

24 (i) question witnesses in a nonadversarial manner to  
 25 elicit full disclosure of all pertinent facts;

1 (ii) introduce evidence on behalf of the parties;

2 (iii) apply the guidelines to the facts elicited from  
 3 the hearing; and

4 (iv) inquire as to any circumstances that may require  
 5 variance from the guidelines.

6 (b) If a party is represented by legal counsel, the  
 7 hearing officer may allow the counsel to present that  
 8 party's case.

9 (7) The hearing officer shall determine a support  
 10 obligation in accordance with the guidelines and shall issue  
 11 a modifying order. If the hearing officer determines that  
 12 the difference between the existing support order and the  
 13 amount determined under the guidelines is negligible under  
 14 rules issued by the department, the modifying order may not  
 15 change the amount of the support obligation. Even though the  
 16 review may indicate that a modification of the support  
 17 obligation is appropriate, the department may not modify the  
 18 support order if the hearing officer determines, after the  
 19 review hearing, that to do so would not be in the best  
 20 interests of the child under the rules issued by the  
 21 department. An increase in child support is presumed to be  
 22 in the best interests of the child unless, after a review  
 23 hearing, either the obligor or the obligee demonstrates it  
 24 would not be in the best interests of the child. The  
 25 modifying order must prospectively modify the underlying



1 support order from the date of service of the order  
2 scheduling the hearing.

3 (8) The hearing officer shall make a written  
4 determination whether health insurance is available to the  
5 child of the obligor through the obligor's employment or  
6 other group insurance. If the hearing officer determines  
7 health insurance is available to the child of the obligor,  
8 the hearing officer shall issue a modifying order that  
9 requires the obligor to obtain and keep health insurance for  
10 the child. If the hearing officer determines that health  
11 insurance is not available to the child of the obligor, he  
12 shall issue a modifying order containing the notices  
13 provided in subsection (9). An order to provide health  
14 insurance is presumed to be in the best interests of the  
15 child unless, after a review hearing, either the obligor or  
16 the obligee demonstrates it would not be in the best  
17 interests of the child.

18 (9) In addition to complying with other requirements of  
19 law, the modifying order must include the following notices  
20 and warnings:

21 (a) that the obligor shall keep the department informed  
22 of the name and address of his current employer and  
23 information on health insurance available to the obligor  
24 through the obligor's employment or other group insurance;

25 (b) that the obligor shall obtain and keep health

1 insurance for the child of the obligor whenever it is  
2 available through the obligor's employment or other group  
3 insurance; and

4 (c) that the modifying order is subject to future  
5 administrative review and modification by the department  
6 upon the request of the department or a party under  
7 [sections 1 through 3] when the department is providing  
8 services under IV-D.

9 (10) Orders entered under this section are final agency  
10 decisions, subject to judicial review pursuant to the  
11 Montana Administrative Procedure Act. All orders entered  
12 under this section must notify the parties that the order is  
13 subject to judicial review under Title 2, chapter 4, part 7.

14 (11) The parties to the support order and the department  
15 when it is providing services under IV-D may enforce the  
16 support order or modify that order independently, as  
17 provided in 40-4-208 and 53-2-613(4)(d).

18 **Section 4.** Section 40-4-204, MCA, is amended to read:

19 **"40-4-204. Child support -- orders to address health**  
20 **insurance -- automatic withholding of child support.** (1) In  
21 a proceeding for dissolution of marriage, legal separation,  
22 maintenance, or child support, the court shall order either  
23 or both parents owing a duty of support to a child to pay an  
24 amount reasonable or necessary for his support, without  
25 regard to marital misconduct.

1 (2) The court shall consider all relevant factors,  
2 including:

- 3 (a) the financial resources of the child;  
4 (b) the financial resources of the custodial parent;  
5 (c) the standard of living the child would have enjoyed  
6 had the marriage not been dissolved;  
7 (d) the physical and emotional condition of the child  
8 and his educational and medical needs;  
9 (e) the financial resources and needs of the  
10 noncustodial parent;  
11 (f) the age of the child;  
12 (g) the cost of day care for the child;  
13 (h) any custody arrangement that is ordered or decided  
14 upon; and  
15 (i) the needs of any person, other than the child, whom  
16 either parent is legally obligated to support.

17 (3) (a) Whenever a court issues or modifies an order  
18 concerning child support, the court shall determine the  
19 child support obligation by applying the standards in this  
20 section and the uniform child support guidelines adopted by  
21 the department of social and rehabilitation services  
22 pursuant to 40-5-209, unless the court finds by clear and  
23 convincing evidence that the application of the standards  
24 and guidelines is unjust to the child or to any of the  
25 parties or is inappropriate in that particular case.

1 (b) If the court does not apply these standards and  
2 guidelines to determine child support, it shall state its  
3 reasons for finding that the application of such standards  
4 and guidelines is unjust to the child or a party or is  
5 inappropriate in that particular case.

6 (c) If the court does not order a parent owing a duty  
7 of support to a child to pay any amount for the child's  
8 support, the court shall state its reasons for not ordering  
9 child support.

10 (4) Each district court judgment, decree, or order  
11 establishing a final child support obligation under this  
12 title and each modification of a final order for child  
13 support must include a provision addressing health insurance  
14 coverage in the following cases:

15 (a) If either party has available through an employer  
16 or other organization health insurance coverage for the  
17 child or children for which the premium is partially or  
18 entirely paid by the employer or organization, the judgment,  
19 decree, or order may contain a provision requiring that  
20 coverage for the child or children be continued or obtained.

21 (b) In the event that health insurance required in a  
22 child support judgment, decree, or order becomes unavailable  
23 to the party who is to provide it, through loss or change of  
24 employment or otherwise, that party must, in the absence of  
25 an agreement to the contrary, obtain comparable insurance or

1 request that the court modify the requirement.

2 (c) All temporary child support orders must contain a  
3 provision requiring the party who has health insurance in  
4 effect for the child or children of the parties to continue  
5 the insurance coverage pending final disposition of the  
6 case.

7 (d) The parties may by written agreement provide for  
8 the health care coverage required by this section, subject  
9 to the approval of the court.

10 (e) Unless otherwise provided in the decree, the health  
11 care coverage required by this section is in addition to and  
12 not in substitution, in whole or in part, for the child  
13 support obligation.

14 (5) (a) Except as provided in subsection (5)(b), each  
15 district court judgment, decree, or order establishing a  
16 child support obligation under this title, whether temporary  
17 or final, and each modification of an existing child support  
18 order must:

19 (i) provide that the amount of child support must be  
20 withheld from the obligor's income and paid to the  
21 department pursuant to procedures established by the  
22 department under Title 40, chapter 5, part 4; and

23 (ii) include the obligor's social security number and  
24 the name and address of the obligor's employer and of any  
25 other payor of income to the obligor.

1 (b) Income is not subject to automatic withholding if:

2 (i) the obligee or obligor demonstrates and the court  
3 finds that there is good cause not to require automatic  
4 income withholding; or

5 (ii) the obligee and obligor agree in writing to an  
6 alternative arrangement regarding the payment of child  
7 support that provides sufficient security to ensure  
8 compliance with their agreement. The security is in addition  
9 to the child support obligation.

10 (c) When a judgment, decree, or order for child support  
11 is entered or modified and automatic income withholding is  
12 ordered, an obligee who is not a recipient of public  
13 assistance shall apply for the support enforcement services  
14 of the department pursuant to Title IV-D of the Social  
15 Security Act for the collection of support through automatic  
16 income withholding under Title 40, chapter 5, part 4. The  
17 department shall accept the application. Pending an  
18 application, the department shall immediately implement  
19 automatic income withholding and hold any amounts collected  
20 in trust for the obligee until the obligee makes  
21 application.

22 (d) When automatic income withholding is ordered under  
23 subsection (5)(a), the clerk of court shall immediately  
24 forward a copy of the order to the department.

25 (e) If an obligor is not subject to income withholding

1 or is exempted from income withholding, the district court  
 2 judgment or order must include a warning statement that if  
 3 the obligor is delinquent in the payment of support, the  
 4 obligor's income may be subject to income withholding  
 5 procedures under Title 40, chapter 5, part 3 or 4. Failure  
 6 to include a warning statement in a judgment or order does  
 7 not preclude the use of withholding procedures.

8 (6) If the department of social and rehabilitation  
 9 services is providing or later provides support enforcement  
 10 services under Title IV-D of the Social Security Act, each  
 11 district court order or modification of an order must  
 12 contain a statement providing that the noncustodial parent,  
 13 without further order of the court, is required to obtain  
 14 and maintain health insurance coverage as provided in  
 15 40-5-208. Failure to include a warning statement in the  
 16 judgment or order does not preclude the imposition of  
 17 sanctions under 40-5-208.

18 (7) Each district court judgment, decree, or order  
 19 establishing a final child support obligation under this  
 20 part and each modification of a final order for child  
 21 support must contain a statement that the order is subject  
 22 to review and modification by the department of social and  
 23 rehabilitation services upon the request of the department  
 24 or a party under [sections 1 through 3] when the department  
 25 is providing services under Title IV-D of the Social

1 Security Act for the enforcement of the order."

2 **Section 5.** Section 40-5-201, MCA, is amended to read:

3 **"40-5-201. Definitions.** As used in this part, the  
 4 following definitions apply:

5 (1) "Alleged father" means a man who is alleged to have  
 6 engaged in sexual intercourse with a child's mother during a  
 7 possible time of conception of the child or a man who is  
 8 presumed to be a child's father under the provisions of  
 9 40-6-105.

10 (2) "Child" means any person under 18 years of age who  
 11 is not otherwise emancipated, self-supporting, married, or a  
 12 member of the armed forces of the United States and for  
 13 whom:

14 (a) support rights are assigned under 53-2-613;

15 (b) a public assistance payment has been made;

16 (c) the department is providing support enforcement  
 17 services under 40-5-203; or

18 (d) the department has received a referral for  
 19 interstate services from an agency of another state under  
 20 the provisions of the Uniform Reciprocal Enforcement of  
 21 Support Act or under Title IV-D of the Social Security Act.

22 (3) "Department" means the department of social and  
 23 rehabilitation services.

24 (4) "Director" means the director of the department of  
 25 social and rehabilitation services or his authorized

1 representative.

2 (5) "Guidelines" means the child support guidelines  
 3 adopted pursuant to 40-5-209.

4 (6) "Hearing Officer" or "hearing examiner" means the  
 5 hearing officer appointed by the department for the purposes  
 6 of this chapter.

7 ~~(5)~~(7) "Need" means the necessary costs of food,  
 8 clothing, shelter, and medical care for the support of a  
 9 child or children.

10 ~~(6)~~(8) "Obligee" means:

11 (a) a person to whom a duty of support is owed and who  
 12 is receiving support enforcement services under this part;  
 13 or

14 (b) a public agency of this or another state having the  
 15 right to receive current or accrued support payments.

16 ~~(7)~~(9) "Obligor" means a person, including an alleged  
 17 father, who owes a duty of support.

18 ~~(8)~~(10) "Parent" means the natural or adoptive parent of  
 19 a child.

20 ~~(9)~~(11) "Paternity blood test" means a test that  
 21 demonstrates through examination of genetic markers either  
 22 that an alleged father is not the natural father of a child  
 23 or that there is a probability that an alleged father is the  
 24 natural father of a child. Paternity blood tests may include  
 25 but are not limited to the human leukocyte antigen test and

1 DNA probe technology.

2 ~~(10)~~(12) "Public assistance" means any type of monetary  
 3 or other assistance for a child, including medical and  
 4 foster care benefits. The term includes payments to meet the  
 5 needs of a relative with whom the child is living, if  
 6 assistance has been furnished with respect to the child by a  
 7 state or county agency of this state or any other state.

8 ~~(11)~~(13) "Support debt" or "support obligation" means  
 9 the amount created by:

10 (a) the failure to provide support to a child under the  
 11 laws of this or any other state or a support order; or

12 (b) a support order for spousal maintenance if the  
 13 judgment or order requiring payment of maintenance also  
 14 contains a judgment or order requiring payment of child  
 15 support for a child of whom the person awarded maintenance  
 16 is the custodial parent.

17 ~~(12)~~(14) "Support order" means an order providing a  
 18 determinable amount for temporary or final periodic payment  
 19 of funds for the support of a child, that is issued by:

20 (a) a district court of this state;

21 (b) a court of appropriate jurisdiction of another  
 22 state;

23 (c) an administrative agency pursuant to proceedings  
 24 under this part; or

25 (d) an administrative agency of another state with a

1 hearing function and process similar to those of the  
2 department under this part.

3 ~~{13}~~{15} "IV-D" means the provisions of Title IV-D of  
4 the Social Security Act and the regulations promulgated  
5 thereunder."

6 **Section 6.** Section 40-5-226, MCA, is amended to read:

7 "40-5-226. Administrative hearing -- nature -- place --  
8 time -- determinations -- failure to appear -- entry of  
9 final decision and order. (1) The administrative hearing is  
10 defined as a "contested case".

11 (2) At the discretion of the hearing officer, the  
12 administrative hearing may be held:

13 (a) in the county of residence or other county  
14 convenient to the obligor or obligee; or

15 (b) in the county in which the department or any of its  
16 offices are located.

17 (3) If a hearing is requested, it must be scheduled  
18 within 20 days.

19 (4) The hearing officer shall determine the liability  
20 and responsibility, if any, of the obligor under the notice  
21 and shall enter a final decision and order in accordance  
22 with such determination.

23 (5) If the obligor fails to appear at the hearing or  
24 fails to timely request a hearing, the hearing officer, upon  
25 a showing of valid service, shall enter a decision and order

1 declaring the amount stated in the notice to be final.

2 (6) In a hearing to determine financial responsibility,  
3 the monthly support responsibility must be determined in  
4 accordance with the evidence presented and with reference to  
5 the scale of suggested minimum contributions under 40-5-214.  
6 The hearing officer is not limited to the amounts stated in  
7 the notice.

8 (7) Within 20 days of the hearing, the hearing officer  
9 shall enter a final ~~decison~~ decision and order. The  
10 determination of the hearing officer constitutes a final  
11 agency decision, subject to judicial review under 40-5-253  
12 and the provisions of the Montana Administrative Procedure  
13 Act.

14 ~~{8}--If--a--support--order--is--established--under--this--part,~~  
15 ~~any--party--may--file--a--verified--petition--with--the--department~~  
16 ~~alleging--facts--constituting--a--material--change--of~~  
17 ~~circumstances;--Upon--the--filing--of--such--petition,--the~~  
18 ~~department--shall--issue--an--order--to--the--nonpetitioning--party~~  
19 ~~to--appear--and--show--cause--why--the--decision--previously--entered~~  
20 ~~should--not--be--prospectively--modified;--The--order--to--appear~~  
21 ~~and--show--cause,--together--with--a--copy--of--the--verified~~  
22 ~~petition,--must--be--served--by--the--petitioner--upon--all--other~~  
23 ~~parties--in--the--manner--provided--by--this--part;--Upon--receipt--of~~  
24 ~~proof--of--service,--the--department--shall--schedule--a--hearing~~  
25 ~~not--less--than--15--or--more--than--30--days--from--the--date--of~~

1 ~~service, unless extended for good cause--shown--Prospective~~  
 2 ~~modification--may be ordered but only upon a showing of good~~  
 3 ~~cause and material change of circumstances.~~

4 (8) A support order entered under this part must  
 5 contain a statement that the order is subject to review and  
 6 modification by the department upon the request of the  
 7 department or a party under [sections 1 through 3] when the  
 8 department is providing services under IV-D for the  
 9 enforcement of the order.

10 (9) A support debt determined pursuant to this section  
 11 is subject to collection action without further necessity of  
 12 action by the hearing officer.

13 (10) A support debt or a support responsibility  
 14 determined under this part by reason of the obligor's  
 15 failure to request a hearing under this part or failure to  
 16 appear at a scheduled hearing may be vacated, upon the  
 17 motion of an obligor, by the hearing officer within the time  
 18 provided and upon a showing of any of the grounds enumerated  
 19 in the Montana Rules of Civil Procedure."

20 **Section 7.** Section 40-6-116, MCA, is amended to read:

21 **"40-6-116. Judgment or order.** (1) The judgment or order  
 22 of the court determining the existence or nonexistence of  
 23 the parent and child relationship is determinative for all  
 24 purposes.

25 (2) If the judgment or order of the court is at

1 variance with the child's birth certificate, the court shall  
 2 order that a substitute birth certificate be issued under  
 3 40-6-123.

4 (3) (a) The judgment or order may contain any other  
 5 provision directed against the appropriate party to the  
 6 proceeding concerning the custody and guardianship of the  
 7 child, visitation privileges with the child, the furnishing  
 8 of bond or other security for the payment of the judgment,  
 9 or any other matter in the best interest of the child.

10 (b) Except when the financial responsibility of a  
 11 responsible parent is in the process of being determined  
 12 pursuant to the administrative procedure provided in  
 13 40-5-225, the judgment or order must contain a provision  
 14 concerning the duty of child support.

15 (c) The judgment or order may direct the father to pay  
 16 the reasonable expenses of the mother's pregnancy and  
 17 confinement.

18 (4) (a) Support judgments or orders ordinarily shall be  
 19 for periodic payments which may vary in amount.

20 (b) In the best interest of the child, a lump-sum  
 21 payment or the purchase of an annuity may be ordered in lieu  
 22 of periodic payments of support.

23 (c) The court may limit the father's liability for past  
 24 support of the child to the proportion of the expenses  
 25 already incurred that the court deems just.

1 (5) In determining the amount to be paid by a parent  
2 for support of the child and the period during which the  
3 duty of support is owed, a court enforcing the obligation of  
4 support shall consider all relevant facts, including:

5 (a) the needs of the child, including his medical  
6 needs;

7 (b) the standard of living and circumstances of the  
8 parents;

9 (c) the relative financial means of the parents;

10 (d) the earning ability of the parents;

11 (e) the need and capacity of the child for education,  
12 including higher education;

13 (f) the age of the child;

14 (g) the financial resources and the earning ability of  
15 the child;

16 (h) the responsibility of the parents for the support  
17 of others;

18 (i) the value of services contributed by the custodial  
19 parent;

20 (j) the cost of day care for the child; and

21 (k) any custody arrangement that is ordered or decided  
22 upon.

23 (6) (a) Whenever a court issues or modifies an order  
24 concerning child support, the court shall determine the  
25 child support obligation by applying the standards in this

1 section and the uniform child support guidelines adopted by  
2 the department of social and rehabilitation services  
3 pursuant to 40-5-209, unless the court finds by clear and  
4 convincing evidence that the application of the standards  
5 and guidelines is unjust to the child or to any of the  
6 parties or is inappropriate in that particular case.

7 (b) If the court does not apply these standards and  
8 guidelines to determine child support, it shall state its  
9 reasons for finding that the application of such standards  
10 and guidelines is unjust to the child or a party or is  
11 inappropriate in that particular case.

12 (c) If the court does not order a parent owing a duty  
13 of support to a child to pay any amount for the child's  
14 support, the court shall state its reasons for not ordering  
15 child support.

16 (7) The judgment or order concerning child support and  
17 each modification of a judgment or order for child support  
18 must include a provision addressing health insurance  
19 coverage in the following cases:

20 (a) If either party has available through an employer  
21 or other organization health insurance coverage for the  
22 child or children for which the premium is partially or  
23 entirely paid by the employer or organization, the judgment  
24 or order may contain a provision requiring that coverage for  
25 the child or children be continued or obtained.



1 (b) In the event that health insurance required in a  
 2 child support judgment or order becomes unavailable to the  
 3 party who is to provide it, through loss or change of  
 4 employment or otherwise, that party shall, in the absence of  
 5 an agreement to the contrary, obtain comparable insurance or  
 6 request that the court modify the requirement.

7 (c) The parties may by written agreement provide for  
 8 the health care coverage required by this section, subject  
 9 to the approval of the court.

10 (d) Unless otherwise provided in the decree, the health  
 11 care coverage required by this section is in addition to and  
 12 not in substitution, in whole or in part, for the child  
 13 support obligation.

14 (8) (a) Except as provided in subsection (8)(b), each  
 15 district court judgment or order establishing a child  
 16 support obligation under this part, whether temporary or  
 17 final, and each modification of an existing child support  
 18 order must:

19 (i) provide that the amount of child support must be  
 20 withheld from the obligor's income and paid to the  
 21 department pursuant to procedures established by the  
 22 department under Title 40, chapter 5, part 4; and

23 (ii) include the obligor's social security number and  
 24 the name and address of the obligor's employer and of any  
 25 other payor of income to the obligor.

1 (b) Income is not subject to automatic withholding if:  
 2 (i) the obligee or obligor demonstrates and the court  
 3 finds that there is good cause not to require automatic  
 4 income withholding; or

5 (ii) the obligee and obligor agree in writing to an  
 6 alternative arrangement regarding the payment of child  
 7 support that provides sufficient security to ensure  
 8 compliance with their agreement. The security is in addition  
 9 to the child support obligation.

10 (c) When a judgment or order for child support is  
 11 entered or modified and automatic income withholding is  
 12 ordered, an obligee who is not a recipient of public  
 13 assistance shall apply for the support enforcement services  
 14 of the department pursuant to Title IV-D of the Social  
 15 Security Act for the collection of support through automatic  
 16 income withholding under Title 40, chapter 5, part 4. The  
 17 department shall accept the application. Pending an  
 18 application, the department shall immediately implement  
 19 automatic income withholding and hold any amounts collected  
 20 in trust for the obligee until the obligee makes  
 21 application.

22 (d) When automatic income withholding is ordered under  
 23 subsection (8)(a), the clerk of court shall immediately  
 24 forward a copy of the order to the department.

25 (9) If the department of social and rehabilitation

1 services is providing or later provides support enforcement  
 2 services under Title IV-D of the Social Security Act, each  
 3 district court order or modification of an order must  
 4 contain a statement providing that the noncustodial parent,  
 5 without further order of the court, is required to obtain  
 6 and maintain health insurance coverage as provided in  
 7 40-5-208. Failure to include a warning statement in the  
 8 judgment or order does not preclude the imposition of  
 9 sanctions under 40-5-208.

10 (10) Each district court judgment, decree, or order  
 11 establishing a final child support obligation under this  
 12 part and each modification of a final order for child  
 13 support must contain a statement that the order is subject  
 14 to review and modification by the department of social and  
 15 rehabilitation services upon the request of the department  
 16 or a party under [sections 1 through 3] when the department  
 17 is providing services under Title IV-D of the Social  
 18 Security Act for the enforcement of the order."

19 **NEW SECTION. Section 8.** Codification instruction.  
 20 [Sections 1 through 3] are intended to be codified as an  
 21 integral part of Title 40, chapter 5, part 2, and the  
 22 provisions of Title 40, chapter 5, part 2, apply to  
 23 [sections 1 through 3].

-End-