

HOUSE BILL NO. 923

INTRODUCED BY DARKO, J. BROWN  
BY REQUEST OF THE DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES

IN THE HOUSE

FEBRUARY 18, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON TAXATION.

  FIRST READING.

FEBRUARY 19, 1991                   ON MOTION, REREFERRED TO COMMITTEE  
ON JUDICIARY.

MARCH 7, 1991                        COMMITTEE RECOMMEND BILL  
DO PASS. REPORT ADOPTED.

MARCH 8, 1991                        PRINTING REPORT.

MARCH 9, 1991                        SECOND READING, DO PASS.

MARCH 11, 1991                      ON MOTION, REREFERRED TO COMMITTEE  
ON APPROPRIATIONS.

MARCH 22, 1991                      COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

  PRINTING REPORT.

MARCH 28, 1991                      SECOND READING, DO PASS.

  ENGROSSING REPORT.

  ON MOTION, RULES SUSPENDED. BILL  
PLACED ON THIRD READING THIS DAY.

  THIRD READING, PASSED.  
AYES, 94; NOES, 6.

  TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 28, 1991                      INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

  FIRST READING.

APRIL 11, 1991                       COMMITTEE RECOMMEND BILL BE

CONCURRED IN. REPORT ADOPTED.

APRIL 15, 1991

SECOND READING, CONCURRED IN.

APRIL 16, 1991

THIRD READING, CONCURRED IN.  
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 17, 1991

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1                    House BILL NO. 923  
 2    INTRODUCED BY Nalako 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 REVISE PROCEDURES  
 7    PERTAINING TO INCOME WITHHOLDING FOR THE PAYMENT OF CHILD  
 8    SUPPORT TO CONFORM THOSE PROCEDURES TO FEDERAL REGULATIONS;  
 9    TO PROVIDE FOR ENFORCEMENT OF HEALTH INSURANCE OBLIGATIONS  
 10    THROUGH INCOME WITHHOLDING; AMENDING SECTIONS 40-4-204,  
 11    40-5-226, 40-5-304, 40-5-309, 40-5-402, 40-5-403, 40-5-411,  
 12    40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417,  
 13    40-5-421, 40-5-433, AND 40-6-116, MCA; AND REPEALING SECTION  
 14    40-5-425, MCA."

15  
 16    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17                    **Section 1.** Section 40-4-204, MCA, is amended to read:

18                    "**40-4-204. Child support -- orders to address health**  
 19                    **insurance -- automatic withholding of child support.** (1) In  
 20                    a proceeding for dissolution of marriage, legal separation,  
 21                    maintenance, or child support, the court shall order either  
 22                    or both parents owing a duty of support to a child to pay an  
 23                    amount reasonable or necessary for his support, without  
 24                    regard to marital misconduct.

25                    (2) The court shall consider all relevant factors,

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

1 guidelines to determine child support, it shall state its  
2 reasons for finding that the application of such standards  
3 and guidelines is unjust to the child or a party or is  
4 inappropriate in that particular case.

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

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

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

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

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

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

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

13 ~~{5}--(a) Except as provided in subsection (5)(b), each~~  
14 ~~district court judgment, decree, or order establishing a~~  
15 ~~child support obligation under this title, whether temporary~~  
16 ~~or final, and each modification of an existing child support~~  
17 ~~order must:~~

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

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

25 ~~(b) income is not subject to automatic withholding if:~~

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

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

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

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

24 (e) If an obligor is not subject to income withholding  
25 or is exempted from income withholding, the district court

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

7 (5) (a) Unless the court makes a written exception  
8 under [section 16] or 40-5-411 and the exception is included  
9 in the support order, a support obligation established by  
10 judgment, decree, or order under this section, whether  
11 temporary or final, and each modification of an existing  
12 support obligation under 40-4-208 must be enforced by  
13 immediate or delinquency income withholding, or both, under  
14 Title 40, chapter 5, part 3 or 4. A support order that omits  
15 the written exceptions provided in [section 16] or 40-5-411  
16 or that provides for a payment arrangement inconsistent with  
17 this section is nevertheless subject to withholding for the  
18 payment of support without need for an amendment to the  
19 support order or for any further action by the court.

20 (b) If an obligor is exempt from immediate income  
21 withholding, the district court judgment or order must  
22 include a warning statement that if the obligor is  
23 delinquent in the payment of support, the obligor's income  
24 may be subject to income withholding procedures under Title  
25 40, chapter 5, part 3 or 4. Failure to include a warning

1 statement in a judgment or order does not preclude the use  
2 of withholding procedures.

3 (6) For the purposes of income withholding under  
4 subsection (5), every district court judgment, decree, or  
5 order that establishes or modifies a child support  
6 obligation must include a provision requiring the parent  
7 obligated to pay support to inform the court and, if the  
8 department of social and rehabilitation services is  
9 providing services under Title IV-D of the Social Security  
10 Act for the enforcement of the judgment, decree, or order,  
11 the department, of the following:

12 (a) the name and address of the parent's current  
13 employer;

14 (b) whether the parent has access to health insurance  
15 through an employer or other group; and

16 (c) if insurance coverage is available, the health  
17 insurance policy information.

18 ~~(6)(7)~~ If the department of social and rehabilitation  
19 services is providing or later provides support enforcement  
20 services under Title IV-D of the Social Security Act, each  
21 district court order or modification of an order must  
22 contain a statement providing that the noncustodial parent,  
23 without further order of the court, is required to obtain  
24 and maintain health insurance coverage as provided in  
25 40-5-208. Failure to include a warning statement in the

1 judgment or order does not preclude the imposition of  
2 sanctions under 40-5-208."

3 **Section 2.** Section 40-6-116, MCA, is amended to read:

4 **"40-6-116. Judgment or order.** (1) The judgment or order  
5 of the court determining the existence or nonexistence of  
6 the parent and child relationship is determinative for all  
7 purposes.

8 (2) If the judgment or order of the court is at  
9 variance with the child's birth certificate, the court shall  
10 order that a substitute birth certificate be issued under  
11 40-6-123.

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

18 (b) Except when the financial responsibility of a  
19 responsible parent is in the process of being determined  
20 pursuant to the administrative procedure provided in  
21 40-5-225, the judgment or order must contain a provision  
22 concerning the duty of child support.

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

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

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

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

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

13 (a) the needs of the child, including his medical  
14 needs;

15 (b) the standard of living and circumstances of the  
16 parents;

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

18 (d) the earning ability of the parents;

19 (e) the need and capacity of the child for education,  
20 including higher education;

21 (f) the age of the child;

22 (g) the financial resources and the earning ability of  
23 the child;

24 (h) the responsibility of the parents for the support  
25 of others;

1 (i) the value of services contributed by the custodial  
2 parent;

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

4 (k) any custody arrangement that is ordered or decided  
5 upon.

6 (6) (a) Whenever a court issues or modifies an order  
7 concerning child support, the court shall determine the  
8 child support obligation by applying the standards in this  
9 section and the uniform child support guidelines adopted by  
10 the department of social and rehabilitation services  
11 pursuant to 40-5-209, unless the court finds by clear and  
12 convincing evidence that the application of the standards  
13 and guidelines is unjust to the child or to any of the  
14 parties or is inappropriate in that particular case.

15 (b) If the court does not apply these standards and  
16 guidelines to determine child support, it shall state its  
17 reasons for finding that the application of such standards  
18 and guidelines is unjust to the child or a party or is  
19 inappropriate in that particular case.

20 (c) If the court does not order a parent owing a duty  
21 of support to a child to pay any amount for the child's  
22 support, the court shall state its reasons for not ordering  
23 child support.

24 (7) The judgment or order concerning child support and  
25 each modification of a judgment or order for child support

1 must include a provision addressing health insurance  
2 coverage in the following cases:

3 (a) If either party has available through an employer  
4 or other organization health insurance coverage for the  
5 child or children for which the premium is partially or  
6 entirely paid by the employer or organization, the judgment  
7 or order may contain a provision requiring that coverage for  
8 the child or children be continued or obtained.

9 (b) In the event that health insurance required in a  
10 child support judgment or order becomes unavailable to the  
11 party who is to provide it, through loss or change of  
12 employment or otherwise, that party shall, in the absence of  
13 an agreement to the contrary, obtain comparable insurance or  
14 request that the court modify the requirement.

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

18 (d) Unless otherwise provided in the decree, the health  
19 care coverage required by this section is in addition to and  
20 not in substitution, in whole or in part, for the child  
21 support obligation.

22 (8) (a) Except as provided in subsection (8)(b), each  
23 district court judgment or order establishing a child  
24 support obligation under this part, whether temporary or  
25 final, and each modification of an existing child support

1 order must:

2 (i) provide that the amount of child support must be  
3 withheld from the obligor's income and paid to the  
4 department pursuant to procedures established by the  
5 department under Title 40, chapter 57, part 4, and

6 (ii) include the obligor's social security number and  
7 the name and address of the obligor's employer and of any  
8 other payor of income to the obligor.

9 (b) Income is not subject to automatic withholding if:  
10 (i) the obligee or obligor demonstrates and the court  
11 finds that there is good cause not to require automatic  
12 income withholding; or

13 (ii) the obligee and obligor agree in writing to an  
14 alternative arrangement regarding the payment of child  
15 support that provides sufficient security to ensure  
16 compliance with their agreement. The security is in addition  
17 to the child support obligation.

18 (c) When a judgment or order for child support is  
19 entered or modified and automatic income withholding is  
20 ordered, an obligee who is not a recipient of public  
21 assistance shall apply for the support enforcement services  
22 of the department pursuant to Title IV-D of the Social  
23 Security Act for the collection of support through automatic  
24 income withholding under Title 40, chapter 57, part 4. The  
25 department shall accept the application. Pending an



1 application,--the--department--shall--immediately--implement  
 2 automatic--income-withholding-and-hoid-any-amounts-collected  
 3 in--trust--for--the--obligee---until---the---obligee---makes  
 4 application:

5 (d)--When--automatic-income-withholding-is-ordered-under  
 6 subsection-(8)(a),--the--clerk--of--court--shall--immediately  
 7 forward-a-copy-of-the-order-to-the-department:

8 (8) Unless an exception is found under [section 16] or  
 9 40-5-411 and the exception is included in the support order,  
 10 a support obligation established by judgment, decree, or  
 11 order under this section, whether temporary or final, and  
 12 each modification of an existing support obligation made  
 13 under 40-6-118 must be enforceable by immediate or  
 14 delinquency withholding, or both, under Title 40, chapter 5,  
 15 part 3 or 4. A support order that omits the exception or  
 16 that provides for a payment arrangement inconsistent with  
 17 this section is nevertheless subject to withholding for the  
 18 payment of support without need for an amendment to the  
 19 support order or for any further action by the court.

20 (9) For the purposes of income withholding as provided  
 21 in subsection (8), whenever the district court establishes  
 22 or modifies a child support obligation, the judgment,  
 23 decree, or order must include a provision requiring the  
 24 parent obligated to pay support to inform the court and, if  
 25 the department of social and rehabilitation services is

1 providing services under Title IV-D of the Social Security  
 2 Act for the enforcement of the judgment, decree, or order,  
 3 the department of:

4 (a) the name and address of the parent's current  
 5 employer;

6 (b) whether the parent has access to health insurance  
 7 through an employer or other group; and

8 (c) if insurance coverage is available, the health  
 9 insurance policy information.

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

20 **Section 3.** Section 40-5-226, MCA, is amended to read:

21 **"40-5-226. Administrative hearing -- nature -- place --**  
 22 **time -- determinations -- failure to appear -- entry of**  
 23 **final decision and order. (1) The administrative hearing is**  
 24 **defined as a "contested case".**

25 (2) At the discretion of the hearing officer, the

1 administrative hearing may be held:

2 (a) in the county of residence or other county  
3 convenient to the obligor or obligee; or

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

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

8 (4) The hearing officer shall determine the liability  
9 and responsibility, if any, of the obligor under the notice  
10 and shall enter a final decision and order in accordance  
11 with such determination.

12 (5) If the obligor fails to appear at the hearing or  
13 fails to timely request a hearing, the hearing officer, upon  
14 a showing of valid service, shall enter a decision and order  
15 declaring the amount stated in the notice to be final.

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

22 (7) Within 20 days of the hearing, the hearing officer  
23 shall enter a final ~~decison~~ decision and order. The  
24 determination of the hearing officer constitutes a final  
25 agency decision, subject to judicial review under 40-5-253

1 and the provisions of the Montana Administrative Procedure  
2 Act.

3 (8) If a support order is established under this part,  
4 any party may file a verified petition with the department  
5 alleging facts constituting a material change of  
6 circumstances. Upon the filing of such petition, the  
7 department shall issue an order to the nonpetitioning party  
8 to appear and show cause why the decision previously entered  
9 should not be prospectively modified. The order to appear  
10 and show cause, together with a copy of the verified  
11 petition, must be served by the petitioner upon all other  
12 parties in the manner provided by this part. Upon receipt of  
13 proof of service, the department shall schedule a hearing  
14 not less than 15 or more than 30 days from the date of  
15 service, unless extended for good cause shown. Prospective  
16 modification may be ordered but only upon a showing of good  
17 cause and material change of circumstances.

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

21 (10) A support debt or a support responsibility  
22 determined under this part by reason of the obligor's  
23 failure to request a hearing under this part or failure to  
24 appear at a scheduled hearing may be vacated, upon the  
25 motion of an obligor, by the hearing officer within the time

1 provided and upon a showing of any of the grounds enumerated  
2 in the Montana Rules of Civil Procedure.

3 (11) Unless the hearing officer makes a written  
4 exception under [section 16] or 40-5-411 and the exception  
5 is included in the support order, every order establishing a  
6 child support obligation, whether temporary or final, and  
7 each modification of an existing child support order under  
8 this part is enforceable by immediate or delinquency income  
9 withholding, or both, under Title 40, chapter 5, part 4. A  
10 support order that omits that provision or that provides for  
11 a payment arrangement inconsistent with this section, is  
12 nevertheless subject to withholding for the payment of  
13 support without need for an amendment of the support order  
14 or for any further action by the hearing officer.

15 (12) For the purposes of income withholding provided for  
16 in subsection (11), whenever the department establishes or  
17 modifies a child support obligation, the department's order  
18 must include a provision requiring the obligor, for as long  
19 as the department is providing support enforcement services,  
20 to keep the department informed of the name and address of  
21 the obligor's current employer, whether the obligor has  
22 access to health insurance through an employer or other  
23 group, and, if so, the health insurance policy information."

24 **Section 4.** Section 40-5-304, MCA, is amended to read:

25 **"40-5-304. When child support payments considered**

1 **delinquent.** (1) Nonpayment of child support required by any  
2 order of a district court or by a similar order of a court  
3 of another jurisdiction becomes delinquent under this part  
4 when the amount owed is equal to 3 months of child support  
5 payments.

6 (2) Child support payments may be considered delinquent  
7 under this part only in reference to a court order setting  
8 child support payments.

9 (3) In the case of support orders not subject to  
10 immediate income withholding under [section 16], including  
11 cases in which the court or administrative authority has  
12 made a finding of good cause or alternative arrangement, the  
13 income of the obligor is subject to withholding under this  
14 part beginning on the date on which the obligor is found to  
15 be delinquent in the payment of support due under a support  
16 order in an amount equal to at least 3 months' support  
17 payments. Intervening agreements or orders establishing a  
18 schedule for payment of delinquent support do not prevent  
19 income withholding under this part. For the purposes of this  
20 section, "alternative arrangement" has the meaning provided  
21 in [section 16(3)(b)]."

22 **Section 5.** Section 40-5-402, MCA, is amended to read:

23 **"40-5-402. Purpose -- applicability.** (1) The purpose of  
24 this part is to provide a more effective and efficient way  
25 to guarantee the support of dependent children by the person

1 or persons primarily responsible for such support by  
2 ensuring that the support of children is the highest  
3 priority in the allocation of a responsible parent's income.

4 (2) This part applies to all support obligations being  
5 enforced or collected by the department of social and  
6 rehabilitation services pursuant to Title IV-D of the Social  
7 Security Act.

8 (3) When the requirements of this part are met, an  
9 employer or other payor of income to a person having a  
10 support obligation under a court or administrative order  
11 must be directed to withhold from the person's income in an  
12 amount sufficient to meet the support obligation and to  
13 defray any arrearages that are due or may become due.

14 (4) Unless an exception under 40-5-411(4) is contained  
15 in a support order, withholding of income is required under  
16 this part without need for any amendment to the support  
17 order involved or any action by the court or entity that  
18 issued the support order even though the support order did  
19 not address withholding or the support order provided for  
20 other payment arrangements.

21 (5) Withholding, once commenced, applies to all current  
22 and subsequent payors of income to a person obligated to pay  
23 support until the withholding is terminated as provided by  
24 this part.

25 (6) The provisions for income withholding under this

1 part take precedence over any other law or court order."

2 **Section 6.** Section 40-5-403, MCA, is amended to read:

3 **\*40-5-403. Definitions.** As used in this part, the  
4 following definitions apply:

5 (1) "Alternative arrangement" means a written agreement  
6 signed by the obligor and obligee, and signed by the  
7 department in the case of an assignment of rights under  
8 53-2-613, that has been approved and entered in the record  
9 of the court or administrative authority issuing or  
10 modifying the support order.

11 ~~(1)~~ (2) "Department" means the department of social and  
12 rehabilitation services provided for in 2-15-2201.

13 ~~(2)~~ (3) "Income" means any form of periodic payment to a  
14 person, including earnings and wages. However, income does  
15 not include:

16 (a) any amount required by law to be withheld, other  
17 than creditor claims, including federal, state, and local  
18 taxes and social security; and

19 (b) any amounts exempted from judgment, execution, or  
20 attachment by federal or state law.

21 ~~(3)~~ (4) "Obligee" means either a person to whom a duty  
22 of support is owed or a public agency of this or another  
23 state to which a person has assigned the right to receive  
24 current and accrued support payments.

25 ~~(4)~~ (5) "Obligor" means a person who owes a duty to make

1 payments under a support order.

2 ~~(5)~~(6) "Payor" means any payor of income to an obligor  
3 on a periodic basis and includes any person, firm,  
4 corporation, association, employer, trustee, political  
5 subdivision, state agency, or any agent thereof, who is  
6 subject to the jurisdiction of the courts of this state  
7 under Rule 4B of the Montana Rules of Civil Procedure.

8 ~~(6)~~(7) "Support order" means an order of the district  
9 court of the state of Montana, an order of a court of  
10 appropriate jurisdiction of another state, an administrative  
11 order established pursuant to proceedings under part 2 of  
12 this chapter, or an order established by administrative  
13 hearing process of an agency of another state with functions  
14 similar to those of the department set forth in part 2 of  
15 this chapter, that provides a set and determinable amount  
16 for temporary or final periodic payment of funds for the  
17 support of a child. Support order further includes the  
18 following:

19 (a) an order for reimbursement of public assistance  
20 money paid by a public agency for the benefit of a minor  
21 child;

22 (b) an order for maintenance to be paid to a former  
23 spouse when the former spouse is the custodial parent of a  
24 child for whom child support is awarded under the same  
25 order; and

1 (c) an order requiring payment of interest due on  
2 unpaid judgments for child support."

3 **Section 7.** Section 40-5-411, MCA, is amended to read:

4 ~~"40-5-411. Income Immediate income withholding. (1) If~~  
5 ~~an obligation for support is being enforced by the~~  
6 ~~department pursuant to Title IV-B of the Social Security Act~~  
7 ~~and the obligation has been established as required by law~~  
8 ~~or administrative process, income due or to become due~~  
9 ~~within this state to the obligor is subject to withholding~~  
10 ~~procedures under this part if:~~

11 ~~(a) except as provided in 40-4-204 and 40-6-116, a~~  
12 ~~support obligation is initially decreed and ordered or~~  
13 ~~modified after January 1, 1990, by a district court or~~  
14 ~~administrative process, regardless of whether child support~~  
15 ~~payments are in arrears, or~~

16 ~~(b) the obligor is found to owe a combination of unpaid~~  
17 ~~child support under a support order in an amount equal to or~~  
18 ~~in excess of 1 month's support payment; (1) Except as~~  
19 ~~provided in subsection (4), in the case of a child support~~  
20 ~~order, whether temporary or final, that is issued by a court~~  
21 ~~or administrative authority of this state after January 1,~~  
22 ~~1990, the income of the obligor is subject to immediate~~  
23 ~~withholding under this part regardless of whether support~~  
24 ~~payments are in arrears.~~

25 (2) When the requirements of this part have been met,

1 ~~the department, without necessity for amendment of the~~  
 2 ~~support order or further order by a court or other entity,~~  
 3 ~~shall issue an order directing the obligor's employer or~~  
 4 ~~other payor to withhold and deliver to the department such~~  
 5 ~~amount of the obligor's income as will be sufficient to meet~~  
 6 ~~the support obligation imposed by the support order and to~~  
 7 ~~defray arrearages, if any, due when the withholding order~~  
 8 ~~takes place. After October 1, 1991, when a support order of~~  
 9 another state is registered in Montana under the provisions  
 10 of 40-5-137 or other applicable law, the support obligation  
 11 is subject to immediate income withholding under this  
 12 section.

13 ~~(3) The provisions for income withholding under this~~  
 14 ~~part take precedence over any other law or court order. The~~  
 15 ~~department may direct the payor of income to the obligor to~~  
 16 ~~commence the withholding of the obligor's income on:~~

17 (a) the effective date of the support order or the date  
 18 of registration of the support order; or

19 (b) the date, if any, that the department becomes  
 20 authorized by law to provide child support enforcement  
 21 services.

22 (4) An obligor's income is not subject to immediate  
 23 withholding if the court or administrative authority that  
 24 issued or modified the support order finds:

25 (a) that there is good cause not to require immediate

1 withholding; or

2 (b) that there is an alternative arrangement between  
 3 the parties for the payment of support that provides  
 4 sufficient security to ensure compliance with the  
 5 arrangement.

6 (5) For the purposes of subsection (4), any finding of  
 7 good cause not to require immediate income withholding must  
 8 be based on at least:

9 (a) a written determination and explanation by the  
 10 court or administrative authority as to why implementation  
 11 of immediate income withholding would not be in the best  
 12 interests of the child; and

13 (b) proof of timely payment of previously ordered  
 14 support in cases involving the modification of support  
 15 orders.

16 (6) Immediate withholding under this section terminates  
 17 only:

18 (a) upon the conditions provided in 40-5-417; or

19 (b) at the request of the obligor if:

20 (i) withholding has not been previously terminated and  
 21 subsequently initiated under 40-5-412 because of a  
 22 delinquency; and

23 (ii) and the obligor meets one of the exemptions under  
 24 subsection (4)."

25 **Section 8.** Section 40-5-412, MCA, is amended to read:

1       "40-5-412. Initiation of Delinquency income withholding  
 2 procedures. (1) In a case concerning a support obligation  
 3 referred to in 40-5-411, the department shall immediately  
 4 issue an order under 40-5-415 for the payment of current  
 5 support. In the case of support orders not subject to  
 6 immediate income withholding under 40-5-411, including cases  
 7 in which the court or administrative authority has made a  
 8 finding of good cause or determines that an alternative  
 9 arrangement exists, the income of the obligor is subject to  
 10 withholding under this part beginning on the date on which  
 11 the obligor is found to owe unpaid support under the support  
 12 order in an amount equal to or in excess of 1 month's  
 13 support payment. Intervening agreements or orders  
 14 establishing a schedule for payment of delinquent support do  
 15 not prevent income withholding under this part.

16       (2) In any other case, the department shall monitor and  
 17 track all support payments required by the support order. If  
 18 at any time these records indicate that the obligor owes a  
 19 combination of unpaid support equal to or in excess of 1  
 20 month's support, the department shall commence proceedings  
 21 to initiate withholding of the obligor's income as provided  
 22 in this part. Notwithstanding the provisions of subsection  
 23 (1), income withholding must be initiated, without regard to  
 24 whether there is an arrearage, on the earliest of:

25       (a) the date the obligor requests that withholding

1 begin; or

2       (b) at the request of the obligee if the obligor is  
 3 found, after an opportunity for hearing under 40-5-414, to  
 4 be delinquent under the terms of an alternative arrangement  
 5 for the payment of support.

6       (3) To accomplish the purpose of subsection ~~(2)~~(1), the  
 7 department shall monitor all support payments not otherwise  
 8 subject to immediate withholding. To facilitate monitoring,  
 9 the department by written notice to the obligor may direct  
 10 an obligor who does not owe unpaid child support equal to or  
 11 in excess of 1 month's support payment to pay all support  
 12 through the department, notwithstanding any court order  
 13 directing payments to be made to the obligee or clerk of  
 14 court.

15       (4) Whenever an obligation for support is paid through  
 16 the support enforcement and collections unit of the  
 17 department, the department must forward payment to the  
 18 obligee within 10 days of the department's receipt of  
 19 payment from the obligor. The only basis for contesting  
 20 withholding under this section is a mistake of fact, which  
 21 includes a mistake:

22       (a) concerning the obligor's identity;  
 23       (b) concerning the existence of the support obligation;  
 24       (c) concerning the amount of support to be paid;  
 25       (d) in the determination that the delinquent support

1 amounts owed are equal to or greater than 1 month's support  
2 payment;

3 (e) in computation of delinquent support amounts owed;  
4 or

5 (f) in the allegation that the obligor is in default of  
6 an alternative agreement."

7 **Section 9.** Section 40-5-413, MCA, is amended to read:

8 **"40-5-413. Notice of intent to withhold income.** (1)  
9 Prior to service of an initial order or a modification of an  
10 existing order on the payor under 40-5-415, the department  
11 shall serve upon the obligor a notice of the intended action  
12 if when:

13 (a) the--department--previously-has-not-issued-an-order  
14 to-withhold--and--it--has--determined--the--obligor--owes--a  
15 combination--of--unpaid--support--equal-to-or-in-excess-of-1  
16 month's--support income withholding is initiated under  
17 40-5-412 because of a delinquency;

18 (b) additional arrearages have accrued subsequent to  
19 the issuance of an order to withhold and the department  
20 proposes to add those arrears to the withholding order; or

21 (c) immediate withholding has commenced for current  
22 support and there are arrearages due for a period prior to  
23 entry of the order to withhold that the department proposes  
24 to add to the withholding order.

25 (2) The notice must contain a statement:

1 (a) of the amount to be withheld, including a  
2 computation showing the period and total amount of the  
3 arrearages as of the date of the notice;

4 (b) that withholding applies to all current and  
5 subsequent payors;

6 (c) of the obligor's right to a hearing under 40-5-414  
7 to contest the implementation initiation of income  
8 withholding or modification of an existing order on the  
9 ground that the intended action is not proper because of  
10 mistake of fact, as provided in 40-5-412(4); and

11 (d) of the period of time within which the obligor must  
12 request a hearing and that failure to request the hearing  
13 within the time limit will result in income withholding  
14 orders being served upon the payor for the amount stated in  
15 the notice; and

16 (e) in those cases in which withholding is being  
17 initiated at the request of an obligee without regard to  
18 whether there is an arrearage as provided in 40-5-412(2), a  
19 statement that the obligor can require the obligee to appear  
20 and show proof that the obligor is not meeting the terms of  
21 the alternative arrangement.

22 (3) The notice must be served upon the obligor  
23 personally or by certified mail."

24 **Section 10.** Section 40-5-414, MCA, is amended to read:

25 **"40-5-414. Hearing.** (1) The To contest the withholding



1 of income initiated under 40-5-412 because of a delinquency,  
 2 an obligor may within 10 days of being served with notice of  
 3 the intended action intent to withhold income under 40-5-413  
 4 file with the department a written request for an  
 5 administrative hearing to be held pursuant to the contested  
 6 case provisions of Title 2, chapter 4, part 6.

7 ~~(2) In a case initiated because an arrearage has~~  
 8 ~~accrued or because additional income is to be withheld to~~  
 9 ~~satisfy additional arrearages and in which the obligor~~  
 10 ~~requests a hearing within the time allowed, the intended~~  
 11 ~~action may not take effect until the conclusion of the~~  
 12 ~~hearing or the date of the hearing if the obligor fails to~~  
 13 ~~appear at a scheduled hearing.~~

14 ~~(3)(2)~~ Venue for the administrative hearing may be in  
 15 the county where the obligor resides if the obligor resides  
 16 in this state, the county in which the payor or the payor's  
 17 agent is located, or the county in which the department or  
 18 any of its regional offices is located.

19 ~~(4)(3)~~ The administrative hearing must be held by  
 20 teleconferencing methods unless the obligor or the  
 21 department expressly requests an in-person hearing before  
 22 the hearing examiner.

23 (4) If the obligor requests a hearing within the 10-day  
 24 period:

25 (a) the delinquency income withholding by the

1 department must be stayed until conclusion of the hearing or  
 2 the date of the hearing if the obligor fails to appear at  
 3 the scheduled hearing. If the obligor is only contesting an  
 4 arrearage amount and is not contesting withholding for  
 5 current support, income withholding for current support is  
 6 not stayed.

7 (b) the department shall, within 45 days of the service  
 8 of the notice of intent to withhold income, inform the  
 9 obligor of the hearing results concerning whether income  
 10 withholding will take place.

11 (5) The department shall issue an order to withhold  
 12 income in accordance with 40-5-415 if:

13 (a) the obligor fails to file a written request for  
 14 hearing with the department within the specified 10-day  
 15 period;

16 (b) the obligor fails to appear at a scheduled hearing;

17 (c) the hearing officer determines from the evidence  
 18 that the obligor owes unpaid support equal to or in excess  
 19 of 1 month's support obligation and the amount of arrearages  
 20 owing is determined and adjudged to be a fixed and certain  
 21 sum; or

22 (d) in cases in which income withholding is being  
 23 initiated at the request of an obligee without regard to  
 24 whether there is an arrearage, the hearing examiner  
 25 determines from the evidence that the obligor did not meet

1 the terms of the alternative arrangement.

2 ~~(5)~~(6) For purposes of the hearing process, arrearages  
3 of support must be computed on the basis of the amount owed  
4 and unpaid on the date the obligor was served with the  
5 notice of intent to withhold income, ~~and the fact that the~~  
6 ~~obligor may have later paid the arrearage does not remove~~  
7 ~~from the hearing examiner the authority to direct the~~  
8 ~~department to order income withholding.~~ When the department  
9 is enforcing a current support obligation, payment of the  
10 arrearage after service of the notice is not a basis for not  
11 initiating income withholding.

12 ~~(6)~~(7) In a case initiated because an arrearage has  
13 accrued or because additional income is being withheld to  
14 satisfy additional arrearages, the obligor, within 45 days  
15 of service of the notice of intent to withhold income, must  
16 be informed of the hearing decision on whether income  
17 withholding will take place.

18 ~~(7)~~(8) If the obligor fails to request a hearing within  
19 10 days or fails to appear at a scheduled hearing or if the  
20 hearing examiner determines that the obligor owes a  
21 combination of unpaid support equal to or in excess of 1  
22 month's support obligation, the department shall proceed  
23 with the intended action in accordance with 40-5-415."

24 **Section 11.** Section 40-5-415, MCA, is amended to read:

25 "40-5-415. Order to withhold income. (1) When the

1 requirements of this part have been met, the department  
2 shall immediately serve an order or modification order to  
3 withhold and deliver income upon any payor or combination of  
4 payors. The order must:

5 (a) direct the payor and successor payors to withhold  
6 from the obligor's income each month the amount specified in  
7 the order if sufficient funds are available;

8 (b) direct the payor to deliver the amount withheld to  
9 the department in the same month in which the funds were  
10 withheld;

11 (c) state that the order is binding on the payor until  
12 further notice by the department; and

13 (d) state the rights and duties of the payor under this  
14 part; and

15 (e) include a statement that the obligor is required  
16 under a support order to provide health insurance coverage  
17 for the obligor's child, if appropriate.

18 (2) An order or modification order to withhold and  
19 deliver the obligor's income made under this section is  
20 binding upon the payor immediately upon service of the order  
21 upon the payor. Service of the order or modification order  
22 to withhold may be made either personally or by certified  
23 mail.

24 (3) Whenever there is more than one payor, the  
25 department may, in its discretion, apportion the total

1 amount to be withheld each month among payors."

2 **Section 12.** Section 40-5-416, MCA, is amended to read:

3 **"40-5-416. Determination of amount of income to be**  
4 **withheld.** (1) (a) Subject to the limitations provided in  
5 subsection (2), the amount of funds to be withheld each  
6 month from the obligor's income must be the amount of money  
7 necessary to pay current installments of support as they  
8 become due and payable.

9 (b) If income is being withheld to satisfy an  
10 arrearage, the amount of funds to be withheld must include  
11 the greater of:

12 (i) the amount of money that, when deducted in equal  
13 amounts each month, will pay all outstanding support  
14 arrearages and interest, if any, within 2 years; or

15 (ii) 25% of the obligor's income.

16 (c) If income is being withheld ~~to satisfy an arrearage~~  
17 under this part, the department may allow a fee not to  
18 exceed \$5 each month, which may be withheld by the payor as  
19 compensation for the administrative costs of each  
20 withholding.

21 (2) The maximum amounts withheld from the obligor's  
22 wages or salaries, including fees, may not exceed the  
23 maximum amount permitted under section 303(b) of the federal  
24 Consumer Credit Protection Act, 15 U.S.C. 1673(b), as  
25 amended.

1 (3) At any time, if the obligor can show that  
2 substantial hardship will result if the maximum permissible  
3 withholding is implemented or continued, the department for  
4 cause shown may in its discretion determine a lesser amount  
5 to be withheld each month in satisfaction of support  
6 arrearages."

7 **Section 13.** Section 40-5-417, MCA, is amended to read:

8 **"40-5-417. Modification or termination of withholding**  
9 **orders.** (1) The department may at any time modify the order  
10 to withhold income to:

11 (a) reflect payment in full of the arrearages by income  
12 withholding or otherwise;

13 (b) recognize an increase or decrease in the support  
14 order; or

15 (c) indicate any other reason the amount to be withheld  
16 is to be reduced or changed.

17 (2) If an arrearage occurs while the department is  
18 collecting an amount of money necessary to pay current  
19 installments of support as they become due and payable, the  
20 department may adjust the amount of income required to be  
21 withheld to also satisfy the arrearage, as provided in this  
22 part.

23 (3) An income withholding order terminates only when  
24 the department is no longer authorized under the law to  
25 collect support or, when appropriate, services rendered

1 under 40-5-203 have come to an end or when the obligation to  
2 pay support is terminated and all arrearages are paid in  
3 full, whichever occurs first.

4 (4) The payment in full of any arrearage amount may not  
5 be the sole basis for termination of withholding as long as  
6 there is a support obligation enforceable by the  
7 department."

8 **Section 14.** Section 40-5-421, MCA, is amended to read:

9 "40-5-421. Duties of payor. (1) A payor who has been  
10 served with an order to withhold and deliver income shall  
11 deduct the amount designated in the order beginning not  
12 later than the first pay period that occurs after 14 days  
13 from the service of the order. The payor shall, within 10  
14 working days of the date the obligor is paid, promptly  
15 deliver the amount withheld to the department as directed by  
16 the order or in accordance with any subsequent modification  
17 of the order received from the department. The payor shall  
18 include with the payment a statement indicating the date the  
19 amount was withheld from the obligor's income.

20 ~~{2}--If-the-obligor's-pay-periods-are-at-intervals-of~~  
21 ~~less-than-1-month,--the-payor-may-withhold-an-equal-amount-at~~  
22 ~~each-pay-period-cumulatively-sufficient-to-pay-the-monthly~~  
23 ~~withholding-as-directed-by-the-withholding-order.~~

24 ~~{3}(2)~~ Whenever the payor is obligated to withhold  
25 income for more than one obligor, the payor may combine all

1 amounts withheld into a single payment for that month with  
2 the portion thereof which is attributable to each obligor  
3 separately designated.

4 ~~{4}(3)~~ Whenever there is more than one order for  
5 withholding against a single obligor, the payor must comply  
6 with the orders in the sequence in which they were served  
7 upon the payor and must honor all withholding orders to the  
8 extent that the total amount withheld from the obligor's  
9 wages or salary does not exceed the limits set in 40-5-416.

10 ~~{5}(4)~~ The payor must promptly notify the department of  
11 the termination of the obligor's employment or other source  
12 of income and provide the obligor's last-known address and  
13 the name and address of the obligor's new employer or other  
14 source of income, if known to the payor."

15 **Section 15.** Section 40-5-433, MCA, is amended to read:

16 "40-5-433. Additional duties of department in  
17 interstate income withholding. ~~{1}--Unless-the-public-agency~~  
18 ~~of--the--foreign--jurisdiction--makes--application--to--the~~  
19 ~~department-for-additional-services,--the--department--is--not~~  
20 ~~required-to-locate-the-obligor-or-to-locate-payors-of-income~~  
21 ~~to--the--obligor,--if-the-application-for-interstate-service~~  
22 ~~provided-for-in-40-5-431-and-40-5-432-fails-to-provide--this~~  
23 ~~information--or--the--information--is--determined--to--be~~  
24 ~~incorrect,--the-department-may-return-the-application-without~~  
25 ~~further-proceeding-under-this-part.~~

1       ~~(2)~~(1) If the department determines that the obligor is  
 2 no longer employed in this state or no longer derives income  
 3 within this state, the department shall promptly notify the  
 4 agency which requested income withholding of the changes and  
 5 shall forward to that agency all information it has with  
 6 respect to the obligor's new address and the name and  
 7 address of the obligor's new employer or other source of  
 8 income.

9       ~~(3)~~(2) The department shall promptly transmit payments  
 10 received on an income withholding order to the agency or  
 11 person designated in the interstate application."

12       NEW SECTION. Section 16. Immediate income deductions.

13       (1) Notwithstanding any provision in this part requiring a  
 14 delinquency as a prerequisite to an order for income  
 15 deductions, except as provided in subsection (2), the  
 16 salaries and wages of a person obligated to pay child  
 17 support by an order of a district court issued after October  
 18 1, 1991, are subject to an immediate deduction order under  
 19 40-5-308 on the effective date of the order, regardless of  
 20 whether there is a delinquency.

21       (2) An obligor's salaries and wages are not subject to  
 22 deduction under this section in any case in which the  
 23 district court finds:

24       (a) that there is good cause not to require immediate  
 25 deduction; or

1       (b) that there is an alternative arrangement between  
 2 the parties for the payment of support that provides  
 3 sufficient security to ensure compliance with the  
 4 arrangement.

5       (3) (a) For the purposes of subsection (2), a finding  
 6 of good cause not to require immediate deduction must, at a  
 7 minimum, be based on:

8       (i) a written determination and explanation by the  
 9 district court as to why implementation of immediate  
 10 deductions is not in the best interests of the child; and

11       (ii) in cases involving the modification of support  
 12 orders, proof of timely payment of previously ordered  
 13 support.

14       (b) As used in subsection (2)(b), "alternative  
 15 arrangement" means a written agreement that is signed by the  
 16 obligor and obligee and, in cases in which there is an  
 17 assignment of support rights under 53-2-613, signed by the  
 18 department of social and rehabilitation services, and that  
 19 has been approved and entered into the record by the  
 20 district court that issued or modified the support order.

21       (4) The clerk of court shall administer immediate  
 22 income deductions under this section. The clerk of court, at  
 23 any time after docketing the support order or modification  
 24 of a support order, at the request of the obligee, and  
 25 without need for amendment to the support order or for any

1 further action by the district court, shall issue the order  
 2 for income deductions provided for by 40-5-308 for service  
 3 upon the obligor's employer. The deduction order must direct  
 4 the employer to promptly deliver the amount deducted to the  
 5 clerk of court for distribution to the obligee.

6 (5) Wage deductions under this section may be  
 7 terminated only when:

8 (a) the obligation to pay support has terminated and  
 9 all arrearages are paid in full;

10 (b) the obligor requests termination and the obligee  
 11 and obligor have entered into an alternative arrangement as  
 12 set forth in subsection (2)(b); or

13 (c) the department has superseded the deduction order  
 14 under authority of Title 40, chapter 5, part 4.

15 (6) If a delinquency occurs subsequent to issuance of  
 16 an immediate deduction order or if arrearages occur prior to  
 17 beginning the deductions, the arrearages may be added to the  
 18 deduction order only after compliance with the notice of  
 19 hearing requirements of 40-5-305.

20 (7) (a) After October 1, 1991, whenever a support order  
 21 is registered as provided by 40-5-137 or other law, the  
 22 support order is subject to immediate orders to deduct  
 23 income under this section.

24 (b) Withholding income under this section must be  
 25 imposed when an obligor has wages or salaries derived from

1 within this state and the support order was issued in  
 2 another state.

3 (8) This section applies only to support orders that  
 4 are not being enforced by the department under Title IV-D of  
 5 the Social Security Act. The withholding of income for  
 6 support orders being enforced by the department is provided  
 7 for in Title 40, chapter 5, part 4, and those procedures, if  
 8 applicable, supersede the provisions of this section.

9 **Section 17.** Section 40-5-309, MCA, is amended to read:

10 **"40-5-309. Amount to be deducted from income.** (1) The  
 11 amount of money to be deducted each pay period from the  
 12 obligor's income shall be:

13 (a) (i) the amount of money necessary to pay current  
 14 installments of child support as they become due and  
 15 payable; plus

16 (ii) the amount of money which, when deducted in equal  
 17 amounts each payday, will pay off all outstanding child  
 18 support payments delinquent within 2 years; or

19 (b) not less than 25% of the obligor's disposable  
 20 earnings ~~but--may--not--be--more--than--the--maximum--amount~~  
 21 ~~allowable--by--federal--garnishment--law--if--the--sum--provided--in~~  
 22 ~~subsection-(1)(a)-exceeds-that-amount.~~

23 (2) The district court may allow a fee of not to exceed  
 24 \$5 per deduction, which the employer may deduct from the  
 25 obligor's wages or salary for the expense of administering

1 the deduction.

2 (3) The total amount to be deducted under subsections  
 3 (1) and (2) may not exceed the maximum amount permitted  
 4 under section 303(b) of the Consumer Credit Protection Act,  
 5 15 U.S.C. 1673(b), as amended.

6 ~~(3)~~(4) The Except as provided in [section 16], the  
 7 child support income deduction shall cease when there is no  
 8 past-due child support owing unless the district court  
 9 orders continued income deductions for payment of child  
 10 support installments as they become due and payable."

11 NEW SECTION. Section 18. Health insurance coverage --  
 12 order of enrollment. (1) Whenever the obligor is required by  
 13 a court or administrative order or is required under  
 14 40-5-208(1)(b) to provide health insurance coverage for a  
 15 child and the obligor fails to provide the coverage or lets  
 16 it lapse, the department may enforce the obligation under  
 17 this section if a payor of income to an obligor has a health  
 18 insurance plan which can be extended to cover the obligor's  
 19 child.

20 (2) (a) Prior to service of an initial order of  
 21 enrollment on a payor, the department shall serve the  
 22 obligor a notice of its intent to order an enrollment, by  
 23 certified mail or by personal service.

24 (b) Within 20 days after service of the notice, the  
 25 obligor may provide written proof to the department that

1 health insurance coverage for the child has been obtained or  
 2 applied for. If proof is received by the department within  
 3 20 days after service, further action may not be taken by  
 4 the department except in the event of a lapse of coverage as  
 5 provided in subsection (3). If proof of health insurance  
 6 coverage is not timely received by the department, an order  
 7 of enrollment may be issued in accordance with subsection  
 8 (3).

9 (3) If the obligor fails to timely provide proof of  
 10 coverage or if after timely proof of coverage the obligor  
 11 lets the coverage lapse, the department may, without further  
 12 notice to the obligor, serve an order of enrollment on the  
 13 payor. The payor may be the same payor who is subject to an  
 14 order to withhold under this part or any other payor or  
 15 subsequent payor.

16 (4) (a) Upon receipt of an order of enrollment, the  
 17 payor shall respond to the department within 20 days and  
 18 confirm that the child:

19 (i) has been enrolled in the health insurance plan;  
 20 (ii) will be enrolled in the next enrollment period; or  
 21 (iii) cannot be covered because the child resides  
 22 outside the plan's service area or the contracted terms of  
 23 the plan do not permit an extension of coverage to the  
 24 child.

25 (b) Upon enrollment of the child, the payor shall

1 withhold from the obligor's income an amount equal to the  
2 required premium, if any, and apply the withheld amount to  
3 the premium as necessary.

4 (c) If more than one plan is offered by the payor and  
5 each plan may be extended to the child, the child must be  
6 enrolled in the same plan as the obligor. If the obligor's  
7 plan does not provide coverage that is accessible to the  
8 child, the child must be enrolled in the least expensive  
9 plan available to the obligor.

10 (d) Once an initial order of enrollment is authorized  
11 under this section, the authority to issue orders to  
12 subsequent payors and to bind payors to the orders  
13 terminates only when:

14 (i) the department is no longer providing enforcement  
15 services;

16 (ii) the obligation to provide health insurance coverage  
17 is terminated according to law; or

18 (iii) the department finds under subsection (5) that the  
19 premium charged to the obligor is not reasonable under the  
20 circumstances of the obligor's case.

21 (e) A payor served with an order of enrollment shall  
22 inform the department of the name of the health insurance  
23 coverage provider or insurer and the extent of the coverage.  
24 The payor shall make available to the department or obligee  
25 any necessary claim forms or enrollment membership cards. If

1 coverage is terminated for any reason, the payor shall  
2 inform the department of the termination within 20 days of  
3 the termination date.

4 (5) (a) Whenever an obligor is being charged with a  
5 premium under subsection (3) and the obligor believes the  
6 amount of the premium to be unreasonable under the  
7 circumstances, the obligor may make a written request to the  
8 department for an administrative hearing to determine the  
9 reasonableness of the premium charge.

10 (b) The department shall schedule the hearing within 20  
11 days after receipt of the obligor's request. The hearing  
12 must be conducted by telephone conferencing methods unless  
13 the hearing officer determines an in-person hearing is  
14 appropriate.

15 (c) If the hearing officer finds that the premium  
16 charged the obligor is causing an undue hardship on the  
17 obligor or the child, the department shall withdraw any  
18 order of enrollment served on a payor. A withdrawal is  
19 temporary and remains in effect only until a significant  
20 change in circumstances occurs, such as an improvement in  
21 the obligor's ability to pay the premium or an increase in  
22 the child's need for health insurance coverage. Upon a  
23 change of circumstances, the department may again serve the  
24 order of enrollment on the payor. After service of the  
25 order, the obligor may request an administrative hearing to



1 determine the reasonableness of premiums considering the new  
2 circumstances.

3 (d) If the hearing officer finds that the premium is  
4 reasonable under the circumstances, the obligor may not  
5 request any further hearings under this subsection (5)  
6 unless there is a significant change in circumstances from  
7 that existing at the time the finding was made.

8 (6) A notice under this section may be combined with a  
9 notice of intent to withhold income under 40-5-413 or with  
10 any other notice served on an obligor under part 2 of this  
11 chapter.

12 (7) This section may not be construed to limit the  
13 right of an obligee or the department to bring any other  
14 action available under the law to enforce an obligation to  
15 provide health insurance coverage for a child.

16 (8) This section may not be construed to require a  
17 health maintenance organization, health care service  
18 provider, or insurer to extend coverage to a child who  
19 resides outside its service area or to deviate from  
20 contractual provisions and restrictions.

21 (9) An obligor whose child is enrolled in a health  
22 insurance plan under this section shall cooperate with the  
23 insurer, health care service provider, department, and  
24 child's custodian to obtain and use the health insurance  
25 plan.

1 NEW SECTION. **Section 19. Liability of payor** --  
2 **penalties.** (1) A payor is liable for a fine of up to \$1,000  
3 for each instance in which the payor fails or refuses,  
4 within 20 days of receipt of an order of enrollment, to:

5 (a) enroll the obligor's child in the health insurance  
6 plan; or

7 (b) make a written response to the department, stating  
8 that the child:

9 (i) will be enrolled in the next available open  
10 enrollment period; or

11 (ii) cannot be covered and explaining the reasons why  
12 coverage cannot be provided.

13 (2) A payor who enrolls a child in a health insurance  
14 plan in compliance with an order of enrollment under  
15 [section 18] is exempt from any liability to the obligor  
16 that may result from the enrollment.

17 NEW SECTION. **Section 20. Health insurance coverage** --  
18 **notice of intent to purchase.** (1) The department may serve a  
19 notice of intent to purchase health insurance coverage on an  
20 obligor by certified mail or personal service, when:

21 (a) the obligor is ordered by a court or administrative  
22 order or is required under 40-5-208(1)(b) to provide health  
23 insurance coverage for a child;

24 (b) the obligor fails to provide such coverage or lets  
25 it lapse;

1 (c) there is no payor upon whom an order of enrollment  
2 under [section 18] is applicable; and

3 (d) the child is currently eligible for medical  
4 assistance benefits under Title 53.

5 (2) The notice must specify the type and cost of the  
6 proposed health insurance coverage. Within 20 days of the  
7 date of service of the notice, the obligor shall:

8 (a) provide written proof to the department that the  
9 obligor has either applied for or obtained coverage  
10 accessible to the child; or

11 (b) request an administrative hearing to show that the  
12 proposed purchase of coverage and the premium chargeable to  
13 the obligor will cause undue hardship.

14 (3) If a hearing is requested, the department shall  
15 schedule the hearing within 20 days of the receipt of the  
16 request. The hearing must be held by telephone conferencing  
17 methods unless the hearing officer determines that an  
18 in-person hearing is appropriate.

19 (4) If the obligor fails to timely provide written  
20 proof of coverage or if the hearing officer finds that the  
21 proposed purchase of coverage will not cause an undue  
22 hardship on the obligor, the department shall purchase the  
23 health insurance coverage specified in the notice. The  
24 amount of the premium may be added to the obligor's child  
25 support debt and may be collected without further notice by

1 income withholding under this part or by any other remedy  
2 available to the department.

3 (5) Health insurance coverage purchased under this  
4 section must be continued by the department until:

5 (a) the child is no longer eligible for medical  
6 assistance benefits;

7 (b) the obligor is no longer responsible under the law  
8 for providing coverage for the child;

9 (c) the obligor provides written proof to the  
10 department that other coverage accessible to the child has  
11 been obtained; or

12 (d) relief is granted under subsection (6).

13 (6) (a) If a change of circumstances occurs after  
14 health insurance coverage is purchased and the obligor  
15 believes the change makes the provision of health insurance  
16 coverage an undue hardship, the obligor may make a written  
17 request for an administrative hearing to reconsider the  
18 matter of continuing to purchase coverage.

19 (b) If a hearing is requested, the department shall  
20 schedule the hearing within 20 days of the receipt of the  
21 request. The hearing must be conducted by telephone  
22 conferencing methods unless the hearing officer determines  
23 that an in-person hearing is appropriate.

24 (c) If the hearing officer finds that the continued  
25 purchase of coverage will cause undue hardship on the

1 obligor, the department shall terminate the coverage.

2 (d) If the hearing officer finds that the continued  
3 purchase of coverage will not cause undue hardship, the  
4 department shall continue to purchase the coverage, as  
5 appropriate, under the provisions of subsection (5).

6 (7) An obligor whose child is enrolled in a health  
7 insurance plan under this section shall cooperate with the  
8 insurer, health care provider, department, and child's  
9 custodian to obtain and use the health insurance plan.

10 NEW SECTION. Section 21. Payors to provide information  
11 -- exemption from liability. (1) For the purposes of this  
12 part, upon written request by the department, a payor or  
13 former payor and any labor union of which the obligor is or  
14 may have been a member shall provide the department with the  
15 following information, if known, regarding the obligor:

- 16 (a) last-known residential address;  
17 (b) social security number;  
18 (c) dates of employment or union membership;  
19 (d) amounts of wages, salaries, commissions, and other  
20 earnings paid to the obligor during any period when the  
21 department provided support enforcement services; and  
22 (e) whether health insurance coverage is or was  
23 available to the obligor through the payor or union and, if  
24 so:

25 (i) the name of the insurer or health care provider;

1 (ii) the policy numbers or other identifiers; and

2 (iii) the persons covered.

3 (2) A payor who discloses information to the department  
4 in compliance with this section is exempt from any liability  
5 to the obligor that may result from such disclosure.

6 NEW SECTION. Section 22. Repealer. Section 40-5-425,  
7 MCA, is repealed.

8 NEW SECTION. Section 23. Codification instruction. (1)  
9 [Section 16] is intended to be codified as an integral part  
10 of Title 40, chapter 5, part 3, and the provisions of Title  
11 40, chapter 5, part 3, apply to [section 16].

12 (2) [Sections 18 through 21] are intended to be  
13 codified as an integral part of Title 40, chapter 5, part 4,  
14 and the provisions of Title 40, chapter 5, part 4, apply to  
15 [sections 18 through 21].

16 NEW SECTION. Section 24. Severability. If a part of  
17 [this act] is invalid, all valid parts that are severable  
18 from the invalid part remain in effect. If a part of [this  
19 act] is invalid in one or more of its applications, the part  
20 remains in effect in all valid applications that are  
21 severable from the invalid applications.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0923, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act to revise procedures pertaining to income withholding for the payment of child support to conform those procedures to federal regulations; to provide for enforcement of health insurance obligations through income withholding.

ASSUMPTIONS:

1. Legislation to allow income withholding in non IV-D cases will have no fiscal impact. Any lost revenue due to a case closure with (CSED) will be counteracted by decreased time spent on case activity.
2. Legislation to provide for enforcement of health insurance obligations through income withholding will have the following impact:
  - a. The modification to current level budget includes the funding needed to proceed with this proposed legislation. Proposed legislation will be used in conjunction with already-existing medical support legislation (40-5-208 MCA).
  - b. Approximately 50% of all obligors will not have insurance available through employment or union.
  - c. Approximately 10% of all obligors will be served with a notice to obtain health insurance.
  - d. Approximately 1.5% of all obligors who have insurance available will claim insurance is too costly.
  - e. Approximately 50% of obligors who claim insurance is too costly will be ordered by the hearing officer to obtain the insurance. CSED will use income withholding to pay the premiums.
  - f. Approximately 50% of obligors noticed to provide health insurance will not respond, resulting in a default order.
  - g. The cost of insurance premiums may result in downward modifications of monthly child support obligations. This could affect state share of child support collections.
  - h. The Third Party Liability Unit of SRS has estimated a savings to Medicaid of \$1,522 per child per 18 month period (\$84.56 per month) for every child covered by health insurance.
  - i. Each case, on average, contains 1.2 children.
  - j. The caseload will grow by 3,865 cases by Dec., 1992. 54% of the caseload will be AFDC.

FISCAL IMPACT:

see next page

  
ROD SUNDSTED, BUDGET DIRECTOR      2-22-91  
Office of Budget and Program Planning      DATE

  
PAULA A. DARKO, PRIMARY SPONSOR      2/25/91  
DATE

Fiscal Note for HB0923, as introduced

HB 923

FISCAL IMPACT:

Department of Social and Rehabilitation Services:

	<u>FY '92</u>			<u>FY '93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Revenues:</u>						
Medicaid Savings	0	108,575	108,575	0	340,946	340,946
<u>Revenue Distribution:</u>						
General Fund	0	30,455	30,455	0	95,226	95,226
Federal Special	<u>0</u>	<u>78,120</u>	<u>78,120</u>	<u>0</u>	<u>245,720</u>	<u>245,720</u>
Total	0	108,575	108,575	0	340,946	340,946
Impact to General Fund			30,455			95,226

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The savings to medicaid should increase as additional health insurance is provided for medicaid recipients.

HB 923

APPROVED BY COMMITTEE ON JUDICIARY

1 House BILL NO. 923
2 INTRODUCED BY Nanko
3 BY REQUEST OF THE DEPARTMENT OF
4 SOCIAL AND REHABILITATION SERVICES

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE PROCEDURES
7 PERTAINING TO INCOME WITHHOLDING FOR THE PAYMENT OF CHILD
8 SUPPORT TO CONFORM THOSE PROCEDURES TO FEDERAL REGULATIONS;
9 TO PROVIDE FOR ENFORCEMENT OF HEALTH INSURANCE OBLIGATIONS
10 THROUGH INCOME WITHHOLDING; AMENDING SECTIONS 40-4-204,
11 40-5-226, 40-5-304, 40-5-309, 40-5-402, 40-5-403, 40-5-411,
12 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417,
13 40-5-421, 40-5-433, AND 40-6-116, MCA; AND REPEALING SECTION
14 40-5-425, MCA."

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

17 Section 1. Section 40-4-204, MCA, is amended to read:

18 "40-4-204. Child support -- orders to address health
19 insurance -- automatic withholding of child support. (1) In
20 a proceeding for dissolution of marriage, legal separation,
21 maintenance, or child support, the court shall order either
22 or both parents owing a duty of support to a child to pay an
23 amount reasonable or necessary for his support, without
24 regard to marital misconduct.

25 (2) The court shall consider all relevant factors,

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



1 guidelines to determine child support, it shall state its  
2 reasons for finding that the application of such standards  
3 and guidelines is unjust to the child or a party or is  
4 inappropriate in that particular case.

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

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

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

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

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

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

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

13 ~~{5}--(a)--Except-as-provided-in-subsection--{5}(b)--each~~  
14 ~~district--court--judgment,--decree,--or-order-establishing-a~~  
15 ~~child-support-obligation-under-this-title,--whether-temporary~~  
16 ~~or-final,--and-each-modification-of-an-existing-child-support~~  
17 ~~order--must:~~

18 ~~{i}--provide-that-the-amount-of-child--support--must--be~~  
19 ~~withheld--from--the--obligor's--income--and--paid--to--the~~  
20 ~~department--pursuant--to--procedures--established--by--the~~  
21 ~~department-under-Title-40,--chapter-5,--part-4,--and~~

22 ~~{ii}--include--the--obligor's--social-security-number-and~~  
23 ~~the-name-and-address-of-the-obligor's-employer--and--of--any~~  
24 ~~other-payor-of-income-to-the-obligor;~~

25 ~~{b}--Income-is-not-subject-to-automatic-withholding-if:~~

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

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

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

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

24 (e) If an obligor is not subject to income withholding  
25 or is exempted from income withholding, the district court

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

7 (5) (a) Unless the court makes a written exception  
8 under [section 16] or 40-5-411 and the exception is included  
9 in the support order, a support obligation established by  
10 judgment, decree, or order under this section, whether  
11 temporary or final, and each modification of an existing  
12 support obligation under 40-4-208 must be enforced by  
13 immediate or delinquency income withholding, or both, under  
14 Title 40, chapter 5, part 3 or 4. A support order that omits  
15 the written exceptions provided in [section 16] or 40-5-411  
16 or that provides for a payment arrangement inconsistent with  
17 this section is nevertheless subject to withholding for the  
18 payment of support without need for an amendment to the  
19 support order or for any further action by the court.

20 (b) If an obligor is exempt from immediate income  
21 withholding, the district court judgment or order must  
22 include a warning statement that if the obligor is  
23 delinquent in the payment of support, the obligor's income  
24 may be subject to income withholding procedures under Title  
25 40, chapter 5, part 3 or 4. Failure to include a warning



1 statement in a judgment or order does not preclude the use  
2 of withholding procedures.

3 (6) For the purposes of income withholding under  
4 subsection (5), every district court judgment, decree, or  
5 order that establishes or modifies a child support  
6 obligation must include a provision requiring the parent  
7 obligated to pay support to inform the court and, if the  
8 department of social and rehabilitation services is  
9 providing services under Title IV-D of the Social Security  
10 Act for the enforcement of the judgment, decree, or order,  
11 the department, of the following:

12 (a) the name and address of the parent's current  
13 employer;

14 (b) whether the parent has access to health insurance  
15 through an employer or other group; and

16 (c) if insurance coverage is available, the health  
17 insurance policy information.

18 ~~(6)~~(7) If the department of social and rehabilitation  
19 services is providing or later provides support enforcement  
20 services under Title IV-D of the Social Security Act, each  
21 district court order or modification of an order must  
22 contain a statement providing that the noncustodial parent,  
23 without further order of the court, is required to obtain  
24 and maintain health insurance coverage as provided in  
25 40-5-208. Failure to include a warning statement in the

1 judgment or order does not preclude the imposition of  
2 sanctions under 40-5-208."

3 **Section 2.** Section 40-6-116, MCA, is amended to read:

4 **"40-6-116. Judgment or order.** (1) The judgment or order  
5 of the court determining the existence or nonexistence of  
6 the parent and child relationship is determinative for all  
7 purposes.

8 (2) If the judgment or order of the court is at  
9 variance with the child's birth certificate, the court shall  
10 order that a substitute birth certificate be issued under  
11 40-6-123.

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

18 (b) Except when the financial responsibility of a  
19 responsible parent is in the process of being determined  
20 pursuant to the administrative procedure provided in  
21 40-5-225, the judgment or order must contain a provision  
22 concerning the duty of child support.

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

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

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

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

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

13 (a) the needs of the child, including his medical  
14 needs;

15 (b) the standard of living and circumstances of the  
16 parents;

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

18 (d) the earning ability of the parents;

19 (e) the need and capacity of the child for education,  
20 including higher education;

21 (f) the age of the child;

22 (g) the financial resources and the earning ability of  
23 the child;

24 (h) the responsibility of the parents for the support  
25 of others;

1 (i) the value of services contributed by the custodial  
2 parent;

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

4 (k) any custody arrangement that is ordered or decided  
5 upon.

6 (6) (a) Whenever a court issues or modifies an order  
7 concerning child support, the court shall determine the  
8 child support obligation by applying the standards in this  
9 section and the uniform child support guidelines adopted by  
10 the department of social and rehabilitation services  
11 pursuant to 40-5-209, unless the court finds by clear and  
12 convincing evidence that the application of the standards  
13 and guidelines is unjust to the child or to any of the  
14 parties or is inappropriate in that particular case.

15 (b) If the court does not apply these standards and  
16 guidelines to determine child support, it shall state its  
17 reasons for finding that the application of such standards  
18 and guidelines is unjust to the child or a party or is  
19 inappropriate in that particular case.

20 (c) If the court does not order a parent owing a duty  
21 of support to a child to pay any amount for the child's  
22 support, the court shall state its reasons for not ordering  
23 child support.

24 (7) The judgment or order concerning child support and  
25 each modification of a judgment or order for child support

1 must include a provision addressing health insurance  
2 coverage in the following cases:

3 (a) If either party has available through an employer  
4 or other organization health insurance coverage for the  
5 child or children for which the premium is partially or  
6 entirely paid by the employer or organization, the judgment  
7 or order may contain a provision requiring that coverage for  
8 the child or children be continued or obtained.

9 (b) In the event that health insurance required in a  
10 child support judgment or order becomes unavailable to the  
11 party who is to provide it, through loss or change of  
12 employment or otherwise, that party shall, in the absence of  
13 an agreement to the contrary, obtain comparable insurance or  
14 request that the court modify the requirement.

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

18 (d) Unless otherwise provided in the decree, the health  
19 care coverage required by this section is in addition to and  
20 not in substitution, in whole or in part, for the child  
21 support obligation.

22 ~~{8}--{a}--Except-as-provided-in-subsection--{8}(b),--each~~  
23 ~~district--court--judgment--or--order--establishing--a--child~~  
24 ~~support--obligation--under--this--part,--whether--temporary--or~~  
25 ~~final,--and--each--modification--of--an--existing--child--support~~

1 order must:

2 ~~{i}--provide--that--the--amount--of--child--support--must--be~~  
3 ~~withheld--from--the--obligor's--income--and--paid---to---the~~  
4 ~~department---pursuant---to---procedures--established--by--the~~  
5 ~~department--under--Title--40,--chapter--5,--part--4,--and~~

6 ~~{ii}--include--the--obligor's--social--security--number--and~~  
7 ~~the--name--and--address--of--the--obligor's--employer--and--of--any~~  
8 ~~other--payor--of--income--to--the--obligor,~~

9 ~~{b}--income--is--not--subject--to--automatic--withholding--if:~~

10 ~~{i}--the--obligee--or--obligor--demonstrates--and--the--court~~  
11 ~~finds--that--there--is--good--cause--not--to--require--automatic~~  
12 ~~income--withholding,--or~~

13 ~~{ii}--the--obligee--and--obligor--agree--in--writing--to--an~~  
14 ~~alternative--arrangement--regarding--the--payment--of--child~~  
15 ~~support---that---provides---sufficient--security--to--ensure~~  
16 ~~compliance--with--their--agreement,--The--security--is--in--addition~~  
17 ~~to--the--child--support--obligation,~~

18 ~~{c}--When--a--judgment--or--order--for--child--support--is~~  
19 ~~entered--or--modified--and--automatic--income--withholding--is~~  
20 ~~ordered,--an--obligee--who--is--not--a--recipient--of--public~~  
21 ~~assistance--shall--apply--for--the--support--enforcement--services~~  
22 ~~of--the--department--pursuant--to--Title--IV--B--of--the--Social~~  
23 ~~Security--Act--for--the--collection--of--support--through--automatic~~  
24 ~~income--withholding--under--Title--40,--chapter--5,--part--4,--The~~  
25 ~~department--shall--accept--the--application,---Pending---an~~

1 application; ~~the department shall immediately implement~~  
 2 ~~automatic income withholding and hold any amounts collected~~  
 3 ~~in trust for the obligee until the obligee makes~~  
 4 ~~application;~~

5 ~~(d) When automatic income withholding is ordered under~~  
 6 ~~subsection (8)(a), the clerk of court shall immediately~~  
 7 ~~forward a copy of the order to the department.~~

8 (8) Unless an exception is found under [section 16] or  
 9 40-5-411 and the exception is included in the support order,  
 10 a support obligation established by judgment, decree, or  
 11 order under this section, whether temporary or final, and  
 12 each modification of an existing support obligation made  
 13 under 40-6-118 must be enforceable by immediate or  
 14 delinquency withholding, or both, under Title 40, chapter 5,  
 15 part 3 or 4. A support order that omits the exception or  
 16 that provides for a payment arrangement inconsistent with  
 17 this section is nevertheless subject to withholding for the  
 18 payment of support without need for an amendment to the  
 19 support order or for any further action by the court.

20 (9) For the purposes of income withholding as provided  
 21 in subsection (8), whenever the district court establishes  
 22 or modifies a child support obligation, the judgment,  
 23 decree, or order must include a provision requiring the  
 24 parent obligated to pay support to inform the court and, if  
 25 the department of social and rehabilitation services is

1 providing services under Title IV-D of the Social Security  
 2 Act for the enforcement of the judgment, decree, or order,  
 3 the department of:

4 (a) the name and address of the parent's current  
 5 employer;

6 (b) whether the parent has access to health insurance  
 7 through an employer or other group; and

8 (c) if insurance coverage is available, the health  
 9 insurance policy information.

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

20 **Section 3.** Section 40-5-226, MCA, is amended to read:

21 **"40-5-226. Administrative hearing -- nature -- place --**  
 22 **time -- determinations -- failure to appear -- entry of**  
 23 **final decision and order.** (1) The administrative hearing is  
 24 defined as a "contested case".

25 (2) At the discretion of the hearing officer, the

1 administrative hearing may be held:

2 (a) in the county of residence or other county  
3 convenient to the obligor or obligee; or

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

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

8 (4) The hearing officer shall determine the liability  
9 and responsibility, if any, of the obligor under the notice  
10 and shall enter a final decision and order in accordance  
11 with such determination.

12 (5) If the obligor fails to appear at the hearing or  
13 fails to timely request a hearing, the hearing officer, upon  
14 a showing of valid service, shall enter a decision and order  
15 declaring the amount stated in the notice to be final.

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

22 (7) Within 20 days of the hearing, the hearing officer  
23 shall enter a final ~~decision~~ decision and order. The  
24 determination of the hearing officer constitutes a final  
25 agency decision, subject to judicial review under 40-5-253

1 and the provisions of the Montana Administrative Procedure  
2 Act.

3 (8) If a support order is established under this part,  
4 any party may file a verified petition with the department  
5 alleging facts constituting a material change of  
6 circumstances. Upon the filing of such petition, the  
7 department shall issue an order to the nonpetitioning party  
8 to appear and show cause why the decision previously entered  
9 should not be prospectively modified. The order to appear  
10 and show cause, together with a copy of the verified  
11 petition, must be served by the petitioner upon all other  
12 parties in the manner provided by this part. Upon receipt of  
13 proof of service, the department shall schedule a hearing  
14 not less than 15 or more than 30 days from the date of  
15 service, unless extended for good cause shown. Prospective  
16 modification may be ordered but only upon a showing of good  
17 cause and material change of circumstances.

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

21 (10) A support debt or a support responsibility  
22 determined under this part by reason of the obligor's  
23 failure to request a hearing under this part or failure to  
24 appear at a scheduled hearing may be vacated, upon the  
25 motion of an obligor, by the hearing officer within the time

1 provided and upon a showing of any of the grounds enumerated  
2 in the Montana Rules of Civil Procedure.

3 (11) Unless the hearing officer makes a written  
4 exception under [section 16] or 40-5-411 and the exception  
5 is included in the support order, every order establishing a  
6 child support obligation, whether temporary or final, and  
7 each modification of an existing child support order under  
8 this part is enforceable by immediate or delinquency income  
9 withholding, or both, under Title 40, chapter 5, part 4. A  
10 support order that omits that provision or that provides for  
11 a payment arrangement inconsistent with this section, is  
12 nevertheless subject to withholding for the payment of  
13 support without need for an amendment of the support order  
14 or for any further action by the hearing officer.

15 (12) For the purposes of income withholding provided for  
16 in subsection (11), whenever the department establishes or  
17 modifies a child support obligation, the department's order  
18 must include a provision requiring the obligor, for as long  
19 as the department is providing support enforcement services,  
20 to keep the department informed of the name and address of  
21 the obligor's current employer, whether the obligor has  
22 access to health insurance through an employer or other  
23 group, and, if so, the health insurance policy information."

24 **Section 4.** Section 40-5-304, MCA, is amended to read:

25 **"40-5-304. When child support payments considered**

1 **delinquent.** (1) Nonpayment of child support required by any  
2 order of a district court or by a similar order of a court  
3 of another jurisdiction becomes delinquent under this part  
4 when the amount owed is equal to 3 months of child support  
5 payments.

6 (2) Child support payments may be considered delinquent  
7 under this part only in reference to a court order setting  
8 child support payments.

9 (3) In the case of support orders not subject to  
10 immediate income withholding under [section 16], including  
11 cases in which the court or administrative authority has  
12 made a finding of good cause or alternative arrangement, the  
13 income of the obligor is subject to withholding under this  
14 part beginning on the date on which the obligor is found to  
15 be delinquent in the payment of support due under a support  
16 order in an amount equal to at least 3 months' support  
17 payments. Intervening agreements or orders establishing a  
18 schedule for payment of delinquent support do not prevent  
19 income withholding under this part. For the purposes of this  
20 section, "alternative arrangement" has the meaning provided  
21 in [section 16(3)(b)]."

22 **Section 5.** Section 40-5-402, MCA, is amended to read:

23 **"40-5-402. Purpose -- applicability.** (1) The purpose of  
24 this part is to provide a more effective and efficient way  
25 to guarantee the support of dependent children by the person

1 or persons primarily responsible for such support by  
2 ensuring that the support of children is the highest  
3 priority in the allocation of a responsible parent's income.

4 (2) This part applies to all support obligations being  
5 enforced or collected by the department of social and  
6 rehabilitation services pursuant to Title IV-D of the Social  
7 Security Act.

8 (3) When the requirements of this part are met, an  
9 employer or other payor of income to a person having a  
10 support obligation under a court or administrative order  
11 must be directed to withhold from the person's income in an  
12 amount sufficient to meet the support obligation and to  
13 defray any arrearages that are due or may become due.

14 (4) Unless an exception under 40-5-411(4) is contained  
15 in a support order, withholding of income is required under  
16 this part without need for any amendment to the support  
17 order involved or any action by the court or entity that  
18 issued the support order even though the support order did  
19 not address withholding or the support order provided for  
20 other payment arrangements.

21 (5) Withholding, once commenced, applies to all current  
22 and subsequent payors of income to a person obligated to pay  
23 support until the withholding is terminated as provided by  
24 this part.

25 (6) The provisions for income withholding under this

1 part take precedence over any other law or court order."

2 **Section 6.** Section 40-5-403, MCA, is amended to read:

3 **"40-5-403. Definitions.** As used in this part, the  
4 following definitions apply:

5 (1) "Alternative arrangement" means a written agreement  
6 signed by the obligor and obligee, and signed by the  
7 department in the case of an assignment of rights under  
8 53-2-613, that has been approved and entered in the record  
9 of the court or administrative authority issuing or  
10 modifying the support order.

11 +1}(2) "Department" means the department of social and  
12 rehabilitation services provided for in 2-15-2201.

13 +2}(3) "Income" means any form of periodic payment to a  
14 person, including earnings and wages. However, income does  
15 not include:

16 (a) any amount required by law to be withheld, other  
17 than creditor claims, including federal, state, and local  
18 taxes and social security; and

19 (b) any amounts exempted from judgment, execution, or  
20 attachment by federal or state law.

21 +3}(4) "Obligee" means either a person to whom a duty  
22 of support is owed or a public agency of this or another  
23 state to which a person has assigned the right to receive  
24 current and accrued support payments.

25 +4}(5) "Obligor" means a person who owes a duty to make

1 payments under a support order.

2 ~~{5}~~{6} "Payor" means any payor of income to an obligor  
3 on a periodic basis and includes any person, firm,  
4 corporation, association, employer, trustee, political  
5 subdivision, state agency, or any agent thereof, who is  
6 subject to the jurisdiction of the courts of this state  
7 under Rule 4B of the Montana Rules of Civil Procedure.

8 ~~{6}~~{7} "Support order" means an order of the district  
9 court of the state of Montana, an order of a court of  
10 appropriate jurisdiction of another state, an administrative  
11 order established pursuant to proceedings under part 2 of  
12 this chapter, or an order established by administrative  
13 hearing process of an agency of another state with functions  
14 similar to those of the department set forth in part 2 of  
15 this chapter, that provides a set and determinable amount  
16 for temporary or final periodic payment of funds for the  
17 support of a child. Support order further includes the  
18 following:

19 (a) an order for reimbursement of public assistance  
20 money paid by a public agency for the benefit of a minor  
21 child;

22 (b) an order for maintenance to be paid to a former  
23 spouse when the former spouse is the custodial parent of a  
24 child for whom child support is awarded under the same  
25 order; and

1 (c) an order requiring payment of interest due on  
2 unpaid judgments for child support."

3 **Section 7.** Section 40-5-411, MCA, is amended to read:

4 "40-5-411. Income Immediate income withholding. ~~{1}~~--if  
5 an---obligation---for---support---is---being---enforced---by---the  
6 department-pursuant-to-Title-IV-D-of-the-Social-Security-Act  
7 and-the-obligation-has-been-established-as-required---by---law  
8 or---administrative---process,---income---due---or---to-become-due  
9 within-this-state-to-the-obligor-is-subject---to---withholding  
10 procedures-under-this-part-if:

11 ~~{a}~~--except--as--provided--in--40-4-204--and--40-6-116,--a  
12 support-obligation--is--initially--decreed--and--ordered--or  
13 modified--after--January--1,--1990,--by--a-district-court-or  
14 administrative-process,--regardless-of-whether-child--support  
15 payments-are-in-arrears;--or

16 ~~{b}~~--the-obligor-is-found-to-owe-a-combination-of-unpaid  
17 child-support-under-a-support-order-in-an-amount-equal-to-or  
18 in--excess--of--i--month's--support--payment; (1) Except as  
19 provided in subsection (4), in the case of a child support  
20 order, whether temporary or final, that is issued by a court  
21 or administrative authority of this state after January 1,  
22 1990, the income of the obligor is subject to immediate  
23 withholding under this part regardless of whether support  
24 payments are in arrears.

25 (2) ~~When the requirements of this part have been met,~~



1 the department, without necessity for amendment of the  
 2 support order or further order by a court or other entity,  
 3 shall issue an order directing the obligor's employer or  
 4 other payor to withhold and deliver to the department such  
 5 amount of the obligor's income as will be sufficient to meet  
 6 the support obligation imposed by the support order and to  
 7 defray arrearages, if any, due when the withholding order  
 8 takes place. After October 1, 1991, when a support order of  
 9 another state is registered in Montana under the provisions  
 10 of 40-5-137 or other applicable law, the support obligation  
 11 is subject to immediate income withholding under this  
 12 section.

13 (3) The provisions for income withholding under this  
 14 part take precedence over any other law or court order. The  
 15 department may direct the payor of income to the obligor to  
 16 commence the withholding of the obligor's income on:

17 (a) the effective date of the support order or the date  
 18 of registration of the support order; or

19 (b) the date, if any, that the department becomes  
 20 authorized by law to provide child support enforcement  
 21 services.

22 (4) An obligor's income is not subject to immediate  
 23 withholding if the court or administrative authority that  
 24 issued or modified the support order finds:

25 (a) that there is good cause not to require immediate

1 withholding; or

2 (b) that there is an alternative arrangement between  
 3 the parties for the payment of support that provides  
 4 sufficient security to ensure compliance with the  
 5 arrangement.

6 (5) For the purposes of subsection (4), any finding of  
 7 good cause not to require immediate income withholding must  
 8 be based on at least:

9 (a) a written determination and explanation by the  
 10 court or administrative authority as to why implementation  
 11 of immediate income withholding would not be in the best  
 12 interests of the child; and

13 (b) proof of timely payment of previously ordered  
 14 support in cases involving the modification of support  
 15 orders.

16 (6) Immediate withholding under this section terminates  
 17 only:

18 (a) upon the conditions provided in 40-5-417; or

19 (b) at the request of the obligor if:

20 (i) withholding has not been previously terminated and  
 21 subsequently initiated under 40-5-412 because of a  
 22 delinquency; and

23 (ii) and the obligor meets one of the exemptions under  
 24 subsection (4)."

25 **Section 8.** Section 40-5-412, MCA, is amended to read:

1       ~~"40-5-412. Initiation of Delinquency income withholding~~  
 2       ~~procedures. (1) In a case concerning a support obligation~~  
 3       ~~referred to in 40-5-411, the department shall immediately~~  
 4       ~~issue an order under 40-5-415 for the payment of current~~  
 5       ~~support. In the case of support orders not subject to~~  
 6       ~~immediate income withholding under 40-5-411, including cases~~  
 7       ~~in which the court or administrative authority has made a~~  
 8       ~~finding of good cause or determines that an alternative~~  
 9       ~~arrangement exists, the income of the obligor is subject to~~  
 10       ~~withholding under this part beginning on the date on which~~  
 11       ~~the obligor is found to owe unpaid support under the support~~  
 12       ~~order in an amount equal to or in excess of 1 month's~~  
 13       ~~support payment. Intervening agreements or orders~~  
 14       ~~establishing a schedule for payment of delinquent support do~~  
 15       ~~not prevent income withholding under this part.~~

16       ~~(2) In any other case, the department shall monitor and~~  
 17       ~~track all support payments required by the support order, if~~  
 18       ~~at any time these records indicate that the obligor owes a~~  
 19       ~~combination of unpaid support equal to or in excess of 1~~  
 20       ~~month's support, the department shall commence proceedings~~  
 21       ~~to initiate withholding of the obligor's income as provided~~  
 22       ~~in this part. Notwithstanding the provisions of subsection~~  
 23       ~~(1), income withholding must be initiated, without regard to~~  
 24       ~~whether there is an arrearage, on the earliest of:~~

25       ~~(a) the date the obligor requests that withholding~~

1       ~~begin; or~~

2       ~~(b) at the request of the obligee if the obligor is~~  
 3       ~~found, after an opportunity for hearing under 40-5-414, to~~  
 4       ~~be delinquent under the terms of an alternative arrangement~~  
 5       ~~for the payment of support.~~

6       ~~(3) To accomplish the purpose of subsection (2)(1), the~~  
 7       ~~department shall monitor all support payments not otherwise~~  
 8       ~~subject to immediate withholding. To facilitate monitoring,~~  
 9       ~~the department by written notice to the obligor may direct~~  
 10       ~~an obligor who does not owe unpaid child support equal to or~~  
 11       ~~in excess of 1 month's support payment to pay all support~~  
 12       ~~through the department, notwithstanding any court order~~  
 13       ~~directing payments to be made to the obligee or clerk of~~  
 14       ~~court.~~

15       ~~(4) Whenever an obligation for support is paid through~~  
 16       ~~the support enforcement and collections unit of the~~  
 17       ~~department, the department must forward payment to the~~  
 18       ~~obligee within 10 days of the department's receipt of~~  
 19       ~~payment from the obligor. The only basis for contesting~~  
 20       ~~withholding under this section is a mistake of fact, which~~  
 21       ~~includes a mistake:~~

22       ~~(a) concerning the obligor's identity;~~

23       ~~(b) concerning the existence of the support obligation;~~

24       ~~(c) concerning the amount of support to be paid;~~

25       ~~(d) in the determination that the delinquent support~~

1 amounts owed are equal to or greater than 1 month's support  
2 payment;

3 (e) in computation of delinquent support amounts owed;

4 or

5 (f) in the allegation that the obligor is in default of  
6 an alternative agreement."

7 **Section 9.** Section 40-5-413, MCA, is amended to read:

8 **"40-5-413. Notice of intent to withhold income. (1)**

9 Prior to service of an initial order or a modification of an  
10 existing order on the payor under 40-5-415, the department  
11 shall serve upon the obligor a notice of the intended action  
12 ~~if~~ when:

13 ~~(a) the--department--previously-has-not-issued-an-order~~  
14 ~~to-withhold--and--it--has--determined--the--obligor--owes--a~~  
15 ~~combination--of--unpaid--support--equal-to-or-in-excess-of-1~~  
16 ~~month's--support~~ income withholding is initiated under  
17 40-5-412 because of a delinquency;

18 (b) additional arrearages have accrued subsequent to  
19 the issuance of an order to withhold and the department  
20 proposes to add those arrears to the withholding order; or

21 (c) immediate withholding has commenced for current  
22 support and there are arrearages due for a period prior to  
23 entry of the order to withhold that the department proposes  
24 to add to the withholding order.

25 (2) The notice must contain a statement:

1 (a) of the amount to be withheld, including a  
2 computation showing the period and total amount of the  
3 arrearages as of the date of the notice;

4 (b) that withholding applies to all current and  
5 subsequent payors;

6 (c) of the obligor's right to a hearing under 40-5-414  
7 to contest the ~~implementation~~ initiation of income  
8 withholding or modification of an existing order on the  
9 ground that the intended action is not proper because of  
10 mistake of fact, as provided in 40-5-412(4); and

11 (d) of the period of time within which the obligor must  
12 request a hearing and that failure to request the hearing  
13 within the time limit will result in income withholding  
14 orders being served upon the payor for the amount stated in  
15 the notice; and

16 (e) in those cases in which withholding is being  
17 initiated at the request of an obligee without regard to  
18 whether there is an arrearage as provided in 40-5-412(2), a  
19 statement that the obligor can require the obligee to appear  
20 and show proof that the obligor is not meeting the terms of  
21 the alternative arrangement.

22 (3) The notice must be served upon the obligor  
23 personally or by certified mail."

24 **Section 10.** Section 40-5-414, MCA, is amended to read:

25 **"40-5-414. Hearing. (1) ~~The~~ To contest the withholding**

1 of income initiated under 40-5-412 because of a delinquency,  
 2 an obligor may within 10 days of being served with notice of  
 3 the intended action intent to withhold income under 40-5-413  
 4 file with the department a written request for an  
 5 administrative hearing to be held pursuant to the contested  
 6 case provisions of Title 2, chapter 4, part 6.

7 ~~{2}--in--a--case--initiated--because--an--arrearage--has~~  
 8 ~~accrued--or--because--additional--income--is--to--be--withheld--to~~  
 9 ~~satisfy--additional--arrears--and--in--which--the--obligor~~  
 10 ~~requests--a--hearing--within--the--time--allowed--the--intended~~  
 11 ~~action--may--not--take--effect--until--the--conclusion--of--the~~  
 12 ~~hearing--or--the--date--of--the--hearing--if--the--obligor--fails--to~~  
 13 ~~appear--at--a--scheduled--hearing--~~

14 {3}{2} Venue for the administrative hearing may be in  
 15 the county where the obligor resides if the obligor resides  
 16 in this state, the county in which the payor or the payor's  
 17 agent is located, or the county in which the department or  
 18 any of its regional offices is located.

19 {4}{3} The administrative hearing must be held by  
 20 teleconferencing methods unless the obligor or the  
 21 department expressly requests an in-person hearing before  
 22 the hearing examiner.

23 (4) If the obligor requests a hearing within the 10-day  
 24 period:

25 (a) the delinquency income withholding by the

1 department must be stayed until conclusion of the hearing or  
 2 the date of the hearing if the obligor fails to appear at  
 3 the scheduled hearing. If the obligor is only contesting an  
 4 arrearage amount and is not contesting withholding for  
 5 current support, income withholding for current support is  
 6 not stayed.

7 (b) the department shall, within 45 days of the service  
 8 of the notice of intent to withhold income, inform the  
 9 obligor of the hearing results concerning whether income  
 10 withholding will take place.

11 (5) The department shall issue an order to withhold  
 12 income in accordance with 40-5-415 if:

13 (a) the obligor fails to file a written request for  
 14 hearing with the department within the specified 10-day  
 15 period;

16 (b) the obligor fails to appear at a scheduled hearing;

17 (c) the hearing officer determines from the evidence  
 18 that the obligor owes unpaid support equal to or in excess  
 19 of 1 month's support obligation and the amount of arrearages  
 20 owing is determined and adjudged to be a fixed and certain  
 21 sum; or

22 (d) in cases in which income withholding is being  
 23 initiated at the request of an obligee without regard to  
 24 whether there is an arrearage, the hearing examiner  
 25 determines from the evidence that the obligor did not meet

1 the terms of the alternative arrangement.

2 {5}(6) For purposes of the hearing process, arrearages  
3 of support must be computed on the basis of the amount owed  
4 and unpaid on the date the obligor was served with the  
5 notice of intent to withhold income, ~~and the fact that the~~  
6 ~~obligor may have later paid the arrearage--does--not--remove~~  
7 ~~from--the--hearing--examiner--the--authority--to--direct--the~~  
8 ~~department--to--order--income--withholding.~~ When the department  
9 is enforcing a current support obligation, payment of the  
10 arrearage after service of the notice is not a basis for not  
11 initiating income withholding.

12 {6}(7) In a case initiated because an arrearage has  
13 accrued or because additional income is being withheld to  
14 satisfy additional arrearages, the obligor, within 45 days  
15 of service of the notice of intent to withhold income, must  
16 be informed of the hearing decision on whether income  
17 withholding will take place.

18 {7}(8) If the obligor fails to request a hearing within  
19 10 days or fails to appear at a scheduled hearing or if the  
20 hearing examiner determines that the obligor owes a  
21 combination of unpaid support equal to or in excess of 1  
22 month's support obligation, the department shall proceed  
23 with the intended action in accordance with 40-5-415."

24 **Section 11.** Section 40-5-415, MCA, is amended to read:

25 **"40-5-415. Order to withhold income.** (1) When the

1 requirements of this part have been met, the department  
2 shall ~~immediately~~ serve an order or modification order to  
3 withhold and deliver income upon any payor or combination of  
4 payors. The order must:

5 (a) direct the payor and successor payors to withhold  
6 from the obligor's income each month the amount specified in  
7 the order if sufficient funds are available;

8 (b) direct the payor to deliver the amount withheld to  
9 the department in the same month in which the funds were  
10 withheld;

11 (c) state that the order is binding on the payor until  
12 further notice by the department; ~~and~~

13 (d) state the rights and duties of the payor under this  
14 part; and

15 (e) include a statement that the obligor is required  
16 under a support order to provide health insurance coverage  
17 for the obligor's child, if appropriate.

18 (2) An order or modification order to withhold and  
19 deliver the obligor's income made under this section is  
20 binding upon the payor immediately upon service of the order  
21 upon the payor. Service of the order or modification order  
22 to withhold may be made either personally or by certified  
23 mail.

24 (3) Whenever there is more than one payor, the  
25 department may, in its discretion, apportion the total

1 amount to be withheld each month among payors."

2 **Section 12.** Section 40-5-416, MCA, is amended to read:

3 "40-5-416. Determination of amount of income to be  
4 withheld. (1) (a) Subject to the limitations provided in  
5 subsection (2), the amount of funds to be withheld each  
6 month from the obligor's income must be the amount of money  
7 necessary to pay current installments of support as they  
8 become due and payable.

9 (b) If income is being withheld to satisfy an  
10 arrearage, the amount of funds to be withheld must include  
11 the greater of:

12 (i) the amount of money that, when deducted in equal  
13 amounts each month, will pay all outstanding support  
14 arrearages and interest, if any, within 2 years; or

15 (ii) 25% of the obligor's income.

16 (c) If income is being withheld ~~to satisfy an arrearage~~  
17 under this part, the department may allow a fee not to  
18 exceed \$5 each month, which may be withheld by the payor as  
19 compensation for the administrative costs of each  
20 withholding.

21 (2) The maximum amounts withheld from the obligor's  
22 wages or salaries, including fees, may not exceed the  
23 maximum amount permitted under section 303(b) of the federal  
24 Consumer Credit Protection Act, 15 U.S.C. 1673(b), as  
25 amended.

1 (3) At any time, if the obligor can show that  
2 substantial hardship will result if the maximum permissible  
3 withholding is implemented or continued, the department for  
4 cause shown may in its discretion determine a lesser amount  
5 to be withheld each month in satisfaction of support  
6 arrearages."

7 **Section 13.** Section 40-5-417, MCA, is amended to read:

8 "40-5-417. Modification or termination of withholding  
9 orders. (1) The department may at any time modify the order  
10 to withhold income to:

11 (a) reflect payment in full of the arrearages by income  
12 withholding or otherwise;

13 (b) recognize an increase or decrease in the support  
14 order; or

15 (c) indicate any other reason the amount to be withheld  
16 is to be reduced or changed.

17 (2) If an arrearage occurs while the department is  
18 collecting an amount of money necessary to pay current  
19 installments of support as they become due and payable, the  
20 department may adjust the amount of income required to be  
21 withheld to also satisfy the arrearage, as provided in this  
22 part.

23 (3) An income withholding order terminates only when  
24 the department is no longer authorized under the law to  
25 collect support or, when appropriate, services rendered

1 under 40-5-203 have come to an end or when the obligation to  
2 pay support is terminated and all arrearages are paid in  
3 full, whichever occurs first.

4 (4) The payment in full of any arrearage amount may not  
5 be the sole basis for termination of withholding as long as  
6 there is a support obligation enforceable by the  
7 department."

8 **Section 14.** Section 40-5-421, MCA, is amended to read:

9 "40-5-421. Duties of payor. (1) A payor who has been  
10 served with an order to withhold and deliver income shall  
11 deduct the amount designated in the order beginning not  
12 later than the first pay period that occurs after 14 days  
13 from the service of the order. The payor shall, within 10  
14 working days of the date the obligor is paid, promptly  
15 deliver the amount withheld to the department as directed by  
16 the order or in accordance with any subsequent modification  
17 of the order received from the department. The payor shall  
18 include with the payment a statement indicating the date the  
19 amount was withheld from the obligor's income.

20 ~~{2}--If the obligor's pay periods are at intervals of~~  
21 ~~less than 1 month, the payor may withhold an equal amount at~~  
22 ~~each pay period cumulatively sufficient to pay the monthly~~  
23 ~~withholding as directed by the withholding order.~~

24 ~~{3}{2}~~ Whenever the payor is obligated to withhold  
25 income for more than one obligor, the payor may combine all

1 amounts withheld into a single payment for that month with  
2 the portion thereof which is attributable to each obligor  
3 separately designated.

4 ~~{4}{3}~~ Whenever there is more than one order for  
5 withholding against a single obligor, the payor must comply  
6 with the orders in the sequence in which they were served  
7 upon the payor and must honor all withholding orders to the  
8 extent that the total amount withheld from the obligor's  
9 wages or salary does not exceed the limits set in 40-5-416.

10 ~~{5}{4}~~ The payor must promptly notify the department of  
11 the termination of the obligor's employment or other source  
12 of income and provide the obligor's last-known address and  
13 the name and address of the obligor's new employer or other  
14 source of income, if known to the payor."

15 **Section 15.** Section 40-5-433, MCA, is amended to read:

16 "40-5-433. Additional duties of department in  
17 interstate income withholding. ~~{1}--Unless the public agency~~  
18 ~~of the foreign jurisdiction makes application to the~~  
19 ~~department for additional services, the department is not~~  
20 ~~required to locate the obligor or to locate payors of income~~  
21 ~~to the obligor. If the application for interstate service~~  
22 ~~provided for in 40-5-431 and 40-5-432 fails to provide this~~  
23 ~~information or the information is determined to be~~  
24 ~~incorrect, the department may return the application without~~  
25 ~~further proceeding under this part.~~

1       †2) (1) If the department determines that the obligor is  
 2 no longer employed in this state or no longer derives income  
 3 within this state, the department shall promptly notify the  
 4 agency which requested income withholding of the changes and  
 5 shall forward to that agency all information it has with  
 6 respect to the obligor's new address and the name and  
 7 address of the obligor's new employer or other source of  
 8 income.

9       †3) (2) The department shall promptly transmit payments  
 10 received on an income withholding order to the agency or  
 11 person designated in the interstate application."

12       **NEW SECTION. Section 16. Immediate income deductions.**

13 (1) Notwithstanding any provision in this part requiring a  
 14 delinquency as a prerequisite to an order for income  
 15 deductions, except as provided in subsection (2), the  
 16 salaries and wages of a person obligated to pay child  
 17 support by an order of a district court issued after October  
 18 1, 1991, are subject to an immediate deduction order under  
 19 40-5-308 on the effective date of the order, regardless of  
 20 whether there is a delinquency.

21 (2) An obligor's salaries and wages are not subject to  
 22 deduction under this section in any case in which the  
 23 district court finds:

24 (a) that there is good cause not to require immediate  
 25 deduction; or

1 (b) that there is an alternative arrangement between  
 2 the parties for the payment of support that provides  
 3 sufficient security to ensure compliance with the  
 4 arrangement.

5 (3) (a) For the purposes of subsection (2), a finding  
 6 of good cause not to require immediate deduction must, at a  
 7 minimum, be based on:

8 (i) a written determination and explanation by the  
 9 district court as to why implementation of immediate  
 10 deductions is not in the best interests of the child; and

11 (ii) in cases involving the modification of support  
 12 orders, proof of timely payment of previously ordered  
 13 support.

14 (b) As used in subsection (2)(b), "alternative  
 15 arrangement" means a written agreement that is signed by the  
 16 obligor and obligee and, in cases in which there is an  
 17 assignment of support rights under 53-2-613, signed by the  
 18 department of social and rehabilitation services, and that  
 19 has been approved and entered into the record by the  
 20 district court that issued or modified the support order.

21 (4) The clerk of court shall administer immediate  
 22 income deductions under this section. The clerk of court, at  
 23 any time after docketing the support order or modification  
 24 of a support order, at the request of the obligee, and  
 25 without need for amendment to the support order or for any



1 further action by the district court, shall issue the order  
 2 for income deductions provided for by 40-5-308 for service  
 3 upon the obligor's employer. The deduction order must direct  
 4 the employer to promptly deliver the amount deducted to the  
 5 clerk of court for distribution to the obligee.

6 (5) Wage deductions under this section may be  
 7 terminated only when:

8 (a) the obligation to pay support has terminated and  
 9 all arrearages are paid in full;

10 (b) the obligor requests termination and the obligee  
 11 and obligor have entered into an alternative arrangement as  
 12 set forth in subsection (2)(b); or

13 (c) the department has superseded the deduction order  
 14 under authority of Title 40, chapter 5, part 4.

15 (6) If a delinquency occurs subsequent to issuance of  
 16 an immediate deduction order or if arrearages occur prior to  
 17 beginning the deductions, the arrearages may be added to the  
 18 deduction order only after compliance with the notice of  
 19 hearing requirements of 40-5-305.

20 (7) (a) After October 1, 1991, whenever a support order  
 21 is registered as provided by 40-5-137 or other law, the  
 22 support order is subject to immediate orders to deduct  
 23 income under this section.

24 (b) Withholding income under this section must be  
 25 imposed when an obligor has wages or salaries derived from

1 within this state and the support order was issued in  
 2 another state.

3 (8) This section applies only to support orders that  
 4 are not being enforced by the department under Title IV-D of  
 5 the Social Security Act. The withholding of income for  
 6 support orders being enforced by the department is provided  
 7 for in Title 40, chapter 5, part 4, and those procedures, if  
 8 applicable, supersede the provisions of this section.

9 **Section 17.** Section 40-5-309, MCA, is amended to read:

10 **"40-5-309. Amount to be deducted from income.** (1) The  
 11 amount of money to be deducted each pay period from the  
 12 obligor's income shall be:

13 (a) (i) the amount of money necessary to pay current  
 14 installments of child support as they become due and  
 15 payable; plus

16 (ii) the amount of money which, when deducted in equal  
 17 amounts each payday, will pay off all outstanding child  
 18 support payments delinquent within 2 years; or

19 (b) not less than 25% of the obligor's disposable  
 20 earnings but--may--not--be--more--than--the--maximum--amount  
 21 allowable--by--federal--garnishment--law--if--the--sum--provided--in  
 22 subsection--(i)--exceeds--that--amount.

23 (2) The district court may allow a fee of not to exceed  
 24 \$5 per deduction, which the employer may deduct from the  
 25 obligor's wages or salary for the expense of administering

1 the deduction.

2 (3) The total amount to be deducted under subsections  
 3 (1) and (2) may not exceed the maximum amount permitted  
 4 under section 303(b) of the Consumer Credit Protection Act,  
 5 15 U.S.C. 1673(b), as amended.

6 ~~(3)~~(4) The Except as provided in [section 16], the  
 7 child support income deduction shall cease when there is no  
 8 past-due child support owing unless the district court  
 9 orders continued income deductions for payment of child  
 10 support installments as they become due and payable."

11 NEW SECTION. Section 18. Health insurance coverage --  
 12 order of enrollment. (1) Whenever the obligor is required by  
 13 a court or administrative order or is required under  
 14 40-5-208(1)(b) to provide health insurance coverage for a  
 15 child and the obligor fails to provide the coverage or lets  
 16 it lapse, the department may enforce the obligation under  
 17 this section if a payor of income to an obligor has a health  
 18 insurance plan which can be extended to cover the obligor's  
 19 child.

20 (2) (a) Prior to service of an initial order of  
 21 enrollment on a payor, the department shall serve the  
 22 obligor a notice of its intent to order an enrollment, by  
 23 certified mail or by personal service.

24 (b) Within 20 days after service of the notice, the  
 25 obligor may provide written proof to the department that

1 health insurance coverage for the child has been obtained or  
 2 applied for. If proof is received by the department within  
 3 20 days after service, further action may not be taken by  
 4 the department except in the event of a lapse of coverage as  
 5 provided in subsection (3). If proof of health insurance  
 6 coverage is not timely received by the department, an order  
 7 of enrollment may be issued in accordance with subsection  
 8 (3).

9 (3) If the obligor fails to timely provide proof of  
 10 coverage or if after timely proof of coverage the obligor  
 11 lets the coverage lapse, the department may, without further  
 12 notice to the obligor, serve an order of enrollment on the  
 13 payor. The payor may be the same payor who is subject to an  
 14 order to withhold under this part or any other payor or  
 15 subsequent payor.

16 (4) (a) Upon receipt of an order of enrollment, the  
 17 payor shall respond to the department within 20 days and  
 18 confirm that the child:

19 (i) has been enrolled in the health insurance plan;  
 20 (ii) will be enrolled in the next enrollment period; or  
 21 (iii) cannot be covered because the child resides  
 22 outside the plan's service area or the contracted terms of  
 23 the plan do not permit an extension of coverage to the  
 24 child.

25 (b) Upon enrollment of the child, the payor shall

1 withhold from the obligor's income an amount equal to the  
2 required premium, if any, and apply the withheld amount to  
3 the premium as necessary.

4 (c) If more than one plan is offered by the payor and  
5 each plan may be extended to the child, the child must be  
6 enrolled in the same plan as the obligor. If the obligor's  
7 plan does not provide coverage that is accessible to the  
8 child, the child must be enrolled in the least expensive  
9 plan available to the obligor.

10 (d) Once an initial order of enrollment is authorized  
11 under this section, the authority to issue orders to  
12 subsequent payors and to bind payors to the orders  
13 terminates only when:

14 (i) the department is no longer providing enforcement  
15 services;

16 (ii) the obligation to provide health insurance coverage  
17 is terminated according to law; or

18 (iii) the department finds under subsection (5) that the  
19 premium charged to the obligor is not reasonable under the  
20 circumstances of the obligor's case.

21 (e) A payor served with an order of enrollment shall  
22 inform the department of the name of the health insurance  
23 coverage provider or insurer and the extent of the coverage.  
24 The payor shall make available to the department or obligee  
25 any necessary claim forms or enrollment membership cards. If

1 coverage is terminated for any reason, the payor shall  
2 inform the department of the termination within 20 days of  
3 the termination date.

4 (5) (a) Whenever an obligor is being charged with a  
5 premium under subsection (3) and the obligor believes the  
6 amount of the premium to be unreasonable under the  
7 circumstances, the obligor may make a written request to the  
8 department for an administrative hearing to determine the  
9 reasonableness of the premium charge.

10 (b) The department shall schedule the hearing within 20  
11 days after receipt of the obligor's request. The hearing  
12 must be conducted by telephone conferencing methods unless  
13 the hearing officer determines an in-person hearing is  
14 appropriate.

15 (c) If the hearing officer finds that the premium  
16 charged the obligor is causing an undue hardship on the  
17 obligor or the child, the department shall withdraw any  
18 order of enrollment served on a payor. A withdrawal is  
19 temporary and remains in effect only until a significant  
20 change in circumstances occurs, such as an improvement in  
21 the obligor's ability to pay the premium or an increase in  
22 the child's need for health insurance coverage. Upon a  
23 change of circumstances, the department may again serve the  
24 order of enrollment on the payor. After service of the  
25 order, the obligor may request an administrative hearing to

1 determine the reasonableness of premiums considering the new  
2 circumstances.

3 (d) If the hearing officer finds that the premium is  
4 reasonable under the circumstances, the obligor may not  
5 request any further hearings under this subsection (5)  
6 unless there is a significant change in circumstances from  
7 that existing at the time the finding was made.

8 (6) A notice under this section may be combined with a  
9 notice of intent to withhold income under 40-5-413 or with  
10 any other notice served on an obligor under part 2 of this  
11 chapter.

12 (7) This section may not be construed to limit the  
13 right of an obligee or the department to bring any other  
14 action available under the law to enforce an obligation to  
15 provide health insurance coverage for a child.

16 (8) This section may not be construed to require a  
17 health maintenance organization, health care service  
18 provider, or insurer to extend coverage to a child who  
19 resides outside its service area or to deviate from  
20 contractual provisions and restrictions.

21 (9) An obligor whose child is enrolled in a health  
22 insurance plan under this section shall cooperate with the  
23 insurer, health care service provider, department, and  
24 child's custodian to obtain and use the health insurance  
25 plan.

1 NEW SECTION. **Section 19.** Liability of payor --  
2 penalties. (1) A payor is liable for a fine of up to \$1,000  
3 for each instance in which the payor fails or refuses,  
4 within 20 days of receipt of an order of enrollment, to:

5 (a) enroll the obligor's child in the health insurance  
6 plan; or

7 (b) make a written response to the department, stating  
8 that the child:

9 (i) will be enrolled in the next available open  
10 enrollment period; or

11 (ii) cannot be covered and explaining the reasons why  
12 coverage cannot be provided.

13 (2) A payor who enrolls a child in a health insurance  
14 plan in compliance with an order of enrollment under  
15 [section 18] is exempt from any liability to the obligor  
16 that may result from the enrollment.

17 NEW SECTION. **Section 20.** Health insurance coverage --  
18 notice of intent to purchase. (1) The department may serve a  
19 notice of intent to purchase health insurance coverage on an  
20 obligor by certified mail or personal service, when:

21 (a) the obligor is ordered by a court or administrative  
22 order or is required under '0-5-208(1)(b) to provide health  
23 insurance coverage for a child;

24 (b) the obligor fails to provide such coverage or lets  
25 it lapse;

1 (c) there is no payor upon whom an order of enrollment  
2 under [section 13] is applicable; and

3 (d) the child is currently eligible for medical  
4 assistance benefits under Title 53.

5 (2) The notice must specify the type and cost of the  
6 proposed health insurance coverage. Within 20 days of the  
7 date of service of the notice, the obligor shall:

8 (a) provide written proof to the department that the  
9 obligor has either applied for or obtained coverage  
10 accessible to the child; or

11 (b) request an administrative hearing to show that the  
12 proposed purchase of coverage and the premium chargeable to  
13 the obligor will cause undue hardship.

14 (3) If a hearing is requested, the department shall  
15 schedule the hearing within 20 days of the receipt of the  
16 request. The hearing must be held by telephone conferencing  
17 methods unless the hearing officer determines that an  
18 in-person hearing is appropriate.

19 (4) If the obligor fails to timely provide written  
20 proof of coverage or if the hearing officer finds that the  
21 proposed purchase of coverage will not cause an undue  
22 hardship on the obligor, the department shall purchase the  
23 health insurance coverage specified in the notice. The  
24 amount of the premium may be added to the obligor's child  
25 support debt and may be collected without further notice by

1 income withholding under this part or by any other remedy  
2 available to the department.

3 (5) Health insurance coverage purchased under this  
4 section must be continued by the department until:

5 (a) the child is no longer eligible for medical  
6 assistance benefits;

7 (b) the obligor is no longer responsible under the law  
8 for providing coverage for the child;

9 (c) the obligor provides written proof to the  
10 department that other coverage accessible to the child has  
11 been obtained; or

12 (d) relief is granted under subsection (6).

13 (6) (a) If a change of circumstances occurs after  
14 health insurance coverage is purchased and the obligor  
15 believes the change makes the provision of health insurance  
16 coverage an undue hardship, the obligor may make a written  
17 request for an administrative hearing to reconsider the  
18 matter of continuing to purchase coverage.

19 (b) If a hearing is requested, the department shall  
20 schedule the hearing within 20 days of the receipt of the  
21 request. The hearing must be conducted by telephone  
22 conferencing methods unless the hearing officer determines  
23 that an in-person hearing is appropriate.

24 (c) If the hearing officer finds that the continued  
25 purchase of coverage will cause undue hardship on the

1 obligor, the department shall terminate the coverage.

2 (d) If the hearing officer finds that the continued  
3 purchase of coverage will not cause undue hardship, the  
4 department shall continue to purchase the coverage, as  
5 appropriate, under the provisions of subsection (5).

6 (7) An obligor whose child is enrolled in a health  
7 insurance plan under this section shall cooperate with the  
8 insurer, health care provider, department, and child's  
9 custodian to obtain and use the health insurance plan.

10 NEW SECTION. Section 21. Payors to provide information  
11 -- exemption from liability. (1) For the purposes of this  
12 part, upon written request by the department, a payor or  
13 former payor and any labor union of which the obligor is or  
14 may have been a member shall provide the department with the  
15 following information, if known, regarding the obligor:

16 (a) last-known residential address;

17 (b) social security number;

18 (c) dates of employment or union membership;

19 (d) amounts of wages, salaries, commissions, and other  
20 earnings paid to the obligor during any period when the  
21 department provided support enforcement services; and

22 (e) whether health insurance coverage is or was  
23 available to the obligor through the payor or union and, if  
24 so:

25 (i) the name of the insurer or health care provider;

1 (ii) the policy numbers or other identifiers; and

2 (iii) the persons covered.

3 (2) A payor who discloses information to the department  
4 in compliance with this section is exempt from any liability  
5 to the obligor that may result from such disclosure.

6 NEW SECTION. Section 22. Repealer. Section 40-5-425,  
7 MCA, is repealed.

8 NEW SECTION. Section 23. Codification instruction. (1)  
9 [Section 16] is intended to be codified as an integral part  
10 of Title 40, chapter 5, part 3, and the provisions of Title  
11 40, chapter 5, part 3, apply to [section 16].

12 (2) [Sections 18 through 21] are intended to be  
13 codified as an integral part of Title 40, chapter 5, part 4,  
14 and the provisions of Title 40, chapter 5, part 4, apply to  
15 [sections 18 through 21].

16 NEW SECTION. Section 24. Severability. If a part of  
17 [this act] is invalid, all valid parts that are severable  
18 from the invalid part remain in effect. If a part of [this  
19 act] is invalid in one or more of its applications, the part  
20 remains in effect in all valid applications that are  
21 severable from the invalid applications.

-End-

RE-REFERRED AND  
APPROVED BY COMMITTEE  
ON APPROPRIATIONS  
AS AMENDED

HOUSE BILL NO. 923

INTRODUCED BY DARKO, J. BROWN  
BY REQUEST OF THE DEPARTMENT OF  
SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE PROCEDURES  
PERTAINING TO INCOME WITHHOLDING FOR THE PAYMENT OF CHILD  
SUPPORT TO CONFORM THOSE PROCEDURES TO FEDERAL REGULATIONS;  
TO PROVIDE FOR ENFORCEMENT OF HEALTH INSURANCE OBLIGATIONS  
THROUGH INCOME WITHHOLDING; AMENDING SECTIONS 40-4-204,  
40-5-226, 40-5-304, 40-5-309, 40-5-402, 40-5-403, 40-5-411,  
40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417,  
40-5-421, 40-5-433, AND 40-6-116, MCA; AND REPEALING SECTION  
40-5-425, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 40-4-204, MCA, is amended to read:

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

(2) The court shall consider all relevant factors,

including:

- (a) the financial resources of the child;
  - (b) the financial resources of the custodial parent;
  - (c) the standard of living the child would have enjoyed had the marriage not been dissolved;
  - (d) the physical and emotional condition of the child and his educational and medical needs;
  - (e) the financial resources and needs of the noncustodial parent;
  - (f) the age of the child;
  - (g) the cost of day care for the child;
  - (h) any custody arrangement that is ordered or decided upon; and
  - (i) the needs of any person, other than the child, whom either parent is legally obligated to support.
- (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.
- (b) If the court does not apply these standards and

1 guidelines to determine child support, it shall state its  
 2 reasons for finding that the application of such standards  
 3 and guidelines is unjust to the child or a party or is  
 4 inappropriate in that particular case.

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

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

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

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

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

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

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

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

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

22 ~~(ii)--include--the--obligor's--social-security-number--and~~  
 23 ~~the--name--and--address--of--the--obligor's--employer--and--of--any~~  
 24 ~~other--payer--of--income--to--the--obligor;~~

25 ~~(b)--Income-is-not-subject-to-automatic-withholding-if:~~



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

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

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

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

24 (e) ~~If an obligor is not subject to income withholding~~  
 25 ~~or is exempted from income withholding, the district court~~

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

7 (5) (a) Unless the court makes a written exception  
 8 under [section 16] or 40-5-411 and the exception is included  
 9 in the support order, a support obligation established by  
 10 judgment, decree, or order under this section, whether  
 11 temporary or final, and each modification of an existing  
 12 support obligation under 40-4-208 must be enforced by  
 13 immediate or delinquency income withholding, or both, under  
 14 Title 40, chapter 5, part 3 or 4. A support order that omits  
 15 the written exceptions provided in [section 16] or 40-5-411  
 16 or that provides for a payment arrangement inconsistent with  
 17 this section is nevertheless subject to withholding for the  
 18 payment of support without need for an amendment to the  
 19 support order or for any further action by the court.

20 (b) If an obligor is exempt from immediate income  
 21 withholding, the district court judgment or order must  
 22 include a warning statement that if the obligor is  
 23 delinquent in the payment of support, the obligor's income  
 24 may be subject to income withholding procedures under Title  
 25 40, chapter 5, part 3 or 4. Failure to include a warning

1 statement in a judgment or order does not preclude the use  
2 of withholding procedures.

3 (6) For the purposes of income withholding under  
4 subsection (5), every district court judgment, decree, or  
5 order that establishes or modifies a child support  
6 obligation must include a provision requiring the parent  
7 obligated to pay support to inform the court and, if the  
8 department of social and rehabilitation services is  
9 providing services under Title IV-D of the Social Security  
10 Act for the enforcement of the judgment, decree, or order,  
11 the department, of the following:

12 (a) the name and address of the parent's current  
13 employer;

14 (b) whether the parent has access to health insurance  
15 through an employer or other group; and

16 (c) if insurance coverage is available, the health  
17 insurance policy information.

18 †6†(7) If the department of social and rehabilitation  
19 services is providing or later provides support enforcement  
20 services under Title IV-D of the Social Security Act, each  
21 district court order or modification of an order must  
22 contain a statement providing that the noncustodial parent,  
23 without further order of the court, is required to obtain  
24 and maintain health insurance coverage as provided in  
25 40-5-208. Failure to include a warning statement in the

1 judgment or order does not preclude the imposition of  
2 sanctions under 40-5-208."

3 **Section 2.** Section 40-6-116, MCA, is amended to read:

4 **"40-6-116. Judgment or order.** (1) The judgment or order  
5 of the court determining the existence or nonexistence of  
6 the parent and child relationship is determinative for all  
7 purposes.

8 (2) If the judgment or order of the court is at  
9 variance with the child's birth certificate, the court shall  
10 order that a substitute birth certificate be issued under  
11 40-6-123.

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

18 (b) Except when the financial responsibility of a  
19 responsible parent is in the process of being determined  
20 pursuant to the administrative procedure provided in  
21 40-5-225, the judgment or order must contain a provision  
22 concerning the duty of child support.

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

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

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

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

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

13 (a) the needs of the child, including his medical  
14 needs;

15 (b) the standard of living and circumstances of the  
16 parents;

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

18 (d) the earning ability of the parents;

19 (e) the need and capacity of the child for education,  
20 including higher education;

21 (f) the age of the child;

22 (g) the financial resources and the earning ability of  
23 the child;

24 (h) the responsibility of the parents for the support  
25 of others;

1 (i) the value of services contributed by the custodial  
2 parent;

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

4 (k) any custody arrangement that is ordered or decided  
5 upon.

6 (6) (a) Whenever a court issues or modifies an order  
7 concerning child support, the court shall determine the  
8 child support obligation by applying the standards in this  
9 section and the uniform child support guidelines adopted by  
10 the department of social and rehabilitation services  
11 pursuant to 40-5-209, unless the court finds by clear and  
12 convincing evidence that the application of the standards  
13 and guidelines is unjust to the child or to any of the  
14 parties or is inappropriate in that particular case.

15 (b) If the court does not apply these standards and  
16 guidelines to determine child support, it shall state its  
17 reasons for finding that the application of such standards  
18 and guidelines is unjust to the child or a party or is  
19 inappropriate in that particular case.

20 (c) If the court does not order a parent owing a duty  
21 of support to a child to pay any amount for the child's  
22 support, the court shall state its reasons for not ordering  
23 child support.

24 (7) The judgment or order concerning child support and  
25 each modification of a judgment or order for child support

1 must include a provision addressing health insurance  
2 coverage in the following cases:

3 (a) If either party has available through an employer  
4 or other organization health insurance coverage for the  
5 child or children for which the premium is partially or  
6 entirely paid by the employer or organization, the judgment  
7 or order may contain a provision requiring that coverage for  
8 the child or children be continued or obtained.

9 (b) In the event that health insurance required in a  
10 child support judgment or order becomes unavailable to the  
11 party who is to provide it, through loss or change of  
12 employment or otherwise, that party shall, in the absence of  
13 an agreement to the contrary, obtain comparable insurance or  
14 request that the court modify the requirement.

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

18 (d) Unless otherwise provided in the decree, the health  
19 care coverage required by this section is in addition to and  
20 not in substitution, in whole or in part, for the child  
21 support obligation.

22 (e) (a) Except as provided in subsection (b), each  
23 district court judgment or order establishing a child  
24 support obligation under this part, whether temporary or  
25 final, and each modification of an existing child support

1 order must:

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

6 (ii) include the obligor's social security number and  
7 the name and address of the obligor's employer and of any  
8 other payor of income to the obligor.

9 (b) Income is not subject to automatic withholding if:  
10 (i) the obligee or obligor demonstrates and the court  
11 finds that there is good cause not to require automatic  
12 income withholding; or

13 (ii) the obligee and obligor agree in writing to an  
14 alternative arrangement regarding the payment of child  
15 support that provides sufficient security to ensure  
16 compliance with their agreement. The security is in addition  
17 to the child support obligation.

18 (c) When a judgment or order for child support is  
19 entered or modified and automatic income withholding is  
20 ordered, an obligee who is not a recipient of public  
21 assistance shall apply for the support enforcement services  
22 of the department pursuant to Title IV-B of the Social  
23 Security Act for the collection of support through automatic  
24 income withholding under Title 40, chapter 5, part 4. The  
25 department shall accept the application. Pending an

1 application, the department shall immediately implement  
2 automatic income withholding and hold any amounts collected  
3 in trust for the obligee until the obligee makes  
4 application.

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

8 (8) Unless an exception is found under [section 16] or  
9 40-5-411 and the exception is included in the support order,  
10 a support obligation established by judgment, decree, or  
11 order under this section, whether temporary or final, and  
12 each modification of an existing support obligation made  
13 under 40-6-118 must be enforceable by immediate or  
14 delinquency withholding, or both, under Title 40, chapter 5,  
15 part 3 or 4. A support order that omits the exception or  
16 that provides for a payment arrangement inconsistent with  
17 this section is nevertheless subject to withholding for the  
18 payment of support without need for an amendment to the  
19 support order or for any further action by the court.

20 (9) For the purposes of income withholding as provided  
21 in subsection (8), whenever the district court establishes  
22 or modifies a child support obligation, the judgment,  
23 decree, or order must include a provision requiring the  
24 parent obligated to pay support to inform the court and, if  
25 the department of social and rehabilitation services is

1 providing services under Title IV-D of the Social Security  
2 Act for the enforcement of the judgment, decree, or order,  
3 the department of:

4 (a) the name and address of the parent's current  
5 employer;

6 (b) whether the parent has access to health insurance  
7 through an employer or other group; and

8 (c) if insurance coverage is available, the health  
9 insurance policy information.

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

20 Section 3. Section 40-5-226, MCA, is amended to read:

21 "40-5-226. Administrative hearing -- nature -- place --  
22 time -- determinations -- failure to appear -- entry of  
23 final decision and order. (1) The administrative hearing is  
24 defined as a "contested case".

25 (2) At the discretion of the hearing officer, the

1 administrative hearing may be held:

2 (a) in the county of residence or other county  
3 convenient to the obligor or obligee; or

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

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

8 (4) The hearing officer shall determine the liability  
9 and responsibility, if any, of the obligor under the notice  
10 and shall enter a final decision and order in accordance  
11 with such determination.

12 (5) If the obligor fails to appear at the hearing or  
13 fails to timely request a hearing, the hearing officer, upon  
14 a showing of valid service, shall enter a decision and order  
15 declaring the amount stated in the notice to be final.

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

22 (7) Within 20 days of the hearing, the hearing officer  
23 shall enter a final ~~decision~~ decision and order. The  
24 determination of the hearing officer constitutes a final  
25 agency decision, subject to judicial review under 40-5-253

1 and the provisions of the Montana Administrative Procedure  
2 Act.

3 (8) If a support order is established under this part,  
4 any party may file a verified petition with the department  
5 alleging facts constituting a material change of  
6 circumstances. Upon the filing of such petition, the  
7 department shall issue an order to the nonpetitioning party  
8 to appear and show cause why the decision previously entered  
9 should not be prospectively modified. The order to appear  
10 and show cause, together with a copy of the verified  
11 petition, must be served by the petitioner upon all other  
12 parties in the manner provided by this part. Upon receipt of  
13 proof of service, the department shall schedule a hearing  
14 not less than 15 or more than 30 days from the date of  
15 service, unless extended for good cause shown. Prospective  
16 modification may be ordered but only upon a showing of good  
17 cause and material change of circumstances.

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

21 (10) A support debt or a support responsibility  
22 determined under this part by reason of the obligor's  
23 failure to request a hearing under this part or failure to  
24 appear at a scheduled hearing may be vacated, upon the  
25 motion of an obligor, by the hearing officer within the time

1 provided and upon a showing of any of the grounds enumerated  
2 in the Montana Rules of Civil Procedure.

3 (11) Unless the hearing officer makes a written  
4 exception under [section 16] or 40-5-411 and the exception  
5 is included in the support order, every order establishing a  
6 child support obligation, whether temporary or final, and  
7 each modification of an existing child support order under  
8 this part is enforceable by immediate or delinquency income  
9 withholding, or both, under Title 40, chapter 5, part 4. A  
10 support order that omits that provision or that provides for  
11 a payment arrangement inconsistent with this section, is  
12 nevertheless subject to withholding for the payment of  
13 support without need for an amendment of the support order  
14 or for any further action by the hearing officer.

15 (12) For the purposes of income withholding provided for  
16 in subsection (11), whenever the department establishes or  
17 modifies a child support obligation, the department's order  
18 must include a provision requiring the obligor, for as long  
19 as the department is providing support enforcement services,  
20 to keep the department informed of the name and address of  
21 the obligor's current employer, whether the obligor has  
22 access to health insurance through an employer or other  
23 group, and, if so, the health insurance policy information."

24 **Section 4.** Section 40-5-304, MCA, is amended to read:

25 **"40-5-304.** When child support payments considered

1 delinquent. (1) Nonpayment of child support required by any  
2 order of a district court or by a similar order of a court  
3 of another jurisdiction becomes delinquent under this part  
4 when the amount owed is equal to 3 months of child support  
5 payments.

6 (2) Child support payments may be considered delinquent  
7 under this part only in reference to a court order setting  
8 child support payments.

9 (3) In the case of support orders not subject to  
10 immediate income withholding under [section 16], including  
11 cases in which the court or administrative authority has  
12 made a finding of good cause or alternative arrangement, the  
13 income of the obligor is subject to withholding under this  
14 part beginning on the date on which the obligor is found to  
15 be delinquent in the payment of support due under a support  
16 order in an amount equal to at least 3 months' support  
17 payments. Intervening agreements or orders establishing a  
18 schedule for payment of delinquent support do not prevent  
19 income withholding under this part. For the purposes of this  
20 section, "alternative arrangement" has the meaning provided  
21 in [section 16(3)(b)]."

22 **Section 5.** Section 40-5-402, MCA, is amended to read:

23 **"40-5-402. Purpose -- applicability.** (1) The purpose of  
24 this part is to provide a more effective and efficient way  
25 to guarantee the support of dependent children by the person

1 or persons primarily responsible for such support by  
 2 ensuring that the support of children is the highest  
 3 priority in the allocation of a responsible parent's income.

4 (2) This part applies to all support obligations being  
 5 enforced or collected by the department of social and  
 6 rehabilitation services pursuant to Title IV-D of the Social  
 7 Security Act.

8 (3) When the requirements of this part are met, an  
 9 employer or other payor of income to a person having a  
 10 support obligation under a court or administrative order  
 11 must be directed to withhold from the person's income in an  
 12 amount sufficient to meet the support obligation and to  
 13 defray any arrearages that are due or may become due.

14 (4) Unless an exception under 40-5-411(4) is contained  
 15 in a support order, withholding of income is required under  
 16 this part without need for any amendment to the support  
 17 order involved or any action by the court or entity that  
 18 issued the support order even though the support order did  
 19 not address withholding or the support order provided for  
 20 other payment arrangements.

21 (5) Withholding, once commenced, applies to all current  
 22 and subsequent payors of income to a person obligated to pay  
 23 support until the withholding is terminated as provided by  
 24 this part.

25 (6) The provisions for income withholding under this

1 part take precedence over any other law or court order."

2 **Section 6.** Section 40-5-403, MCA, is amended to read:

3 **"40-5-403. Definitions.** As used in this part, the  
 4 following definitions apply:

5 (1) "Alternative arrangement" means a written agreement  
 6 signed by the obligor and obligee, and signed by the  
 7 department in the case of an assignment of rights under  
 8 53-2-613, that has been approved and entered in the record  
 9 of the court or administrative authority issuing or  
 10 modifying the support order.

11 (2) "Department" means the department of social and  
 12 rehabilitation services provided for in 2-15-2201.

13 (3) "Income" means any form of periodic payment to a  
 14 person, including earnings and wages. However, income does  
 15 not include:

16 (a) any amount required by law to be withheld, other  
 17 than creditor claims, including federal, state, and local  
 18 taxes and social security; and

19 (b) any amounts exempted from judgment, execution, or  
 20 attachment by federal or state law.

21 (4) "Obligee" means either a person to whom a duty  
 22 of support is owed or a public agency of this or another  
 23 state to which a person has assigned the right to receive  
 24 current and accrued support payments.

25 (5) "Obligor" means a person who owes a duty to make



1 payments under a support order.

2 ~~†5†~~(6) "Payor" means any payor of income to an obligor  
 3 on a periodic basis and includes any person, firm,  
 4 corporation, association, employer, trustee, political  
 5 subdivision, state agency, or any agent thereof, who is  
 6 subject to the jurisdiction of the courts of this state  
 7 under Rule 4B of the Montana Rules of Civil Procedure.

8 ~~†6†~~(7) "Support order" means an order of the district  
 9 court of the state of Montana, an order of a court of  
 10 appropriate jurisdiction of another state, an administrative  
 11 order established pursuant to proceedings under part 2 of  
 12 this chapter, or an order established by administrative  
 13 hearing process of an agency of another state with functions  
 14 similar to those of the department set forth in part 2 of  
 15 this chapter, that provides a set and determinable amount  
 16 for temporary or final periodic payment of funds for the  
 17 support of a child. Support order further includes the  
 18 following:

19 (a) an order for reimbursement of public assistance  
 20 money paid by a public agency for the benefit of a minor  
 21 child;

22 (b) an order for maintenance to be paid to a former  
 23 spouse when the former spouse is the custodial parent of a  
 24 child for whom child support is awarded under the same  
 25 order; and

1 (c) an order requiring payment of interest due on  
 2 unpaid judgments for child support."

3 **Section 7.** Section 40-5-411, MCA, is amended to read:

4 "40-5-411. Income Immediate income withholding. ~~††~~--if  
 5 an---obligation---for---support---is---being---enforced---by---the  
 6 department---pursuant---to---Title---IV---B---of---the---Social---Security---Act  
 7 and---the---obligation---has---been---established---as---required---by---law  
 8 or---administrative---process,---income---due---or---to---become---due  
 9 within---this---state---to---the---obligor---is---subject---to---withholding  
 10 procedures---under---this---part---if:

11 ~~†a†~~--except--as--provided--in--40-4-204--and--40-6-116,--a  
 12 support-obligation--is--initially--decreed--and--ordered--or  
 13 modified--after--January--1,--1990,--by--a--district--court--or  
 14 administrative--process,--regardless--of--whether--child--support  
 15 payments--are--in--arrears;--or

16 ~~†b†~~--the--obligor--is--found--to--owe--a--combination--of--unpaid  
 17 child--support--under--a--support--order--in--an--amount--equal--to--or  
 18 in--excess--of--1--month's--support--payment, (1) Except as  
 19 provided in subsection (4), in the case of a child support  
 20 order, whether temporary or final, that is issued by a court  
 21 or administrative authority of this state after January 1,  
 22 1990, the income of the obligor is subject to immediate  
 23 withholding under this part regardless of whether support  
 24 payments are in arrears.

25 (2) ~~When the requirements of this part have been met,~~

1 ~~the department, without necessity for amendment of the~~  
 2 ~~support order or further order by a court or other entity,~~  
 3 ~~shall issue an order directing the obligor's employer or~~  
 4 ~~other payor to withhold and deliver to the department such~~  
 5 ~~amount of the obligor's income as will be sufficient to meet~~  
 6 ~~the support obligation imposed by the support order and to~~  
 7 ~~defray arrearages, if any, due when the withholding order~~  
 8 ~~takes place. After October 1, 1991, when a support order of~~  
 9 another state is registered in Montana under the provisions  
 10 of 40-5-137 or other applicable law, the support obligation  
 11 is subject to immediate income withholding under this  
 12 section.

13 ~~(3) The provisions for income withholding under this~~  
 14 ~~part take precedence over any other law or court order. The~~  
 15 ~~department may direct the payor of income to the obligor to~~  
 16 commence the withholding of the obligor's income on:

17 (a) the effective date of the support order or the date  
 18 of registration of the support order; or

19 (b) the date, if any, that the department becomes  
 20 authorized by law to provide child support enforcement  
 21 services.

22 (4) An obligor's income is not subject to immediate  
 23 withholding if the court or administrative authority that  
 24 issued or modified the support order finds:

25 (a) that there is good cause not to require immediate

1 withholding; or

2 (b) that there is an alternative arrangement between  
 3 the parties for the payment of support that provides  
 4 sufficient security to ensure compliance with the  
 5 arrangement.

6 (5) For the purposes of subsection (4), any finding of  
 7 good cause not to require immediate income withholding must  
 8 be based on at least:

9 (a) a written determination and explanation by the  
 10 court or administrative authority as to why implementation  
 11 of immediate income withholding would not be in the best  
 12 interests of the child; and

13 (b) proof of timely payment of previously ordered  
 14 support in cases involving the modification of support  
 15 orders.

16 (6) Immediate withholding under this section terminates  
 17 only:

18 (a) upon the conditions provided in 40-5-417; or

19 (b) at the request of the obligor if:

20 (i) withholding has not been previously terminated and  
 21 subsequently initiated under 40-5-412 because of a  
 22 delinquency; and

23 (ii) and the obligor meets one of the exemptions under  
 24 subsection (4)."

25 **Section 8.** Section 40-5-412, MCA, is amended to read:

1       \*40-5-412. Initiation of Delinquency income withholding  
 2 procedures. (1) In a case concerning a support obligation  
 3 referred to in 40-5-411, the department shall immediately  
 4 issue an order under 40-5-415 for the payment of current  
 5 support. In the case of support orders not subject to  
 6 immediate income withholding under 40-5-411, including cases  
 7 in which the court or administrative authority has made a  
 8 finding of good cause or determines that an alternative  
 9 arrangement exists, the income of the obligor is subject to  
 10 withholding under this part beginning on the date on which  
 11 the obligor is found to owe unpaid support under the support  
 12 order in an amount equal to or in excess of 1 month's  
 13 support payment. Intervening agreements or orders  
 14 establishing a schedule for payment of delinquent support do  
 15 not prevent income withholding under this part.

16       (2) ~~In any other case, the department shall monitor and~~  
 17 ~~track all support payments required by the support order, if~~  
 18 ~~at any time these records indicate that the obligor owes a~~  
 19 ~~combination of unpaid support equal to or in excess of 1~~  
 20 ~~month's support, the department shall commence proceedings~~  
 21 ~~to initiate withholding of the obligor's income as provided~~  
 22 ~~in this part. Notwithstanding the provisions of subsection~~  
 23 ~~(1), income withholding must be initiated, without regard to~~  
 24 ~~whether there is an arrearage, on the earliest of:~~

25       (a) the date the obligor requests that withholding

1 begin; or

2       (b) at the request of the obligee if the obligor is  
 3 found, after an opportunity for hearing under 40-5-414, to  
 4 be delinquent under the terms of an alternative arrangement  
 5 for the payment of support.

6       (3) To accomplish the purpose of subsection ~~(2)~~(1), the  
 7 department shall monitor all support payments not otherwise  
 8 subject to immediate withholding. To facilitate monitoring,  
 9 the department by written notice to the obligor may direct  
 10 an obligor who does not owe unpaid child support equal to or  
 11 in excess of 1 month's support payment to pay all support  
 12 through the department, notwithstanding any court order  
 13 directing payments to be made to the obligee or clerk of  
 14 court.

15       (4) ~~Whenever an obligation for support is paid through~~  
 16 ~~the support enforcement and collections unit of the~~  
 17 ~~department, the department must forward payment to the~~  
 18 ~~obligee within 10 days of the department's receipt of~~  
 19 ~~payment from the obligor. The only basis for contesting~~  
 20 ~~withholding under this section is a mistake of fact, which~~  
 21 ~~includes a mistake:~~

22       (a) concerning the obligor's identity;  
 23       (b) concerning the existence of the support obligation;  
 24       (c) concerning the amount of support to be paid;  
 25       (d) in the determination that the delinquent support

1 amounts owed are equal to or greater than 1 month's support  
2 payment;

3 (e) in computation of delinquent support amounts owed;  
4 or

5 (f) in the allegation that the obligor is in default of  
6 an alternative agreement."

7 **Section 9.** Section 40-5-413, MCA, is amended to read:

8 **"40-5-413. Notice of intent to withhold income.** (1)  
9 Prior to service of an initial order or a modification of an  
10 existing order on the payor under 40-5-415, the department  
11 shall serve upon the obligor a notice of the intended action  
12 if when:

13 (a) the--department--previously-has-not-issued-an-order  
14 to-withhold--and--it--has--determined--the--obligor--owes--a  
15 combination--of--unpaid--support--equal-to-or-in-excess-of-1  
16 month's--support income withholding is initiated under  
17 40-5-412 because of a delinquency;

18 (b) additional arrearages have accrued subsequent to  
19 the issuance of an order to withhold and the department  
20 proposes to add those arrears to the withholding order; or

21 (c) immediate withholding has commenced for current  
22 support and there are arrearages due for a period prior to  
23 entry of the order to withhold that the department proposes  
24 to add to the withholding order.

25 (2) The notice must contain a statement:

1 (a) of the amount to be withheld, including a  
2 computation showing the period and total amount of the  
3 arrearages as of the date of the notice;

4 (b) that withholding applies to all current and  
5 subsequent payors;

6 (c) of the obligor's right to a hearing under 40-5-414  
7 to contest the implementation initiation of income  
8 withholding or modification of an existing order on the  
9 ground that the intended action is not proper because of  
10 mistake of fact, as provided in 40-5-412(4); and

11 (d) of the period of time within which the obligor must  
12 request a hearing and that failure to request the hearing  
13 within the time limit will result in income withholding  
14 orders being served upon the payor for the amount stated in  
15 the notice; and

16 (e) in those cases in which withholding is being  
17 initiated at the request of an obligee without regard to  
18 whether there is an arrearage as provided in 40-5-412(2), a  
19 statement that the obligor can require the obligee to appear  
20 and show proof that the obligor is not meeting the terms of  
21 the alternative arrangement.

22 (3) The notice must be served upon the obligor  
23 personally or by certified mail."

24 **Section 10.** Section 40-5-414, MCA, is amended to read:

25 **"40-5-414. Hearing.** (1) The To contest the withholding

1 of income initiated under 40-5-412 because of a delinquency,  
 2 an obligor may within 10 days of being served with notice of  
 3 the-intended-action intent to withhold income under 40-5-413  
 4 file with the department a written request for an  
 5 administrative hearing to be held pursuant to the contested  
 6 case provisions of Title 2, chapter 4, part 6.

7 ~~(2) In a case initiated because an arrearage has~~  
 8 ~~accrued or because additional income is to be withheld to~~  
 9 ~~satisfy additional arrearages and in which the obligor~~  
 10 ~~requests a hearing within the time allowed, the intended~~  
 11 ~~action may not take effect until the conclusion of the~~  
 12 ~~hearing or the date of the hearing if the obligor fails to~~  
 13 ~~appear at a scheduled hearing.~~

14 ~~(3)(2)~~ Venue for the administrative hearing may be in  
 15 the county where the obligor resides if the obligor resides  
 16 in this state, the county in which the payor or the payor's  
 17 agent is located, or the county in which the department or  
 18 any of its regional offices is located.

19 ~~(4)(3)~~ The administrative hearing must be held by  
 20 teleconferencing methods unless the obligor or the  
 21 department expressly requests an in-person hearing before  
 22 the hearing examiner.

23 (4) If the obligor requests a hearing within the 10-day  
 24 period:

25 (a) the delinquency income withholding by the

1 department must be stayed until conclusion of the hearing or  
 2 the date of the hearing if the obligor fails to appear at  
 3 the scheduled hearing. If the obligor is only contesting an  
 4 arrearage amount and is not contesting withholding for  
 5 current support, income withholding for current support is  
 6 not stayed.

7 (b) the department shall, within 45 days of the service  
 8 of the notice of intent to withhold income, inform the  
 9 obligor of the hearing results concerning whether income  
 10 withholding will take place.

11 (5) The department shall issue an order to withhold  
 12 income in accordance with 40-5-415 if:

13 (a) the obligor fails to file a written request for  
 14 hearing with the department within the specified 10-day  
 15 period;

16 (b) the obligor fails to appear at a scheduled hearing;

17 (c) the hearing officer determines from the evidence  
 18 that the obligor owes unpaid support equal to or in excess  
 19 of 1 month's support obligation and the amount of arrearages  
 20 owing is determined and adjudged to be a fixed and certain  
 21 sum; or

22 (d) in cases in which income withholding is being  
 23 initiated at the request of an obligee without regard to  
 24 whether there is an arrearage, the hearing examiner  
 25 determines from the evidence that the obligor did not meet

1 the terms of the alternative arrangement.  
 2 ~~(5)~~(6) For purposes of the hearing process, arrearages  
 3 of support must be computed on the basis of the amount owed  
 4 and unpaid on the date the obligor was served with the  
 5 notice of intent to withhold income,~~and the fact that the~~  
 6 ~~obligor may have later paid the arrearage--does--not--remove~~  
 7 ~~from--the--hearing--examiner--the--authority--to--direct--the~~  
 8 ~~department--to--order--income--withholding.~~ When the department  
 9 is enforcing a current support obligation, payment of the  
 10 arrears after service of the notice is not a basis for not  
 11 initiating income withholding.

12 ~~(6)~~(7) In a case initiated because an arrearage has  
 13 accrued or because additional income is being withheld to  
 14 satisfy additional arrearages, the obligor, within 45 days  
 15 of service of the notice of intent to withhold income, must  
 16 be informed of the hearing decision on whether income  
 17 withholding will take place.

18 ~~(7)~~(8) If the obligor fails to request a hearing within  
 19 10 days or fails to appear at a scheduled hearing or if the  
 20 hearing examiner determines that the obligor owes a  
 21 combination of unpaid support equal to or in excess of 1  
 22 month's support obligation, the department shall proceed  
 23 with the intended action in accordance with 40-5-415."

24 **Section 11.** Section 40-5-415, MCA, is amended to read:

25 "40-5-415. Order to withhold income. (1) When the

1 requirements of this part have been met, the department  
 2 shall immediately serve an order or modification order to  
 3 withhold and deliver income upon any payor or combination of  
 4 payors. The order must:

5 (a) direct the payor and successor payors to withhold  
 6 from the obligor's income each month the amount specified in  
 7 the order if sufficient funds are available;

8 (b) direct the payor to deliver the amount withheld to  
 9 the department in the same month in which the funds were  
 10 withheld;

11 (c) state that the order is binding on the payor until  
 12 further notice by the department; and

13 (d) state the rights and duties of the payor under this  
 14 part; and

15 (e) include a statement that the obligor is required  
 16 under a support order to provide health insurance coverage  
 17 for the obligor's child, if appropriate.

18 (2) An order or modification order to withhold and  
 19 deliver the obligor's income made under this section is  
 20 binding upon the payor immediately upon service of the order  
 21 upon the payor. Service of the order or modification order  
 22 to withhold may be made either personally or by certified  
 23 mail.

24 (3) Whenever there is more than one payor, the  
 25 department may, in its discretion, apportion the total

1 amount to be withheld each month among payors."

2 **Section 12.** Section 40-5-416, MCA, is amended to read:

3 "40-5-416. Determination of amount of income to be  
4 withheld. (1) (a) Subject to the limitations provided in  
5 subsection (2), the amount of funds to be withheld each  
6 month from the obligor's income must be the amount of money  
7 necessary to pay current installments of support as they  
8 become due and payable.

9 (b) If income is being withheld to satisfy an  
10 arrearage, the amount of funds to be withheld must include  
11 the greater of:

12 (i) the amount of money that, when deducted in equal  
13 amounts each month, will pay all outstanding support  
14 arrearages and interest, if any, within 2 years; or

15 (ii) 25% of the obligor's income.

16 (c) If income is being withheld ~~to satisfy an arrearage~~  
17 under this part, the department may allow a fee not to  
18 exceed \$5 each month, which may be withheld by the payor as  
19 compensation for the administrative costs of each  
20 withholding.

21 (2) The maximum amounts withheld from the obligor's  
22 wages or salaries, including fees, may not exceed the  
23 maximum amount permitted under section 303(b) of the federal  
24 Consumer Credit Protection Act, 15 U.S.C. 1673(b), as  
25 amended.

1 (3) At any time, if the obligor can show that  
2 substantial hardship will result if the maximum permissible  
3 withholding is implemented or continued, the department for  
4 cause shown may in its discretion determine a lesser amount  
5 to be withheld each month in satisfaction of support  
6 arrearages."

7 **Section 13.** Section 40-5-417, MCA, is amended to read:

8 "40-5-417. Modification or termination of withholding  
9 orders. (1) The department may at any time modify the order  
10 to withhold income to:

11 (a) reflect payment in full of the arrearages by income  
12 withholding or otherwise;

13 (b) recognize an increase or decrease in the support  
14 order; or

15 (c) indicate any other reason the amount to be withheld  
16 is to be reduced or changed.

17 (2) If an arrearage occurs while the department is  
18 collecting an amount of money necessary to pay current  
19 installments of support as they become due and payable, the  
20 department may adjust the amount of income required to be  
21 withheld to also satisfy the arrearage, as provided in this  
22 part.

23 (3) An income withholding order terminates only when  
24 the department is no longer authorized under the law to  
25 collect support or, when appropriate, services rendered

1 under 40-5-203 have come to an end or when the obligation to  
2 pay support is terminated and all arrearages are paid in  
3 full, whichever occurs first.

4 (4) The payment in full of any arrearage amount may not  
5 be the sole basis for termination of withholding as long as  
6 there is a support obligation enforceable by the  
7 department."

8 **Section 14.** Section 40-5-421, MCA, is amended to read:

9 "40-5-421. Duties of payor. (1) A payor who has been  
10 served with an order to withhold and deliver income shall  
11 deduct the amount designated in the order beginning not  
12 later than the first pay period that occurs after 14 days  
13 from the service of the order. The payor shall, within 10  
14 working days of the date the obligor is paid, promptly  
15 deliver the amount withheld to the department as directed by  
16 the order or in accordance with any subsequent modification  
17 of the order received from the department. The payor shall  
18 include with the payment a statement indicating the date the  
19 amount was withheld from the obligor's income.

20 ~~(2) If the obligor's pay periods are at intervals of~~  
21 ~~less than 1 month, the payor may withhold an equal amount at~~  
22 ~~each pay period cumulatively sufficient to pay the monthly~~  
23 ~~withholding as directed by the withholding order.~~

24 (3)(2) Whenever the payor is obligated to withhold  
25 income for more than one obligor, the payor may combine all

1 amounts withheld into a single payment for that month with  
2 the portion thereof which is attributable to each obligor  
3 separately designated.

4 (4)(3) Whenever there is more than one order for  
5 withholding against a single obligor, the payor must comply  
6 with the orders in the sequence in which they were served  
7 upon the payor and must honor all withholding orders to the  
8 extent that the total amount withheld from the obligor's  
9 wages or salary does not exceed the limits set in 40-5-416.

10 (5)(4) The payor must promptly notify the department of  
11 the termination of the obligor's employment or other source  
12 of income and provide the obligor's last-known address and  
13 the name and address of the obligor's new employer or other  
14 source of income, if known to the payor."

15 **Section 15.** Section 40-5-433, MCA, is amended to read:

16 "40-5-433. Additional duties of department in  
17 interstate income withholding. ~~(1) Unless the public agency~~  
18 ~~of the foreign jurisdiction makes application to the~~  
19 ~~department for additional services, the department is not~~  
20 ~~required to locate the obligor or to locate payors of income~~  
21 ~~to the obligor. If the application for interstate service~~  
22 ~~provided for in 40-5-431 and 40-5-432 fails to provide this~~  
23 ~~information or the information is determined to be~~  
24 ~~incorrect, the department may return the application without~~  
25 ~~further proceeding under this part.~~



1       ~~(2)~~(1) If the department determines that the obligor is  
 2 no longer employed in this state or no longer derives income  
 3 within this state, the department shall promptly notify the  
 4 agency which requested income withholding of the changes and  
 5 shall forward to that agency all information it has with  
 6 respect to the obligor's new address and the name and  
 7 address of the obligor's new employer or other source of  
 8 income.

9       ~~(3)~~(2) The department shall promptly transmit payments  
 10 received on an income withholding order to the agency or  
 11 person designated in the interstate application."

12       **NEW SECTION. Section 16. Immediate income deductions.**

13 (1) Notwithstanding any provision in this part requiring a  
 14 delinquency as a prerequisite to an order for income  
 15 deductions, except as provided in subsection (2), the  
 16 salaries and wages of a person obligated to pay child  
 17 support by an order of a district court issued after October  
 18 1, 1991, are subject to an immediate deduction order under  
 19 40-5-308 on the effective date of the order, regardless of  
 20 whether there is a delinquency.

21 (2) An obligor's salaries and wages are not subject to  
 22 deduction under this section in any case in which the  
 23 district court finds:

24 (a) that there is good cause not to require immediate  
 25 deduction; or

1 (b) that there is an alternative arrangement between  
 2 the parties for the payment of support that provides  
 3 sufficient security to ensure compliance with the  
 4 arrangement.

5 (3) (a) For the purposes of subsection (2), a finding  
 6 of good cause not to require immediate deduction must, at a  
 7 minimum, be based on:

8 (i) a written determination and explanation by the  
 9 district court as to why implementation of immediate  
 10 deductions is not in the best interests of the child; and

11 (ii) in cases involving the modification of support  
 12 orders, proof of timely payment of previously ordered  
 13 support.

14 (b) As used in subsection (2)(b), "alternative  
 15 arrangement" means a written agreement that is signed by the  
 16 obligor and obligee and, in cases in which there is an  
 17 assignment of support rights under 53-2-613, signed by the  
 18 department of social and rehabilitation services, and that  
 19 has been approved and entered into the record by the  
 20 district court that issued or modified the support order.

21 (4) The clerk of court shall administer immediate  
 22 income deductions under this section. The clerk of court, at  
 23 any time after docketing the support order or modification  
 24 of a support order, at the request of the obligee, and  
 25 without need for amendment to the support order or for any

1 further action by the district court, shall issue the order  
 2 for income deductions provided for by 40-5-308 for service  
 3 upon the obligor's employer. The deduction order must direct  
 4 the employer to promptly deliver the amount deducted to the  
 5 clerk of court for distribution to the obligee.

6 (5) Wage deductions under this section may be  
 7 terminated only when:

8 (a) the obligation to pay support has terminated and  
 9 all arrearages are paid in full;

10 (b) the obligor requests termination and the obligee  
 11 and obligor have entered into an alternative arrangement as  
 12 set forth in subsection (2)(b); or

13 (c) the department has superseded the deduction order  
 14 under authority of Title 40, chapter 5, part 4.

15 (6) If a delinquency occurs subsequent to issuance of  
 16 an immediate deduction order or if arrearages occur prior to  
 17 beginning the deductions, the arrearages may be added to the  
 18 deduction order only after compliance with the notice of  
 19 hearing requirements of 40-5-305.

20 (7) (a) After October 1, 1991, whenever a support order  
 21 is registered as provided by 40-5-137 or other law, the  
 22 support order is subject to immediate orders to deduct  
 23 income under this section.

24 (b) Withholding income under this section must be  
 25 imposed when an obligor has wages or salaries derived from

1 within this state and the support order was issued in  
 2 another state.

3 (8) This section applies only to support orders that  
 4 are not being enforced by the department under Title IV-D of  
 5 the Social Security Act. The withholding of income for  
 6 support orders being enforced by the department is provided  
 7 for in Title 40, chapter 5, part 4, and those procedures, if  
 8 applicable, supersede the provisions of this section.

9 **Section 17.** Section 40-5-309, MCA, is amended to read:

10 **"40-5-309. Amount to be deducted from income.** (1) The  
 11 amount of money to be deducted each pay period from the  
 12 obligor's income shall be:

13 (a) (i) the amount of money necessary to pay current  
 14 installments of child support as they become due and  
 15 payable; plus

16 (ii) the amount of money which, when deducted in equal  
 17 amounts each payday, will pay off all outstanding child  
 18 support payments delinquent within 2 years; or

19 (b) not less than 25% of the obligor's disposable  
 20 earnings ~~but--may--not--be--more--than--the--maximum--amount~~  
 21 ~~allowable--by--federal--garnishment--law--if--the--sum--provided--in~~  
 22 ~~subsection--(1)(a)--exceeds--that--amount.~~

23 (2) The district court may allow a fee of not to exceed  
 24 \$5 per deduction, which the employer may deduct from the  
 25 obligor's wages or salary for the expense of administering

1 the deduction.

2 (3) The total amount to be deducted under subsections  
 3 (1) and (2) may not exceed the maximum amount permitted  
 4 under section 303(b) of the Consumer Credit Protection Act,  
 5 15 U.S.C. 1673(b), as amended.

6 ~~†3~~(4) The Except as provided in [section 16], the  
 7 child support income deduction shall cease when there is no  
 8 past-due child support owing unless the district court  
 9 orders continued income deductions for payment of child  
 10 support installments as they become due and payable."

11 **NEW SECTION. Section 18. Health insurance coverage --**  
 12 **order of enrollment.** (1) Whenever the obligor is required by  
 13 a court or administrative order or is required under  
 14 40-5-208(1)(b) to provide health insurance coverage for a  
 15 child and the obligor fails to provide the coverage or lets  
 16 it lapse, the department may enforce the obligation under  
 17 this section if a payor of income to an obligor has a health  
 18 insurance plan which can be extended to cover the obligor's  
 19 child.

20 (2) (a) Prior to service of an initial order of  
 21 enrollment on a payor, the department shall serve the  
 22 obligor a notice of its intent to order an enrollment, by  
 23 certified mail or by personal service.

24 (b) Within 20 days after service of the notice, the  
 25 obligor may provide written proof to the department that

1 health insurance coverage for the child has been obtained or  
 2 applied for. If proof is received by the department within  
 3 20 days after service, further action may not be taken by  
 4 the department except in the event of a lapse of coverage as  
 5 provided in subsection (3). If proof of health insurance  
 6 coverage is not timely received by the department, an order  
 7 of enrollment may be issued in accordance with subsection  
 8 (3).

9 (3) If the obligor fails to timely provide proof of  
 10 coverage or if after timely proof of coverage the obligor  
 11 lets the coverage lapse, the department may, without further  
 12 notice to the obligor, serve an order of enrollment on the  
 13 payor. The payor may be the same payor who is subject to an  
 14 order to withhold under this part or any other payor or  
 15 subsequent payor.

16 (4) (a) Upon receipt of an order of enrollment, the  
 17 payor shall respond to the department within 20 days and  
 18 confirm that the child:

19 (i) has been enrolled in the health insurance plan;  
 20 (ii) will be enrolled in the next enrollment period; or  
 21 (iii) cannot be covered because the child resides  
 22 outside the plan's service area or the contracted terms of  
 23 the plan do not permit an extension of coverage to the  
 24 child.

25 (b) Upon enrollment of the child, the payor shall

1 withhold from the obligor's income an amount equal to the  
2 required premium, if any, and apply the withheld amount to  
3 the premium as necessary.

4 (c) If more than one plan is offered by the payor and  
5 each plan may be extended to the child, the child must be  
6 enrolled in the same plan as the obligor. If the obligor's  
7 plan does not provide coverage that is accessible to the  
8 child, the child must be enrolled in the least expensive  
9 plan available to the obligor.

10 (d) Once an initial order of enrollment is authorized  
11 under this section, the authority to issue orders to  
12 subsequent payors and to bind payors to the orders  
13 terminates only when:

14 (i) the department is no longer providing enforcement  
15 services;

16 (ii) the obligation to provide health insurance coverage  
17 is terminated according to law; or

18 (iii) the department finds under subsection (5) that the  
19 premium charged to the obligor is not reasonable under the  
20 circumstances of the obligor's case.

21 (e) A payor served with an order of enrollment shall  
22 inform the department of the name of the health insurance  
23 coverage provider or insurer and the extent of the coverage.  
24 The payor shall make available to the department or obligee  
25 any necessary claim forms or enrollment membership cards. If

1 coverage is terminated for any reason, the payor shall  
2 inform the department of the termination within 20 days of  
3 the termination date.

4 (5) (a) Whenever an obligor is being charged with a  
5 premium under subsection (3) and the obligor believes the  
6 amount of the premium to be unreasonable under the  
7 circumstances, the obligor may make a written request to the  
8 department for an administrative hearing to determine the  
9 reasonableness of the premium charge.

10 (b) The department shall schedule the hearing within 20  
11 days after receipt of the obligor's request. The hearing  
12 must be conducted by telephone conferencing methods unless  
13 the hearing officer determines an in-person hearing is  
14 appropriate.

15 (c) If the hearing officer finds that the premium  
16 charged the obligor is causing an undue hardship on the  
17 obligor or the child, the department shall withdraw any  
18 order of enrollment served on a payor. A withdrawal is  
19 temporary and remains in effect only until a significant  
20 change in circumstances occurs, such as an improvement in  
21 the obligor's ability to pay the premium or an increase in  
22 the child's need for health insurance coverage. Upon a  
23 change of circumstances, the department may again serve the  
24 order of enrollment on the payor. After service of the  
25 order, the obligor may request an administrative hearing to

1 determine the reasonableness of premiums considering the new  
2 circumstances.

3 (d) If the hearing officer finds that the premium is  
4 reasonable under the circumstances, the obligor may not  
5 request any further hearings under this subsection (5)  
6 unless there is a significant change in circumstances from  
7 that existing at the time the finding was made.

8 (6) A notice under this section may be combined with a  
9 notice of intent to withhold income under 40-5-413 or with  
10 any other notice served on an obligor under part 2 of this  
11 chapter.

12 (7) This section may not be construed to limit the  
13 right of an obligee or the department to bring any other  
14 action available under the law to enforce an obligation to  
15 provide health insurance coverage for a child.

16 (8) This section may not be construed to require a  
17 health maintenance organization, health care service  
18 provider, or insurer to extend coverage to a child who  
19 resides outside its service area or to deviate from  
20 contractual provisions and restrictions.

21 (9) An obligor whose child is enrolled in a health  
22 insurance plan under this section shall cooperate with the  
23 insurer, health care service provider, department, and  
24 child's custodian to obtain and use the health insurance  
25 plan.

1 NEW SECTION. **Section 19. Liability of payor --**  
2 **penalties.** (1) A payor is liable for a fine of up to \$1,000  
3 for each instance in which the payor fails or refuses,  
4 within 20 days of receipt of an order of enrollment, to:

5 (a) enroll the obligor's child in the health insurance  
6 plan; or

7 (b) make a written response to the department, stating  
8 that the child:

9 (i) will be enrolled in the next available open  
10 enrollment period; or

11 (ii) cannot be covered and explaining the reasons why  
12 coverage cannot be provided.

13 (2) A payor who enrolls a child in a health insurance  
14 plan in compliance with an order of enrollment under  
15 [section 18] is exempt from any liability to the obligor  
16 that may result from the enrollment.

17 NEW SECTION. **Section 20. Health insurance coverage --**  
18 **notice of intent to purchase.** (1) The department may serve a  
19 notice of intent to purchase health insurance coverage on an  
20 obligor by certified mail or personal service, when:

21 (a) the obligor is ordered by a court or administrative  
22 order or is required under 40-5-208(1)(b) to provide health  
23 insurance coverage for a child;

24 (b) the obligor fails to provide such coverage or lets  
25 it lapse;

1 (c) there is no payor upon whom an order of enrollment  
2 under [section 18] is applicable; and

3 (d) the child is currently eligible for medical  
4 assistance benefits under Title 53.

5 (2) The notice must specify the type and cost of the  
6 proposed health insurance coverage. Within 20 days of the  
7 date of service of the notice, the obligor shall:

8 (a) provide written proof to the department that the  
9 obligor has either applied for or obtained coverage  
10 accessible to the child; or

11 (b) request an administrative hearing to show that the  
12 proposed purchase of coverage and the premium chargeable to  
13 the obligor will cause undue hardship.

14 (3) If a hearing is requested, the department shall  
15 schedule the hearing within 20 days of the receipt of the  
16 request. The hearing must be held by telephone conferencing  
17 methods unless the hearing officer determines that an  
18 in-person hearing is appropriate.

19 (4) If the obligor fails to timely provide written  
20 proof of coverage or if the hearing officer finds that the  
21 proposed purchase of coverage will not cause an undue  
22 hardship on the obligor, the department shall purchase the  
23 health insurance coverage specified in the notice. The  
24 amount of the premium may be added to the obligor's child  
25 support debt and may be collected without further notice by

1 income withholding under this part or by any other remedy  
2 available to the department.

3 (5) Health insurance coverage purchased under this  
4 section must be continued by the department until:

5 (a) the child is no longer eligible for medical  
6 assistance benefits;

7 (b) the obligor is no longer responsible under the law  
8 for providing coverage for the child;

9 (c) the obligor provides written proof to the  
10 department that other coverage accessible to the child has  
11 been obtained; or

12 (d) relief is granted under subsection (6).

13 (6) (a) If a change of circumstances occurs after  
14 health insurance coverage is purchased and the obligor  
15 believes the change makes the provision of health insurance  
16 coverage an undue hardship, the obligor may make a written  
17 request for an administrative hearing to reconsider the  
18 matter of continuing to purchase coverage.

19 (b) If a hearing is requested, the department shall  
20 schedule the hearing within 20 days of the receipt of the  
21 request. The hearing must be conducted by telephone  
22 conferencing methods unless the hearing officer determines  
23 that an in-person hearing is appropriate.

24 (c) If the hearing officer finds that the continued  
25 purchase of coverage will cause undue hardship on the

1 obligor, the department shall terminate the coverage.

2 (d) If the hearing officer finds that the continued  
3 purchase of coverage will not cause undue hardship, the  
4 department shall continue to purchase the coverage, as  
5 appropriate, under the provisions of subsection (5).

6 (7) An obligor whose child is enrolled in a health  
7 insurance plan under this section shall cooperate with the  
8 insurer, health care provider, department, and child's  
9 custodian to obtain and use the health insurance plan.

10 **NEW SECTION. Section 21.** Payors to provide information  
11 -- exemption from liability. (1) For the purposes of this  
12 part, upon written request by the department, a payor or  
13 former payor and any labor union of which the obligor is or  
14 may have been a member shall provide the department with the  
15 following information, if known, regarding the obligor:

16 (a) last-known residential address;  
17 (b) social security number;  
18 (c) dates of employment or union membership;  
19 (d) amounts of wages, salaries, commissions, and other  
20 earnings paid to the obligor during any period when the  
21 department provided support enforcement services; and

22 (e) whether health insurance coverage is or was  
23 available to the obligor through the payor or union and, if  
24 so:

25 (i) the name of the insurer or health care provider;

1 (ii) the policy numbers or other identifiers; and

2 (iii) the persons covered.

3 (2) A payor who discloses information to the department  
4 in compliance with this section is exempt from any liability  
5 to the obligor that may result from such disclosure.

6 **NEW SECTION. Section 22.** Repealer. Section 40-5-425,  
7 MCA, is repealed.

8 **NEW SECTION. Section 23.** Codification instruction. (1)  
9 [Section 16] is intended to be codified as an integral part  
10 of Title 40, chapter 5, part 3, and the provisions of Title  
11 40, chapter 5, part 3, apply to [section 16].

12 (2) [Sections 18 through 21] are intended to be  
13 codified as an integral part of Title 40, chapter 5, part 4,  
14 and the provisions of Title 40, chapter 5, part 4, apply to  
15 [sections 18 through 21].

16 **NEW SECTION. Section 24.** Severability. If a part of  
17 [this act] is invalid, all valid parts that are severable  
18 from the invalid part remain in effect. If a part of [this  
19 act] is invalid in one or more of its applications, the part  
20 remains in effect in all valid applications that are  
21 severable from the invalid applications.

22 **NEW SECTION. SECTION 25.** EFFECTIVE DATE. [THIS ACT]  
23 IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

1                   HOUSE BILL NO. 923  
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 REVISE PROCEDURES  
7           PERTAINING TO INCOME WITHHOLDING FOR THE PAYMENT OF CHILD  
8           SUPPORT TO CONFORM THOSE PROCEDURES TO FEDERAL REGULATIONS;  
9           TO PROVIDE FOR ENFORCEMENT OF HEALTH INSURANCE OBLIGATIONS  
10          THROUGH INCOME WITHHOLDING; AMENDING SECTIONS 40-4-204,  
11          40-5-226, 40-5-304, 40-5-309, 40-5-402, 40-5-403, 40-5-411,  
12          40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417,  
13          40-5-421, 40-5-433, AND 40-6-116, MCA; AND REPEALING SECTION  
14          40-5-425, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
15  
16          BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
17                **Section 1.** Section 40-4-204, MCA, is amended to read:  
18                "40-4-204. Child support -- orders to address health  
19                insurance -- automatic withholding of child support. (1) In  
20                a proceeding for dissolution of marriage, legal separation,  
21                maintenance, or child support, the court shall order either  
22                or both parents owing a duty of support to a child to pay an  
23                amount reasonable or necessary for his support, without  
24                regard to marital misconduct.  
25                (2) The court shall consider all relevant factors,

There are no changes in this bill,  
and will not be reprinted. Please  
refer to yellow copy for complete  
text.



## 1 HOUSE BILL NO. 923

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 REVISE PROCEDURES  
7 PERTAINING TO INCOME WITHHOLDING FOR THE PAYMENT OF CHILD  
8 SUPPORT TO CONFORM THOSE PROCEDURES TO FEDERAL REGULATIONS;  
9 TO PROVIDE FOR ENFORCEMENT OF HEALTH INSURANCE OBLIGATIONS  
10 THROUGH INCOME WITHHOLDING; AMENDING SECTIONS 40-4-204,  
11 40-5-226, 40-5-304, 40-5-309, 40-5-402, 40-5-403, 40-5-411,  
12 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417,  
13 40-5-421, 40-5-433, AND 40-6-116, MCA; AND REPEALING SECTION  
14 40-5-425, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15

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

17 **Section 1.** Section 40-4-204, MCA, is amended to read:

18 **\*40-4-204.** Child support -- orders to address health  
19 insurance -- automatic withholding of child support. (1) In  
20 a proceeding for dissolution of marriage, legal separation,  
21 maintenance, or child support, the court shall order either  
22 or both parents owing a duty of support to a child to pay an  
23 amount reasonable or necessary for his support, without  
24 regard to marital misconduct.

25 (2) The court shall consider all relevant factors,

1 including:

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

1 guidelines to determine child support, it shall state its  
2 reasons for finding that the application of such standards  
3 and guidelines is unjust to the child or a party or is  
4 inappropriate in that particular case.

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

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

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

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

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

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

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

13 ~~{5}--(a) Except as provided in subsection--(5)(b), each~~  
14 ~~district--court--judgment,--decree,--or--order--establishing--a~~  
15 ~~child--support--obligation--under--this--title,--whether--temporary~~  
16 ~~or--final,--and--each--modification--of--an--existing--child--support~~  
17 ~~order--must:~~

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

22 ~~{ii}--include--the--obligor's--social--security--number--and~~  
23 ~~the--name--and--address--of--the--obligor's--employer--and--of--any~~  
24 ~~other--payer--of--income--to--the--obligor;~~

25 ~~{b}--Income--is--not--subject--to--automatic--withholding--if:~~

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

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

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

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

24 (e) If an obligor is not subject to income withholding  
25 or is exempted from income withholding, the district court

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

7 (5) (a) Unless the court makes a written exception  
8 under [section 16] or 40-5-411 and the exception is included  
9 in the support order, a support obligation established by  
10 judgment, decree, or order under this section, whether  
11 temporary or final, and each modification of an existing  
12 support obligation under 40-4-208 must be enforced by  
13 immediate or delinquency income withholding, or both, under  
14 Title 40, chapter 5, part 3 or 4. A support order that omits  
15 the written exceptions provided in [section 16] or 40-5-411  
16 or that provides for a payment arrangement inconsistent with  
17 this section is nevertheless subject to withholding for the  
18 payment of support without need for an amendment to the  
19 support order or for any further action by the court.

20 (b) If an obligor is exempt from immediate income  
21 withholding, the district court judgment or order must  
22 include a warning statement that if the obligor is  
23 delinquent in the payment of support, the obligor's income  
24 may be subject to income withholding procedures under Title  
25 40, chapter 5, part 3 or 4. Failure to include a warning

1 statement in a judgment or order does not preclude the use  
2 of withholding procedures.

3 (6) For the purposes of income withholding under  
4 subsection (5), every district court judgment, decree, or  
5 order that establishes or modifies a child support  
6 obligation must include a provision requiring the parent  
7 obligated to pay support to inform the court and, if the  
8 department of social and rehabilitation services is  
9 providing services under Title IV-D of the Social Security  
10 Act for the enforcement of the judgment, decree, or order,  
11 the department, of the following:

12 (a) the name and address of the parent's current  
13 employer;

14 (b) whether the parent has access to health insurance  
15 through an employer or other group; and

16 (c) if insurance coverage is available, the health  
17 insurance policy information.

18 (6)(7) If the department of social and rehabilitation  
19 services is providing or later provides support enforcement  
20 services under Title IV-D of the Social Security Act, each  
21 district court order or modification of an order must  
22 contain a statement providing that the noncustodial parent,  
23 without further order of the court, is required to obtain  
24 and maintain health insurance coverage as provided in  
25 40-5-208. Failure to include a warning statement in the

1 judgment or order does not preclude the imposition of  
2 sanctions under 40-5-208."

3 **Section 2.** Section 40-6-116, MCA, is amended to read:

4 **"40-6-116. Judgment or order.** (1) The judgment or order  
5 of the court determining the existence or nonexistence of  
6 the parent and child relationship is determinative for all  
7 purposes.

8 (2) If the judgment or order of the court is at  
9 variance with the child's birth certificate, the court shall  
10 order that a substitute birth certificate be issued under  
11 40-6-123.

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

18 (b) Except when the financial responsibility of a  
19 responsible parent is in the process of being determined  
20 pursuant to the administrative procedure provided in  
21 40-5-225, the judgment or order must contain a provision  
22 concerning the duty of child support.

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

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

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

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

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

13 (a) the needs of the child, including his medical  
14 needs;

15 (b) the standard of living and circumstances of the  
16 parents;

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

18 (d) the earning ability of the parents;

19 (e) the need and capacity of the child for education,  
20 including higher education;

21 (f) the age of the child;

22 (g) the financial resources and the earning ability of  
23 the child;

24 (h) the responsibility of the parents for the support  
25 of others;

1 (i) the value of services contributed by the custodial  
2 parent;

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

4 (k) any custody arrangement that is ordered or decided  
5 upon.

6 (6) (a) Whenever a court issues or modifies an order  
7 concerning child support, the court shall determine the  
8 child support obligation by applying the standards in this  
9 section and the uniform child support guidelines adopted by  
10 the department of social and rehabilitation services  
11 pursuant to 40-5-209, unless the court finds by clear and  
12 convincing evidence that the application of the standards  
13 and guidelines is unjust to the child or to any of the  
14 parties or is inappropriate in that particular case.

15 (b) If the court does not apply these standards and  
16 guidelines to determine child support, it shall state its  
17 reasons for finding that the application of such standards  
18 and guidelines is unjust to the child or a party or is  
19 inappropriate in that particular case.

20 (c) If the court does not order a parent owing a duty  
21 of support to a child to pay any amount for the child's  
22 support, the court shall state its reasons for not ordering  
23 child support.

24 (7) The judgment or order concerning child support and  
25 each modification of a judgment or order for child support

1 must include a provision addressing health insurance  
2 coverage in the following cases:

3 (a) If either party has available through an employer  
4 or other organization health insurance coverage for the  
5 child or children for which the premium is partially or  
6 entirely paid by the employer or organization, the judgment  
7 or order may contain a provision requiring that coverage for  
8 the child or children be continued or obtained.

9 (b) In the event that health insurance required in a  
10 child support judgment or order becomes unavailable to the  
11 party who is to provide it, through loss or change of  
12 employment or otherwise, that party shall, in the absence of  
13 an agreement to the contrary, obtain comparable insurance or  
14 request that the court modify the requirement.

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

18 (d) Unless otherwise provided in the decree, the health  
19 care coverage required by this section is in addition to and  
20 not in substitution, in whole or in part, for the child  
21 support obligation.

22 ~~{b}{a} Except as provided in subsection {b}{b}, each~~  
23 ~~district court judgment or order establishing a child~~  
24 ~~support obligation under this part, whether temporary or~~  
25 ~~final, and each modification of an existing child support~~

1 order must:

2 ~~{i} provide that the amount of child support must be~~  
3 ~~withheld from the obligor's income and paid to the~~  
4 ~~department pursuant to procedures established by the~~  
5 ~~department under Title 40, chapter 5, part 4, and~~

6 ~~{ii} include the obligor's social security number and~~  
7 ~~the name and address of the obligor's employer and of any~~  
8 ~~other payer of income to the obligor;~~

9 ~~{b} income is not subject to automatic withholding if:~~

10 ~~{i} the obligee or obligor demonstrates and the court~~  
11 ~~finds that there is good cause not to require automatic~~  
12 ~~income withholding; or~~

13 ~~{ii} the obligee and obligor agree in writing to an~~  
14 ~~alternative arrangement regarding the payment of child~~  
15 ~~support that provides sufficient security to ensure~~  
16 ~~compliance with their agreement; The security is in addition~~  
17 ~~to the child support obligation;~~

18 ~~{c} When a judgment or order for child support is~~  
19 ~~entered or modified and automatic income withholding is~~  
20 ~~ordered, an obligee who is not a recipient of public~~  
21 ~~assistance shall apply for the support enforcement services~~  
22 ~~of the department pursuant to Title IV-D of the Social~~  
23 ~~Security Act for the collection of support through automatic~~  
24 ~~income withholding under Title 40, chapter 5, part 4. The~~  
25 ~~department shall accept the application. Pending an~~

1 application, the department shall immediately implement  
 2 automatic income withholding and hold any amounts collected  
 3 in trust for the obligee until the obligee makes  
 4 application.

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

8 (8) Unless an exception is found under [section 16] or  
 9 40-5-411 and the exception is included in the support order,  
 10 a support obligation established by judgment, decree, or  
 11 order under this section, whether temporary or final, and  
 12 each modification of an existing support obligation made  
 13 under 40-6-118 must be enforceable by immediate or  
 14 delinquency withholding, or both, under Title 40, chapter 5,  
 15 part 3 or 4. A support order that omits the exception or  
 16 that provides for a payment arrangement inconsistent with  
 17 this section is nevertheless subject to withholding for the  
 18 payment of support without need for an amendment to the  
 19 support order or for any further action by the court.

20 (9) For the purposes of income withholding as provided  
 21 in subsection (8), whenever the district court establishes  
 22 or modifies a child support obligation, the judgment,  
 23 decree, or order must include a provision requiring the  
 24 parent obligated to pay support to inform the court and, if  
 25 the department of social and rehabilitation services is

1 providing services under Title IV-D of the Social Security  
 2 Act for the enforcement of the judgment, decree, or order,  
 3 the department of:

4 (a) the name and address of the parent's current  
 5 employer;

6 (b) whether the parent has access to health insurance  
 7 through an employer or other group; and

8 (c) if insurance coverage is available, the health  
 9 insurance policy information.

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

20 **Section 3.** Section 40-5-226, MCA, is amended to read:

21 "40-5-226. Administrative hearing -- nature -- place --  
 22 time -- determinations -- failure to appear -- entry of  
 23 final decision and order. (1) The administrative hearing is  
 24 defined as a "contested case".

25 (2) At the discretion of the hearing officer, the

1 administrative hearing may be held:

2 (a) in the county of residence or other county  
3 convenient to the obligor or obligee; or

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

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

8 (4) The hearing officer shall determine the liability  
9 and responsibility, if any, of the obligor under the notice  
10 and shall enter a final decision and order in accordance  
11 with such determination.

12 (5) If the obligor fails to appear at the hearing or  
13 fails to timely request a hearing, the hearing officer, upon  
14 a showing of valid service, shall enter a decision and order  
15 declaring the amount stated in the notice to be final.

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

22 (7) Within 20 days of the hearing, the hearing officer  
23 shall enter a final ~~decison~~ decision and order. The  
24 determination of the hearing officer constitutes a final  
25 agency decision, subject to judicial review under 40-5-253

1 and the provisions of the Montana Administrative Procedure  
2 Act.

3 (8) If a support order is established under this part,  
4 any party may file a verified petition with the department  
5 alleging facts constituting a material change of  
6 circumstances. Upon the filing of such petition, the  
7 department shall issue an order to the nonpetitioning party  
8 to appear and show cause why the decision previously entered  
9 should not be prospectively modified. The order to appear  
10 and show cause, together with a copy of the verified  
11 petition, must be served by the petitioner upon all other  
12 parties in the manner provided by this part. Upon receipt of  
13 proof of service, the department shall schedule a hearing  
14 not less than 15 or more than 30 days from the date of  
15 service, unless extended for good cause shown. Prospective  
16 modification may be ordered but only upon a showing of good  
17 cause and material change of circumstances.

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

21 (10) A support debt or a support responsibility  
22 determined under this part by reason of the obligor's  
23 failure to request a hearing under this part or failure to  
24 appear at a scheduled hearing may be vacated, upon the  
25 motion of an obligor, by the hearing officer within the time



1 provided and upon a showing of any of the grounds enumerated  
2 in the Montana Rules of Civil Procedure.

3 (11) Unless the hearing officer makes a written  
4 exception under [section 16] or 40-5-411 and the exception  
5 is included in the support order, every order establishing a  
6 child support obligation, whether temporary or final, and  
7 each modification of an existing child support order under  
8 this part is enforceable by immediate or delinquency income  
9 withholding, or both, under Title 40, chapter 5, part 4. A  
10 support order that omits that provision or that provides for  
11 a payment arrangement inconsistent with this section, is  
12 nevertheless subject to withholding for the payment of  
13 support without need for an amendment of the support order  
14 or for any further action by the hearing officer.

15 (12) For the purposes of income withholding provided for  
16 in subsection (11), whenever the department establishes or  
17 modifies a child support obligation, the department's order  
18 must include a provision requiring the obligor, for as long  
19 as the department is providing support enforcement services,  
20 to keep the department informed of the name and address of  
21 the obligor's current employer, whether the obligor has  
22 access to health insurance through an employer or other  
23 group, and, if so, the health insurance policy information."

24 **Section 4.** Section 40-5-304, MCA, is amended to read:

25 **"40-5-304. When child support payments considered**

1 delinquent. (1) Nonpayment of child support required by any  
2 order of a district court or by a similar order of a court  
3 of another jurisdiction becomes delinquent under this part  
4 when the amount owed is equal to 3 months of child support  
5 payments.

6 (2) Child support payments may be considered delinquent  
7 under this part only in reference to a court order setting  
8 child support payments.

9 (3) In the case of support orders not subject to  
10 immediate income withholding under [section 16], including  
11 cases in which the court or administrative authority has  
12 made a finding of good cause or alternative arrangement, the  
13 income of the obligor is subject to withholding under this  
14 part beginning on the date on which the obligor is found to  
15 be delinquent in the payment of support due under a support  
16 order in an amount equal to at least 3 months' support  
17 payments. Intervening agreements or orders establishing a  
18 schedule for payment of delinquent support do not prevent  
19 income withholding under this part. For the purposes of this  
20 section, "alternative arrangement" has the meaning provided  
21 in [section 16(3)(b)]."

22 **Section 5.** Section 40-5-402, MCA, is amended to read:

23 **"40-5-402. Purpose -- applicability.** (1) The purpose of  
24 this part is to provide a more effective and efficient way  
25 to guarantee the support of dependent children by the person

1 or persons primarily responsible for such support by  
2 ensuring that the support of children is the highest  
3 priority in the allocation of a responsible parent's income.

4 (2) This part applies to all support obligations being  
5 enforced or collected by the department of social and  
6 rehabilitation services pursuant to Title IV-D of the Social  
7 Security Act.

8 (3) When the requirements of this part are met, an  
9 employer or other payor of income to a person having a  
10 support obligation under a court or administrative order  
11 must be directed to withhold from the person's income in an  
12 amount sufficient to meet the support obligation and to  
13 defray any arrearages that are due or may become due.

14 (4) Unless an exception under 40-5-411(4) is contained  
15 in a support order, withholding of income is required under  
16 this part without need for any amendment to the support  
17 order involved or any action by the court or entity that  
18 issued the support order even though the support order did  
19 not address withholding or the support order provided for  
20 other payment arrangements.

21 (5) Withholding, once commenced, applies to all current  
22 and subsequent payors of income to a person obligated to pay  
23 support until the withholding is terminated as provided by  
24 this part.

25 (6) The provisions for income withholding under this

1 part take precedence over any other law or court order."

2 **Section 6.** Section 40-5-403, MCA, is amended to read:

3 **"40-5-403. Definitions.** As used in this part, the  
4 following definitions apply:

5 (1) "Alternative arrangement" means a written agreement  
6 signed by the obligor and obligee, and signed by the  
7 department in the case of an assignment of rights under  
8 53-2-613, that has been approved and entered in the record  
9 of the court or administrative authority issuing or  
10 modifying the support order.

11 {1}(2) "Department" means the department of social and  
12 rehabilitation services provided for in 2-15-2201.

13 {2}(3) "Income" means any form of periodic payment to a  
14 person, including earnings and wages. However, income does  
15 not include:

16 (a) any amount required by law to be withheld, other  
17 than creditor claims, including federal, state, and local  
18 taxes and social security; and

19 (b) any amounts exempted from judgment, execution, or  
20 attachment by federal or state law.

21 {3}(4) "Obligee" means either a person to whom a duty  
22 of support is owed or a public agency of this or another  
23 state to which a person has assigned the right to receive  
24 current and accrued support payments.

25 {4}(5) "Obligor" means a person who owes a duty to make

1 payments under a support order.

2 {5}{6} "Payor" means any payor of income to an obligor  
 3 on a periodic basis and includes any person, firm,  
 4 corporation, association, employer, trustee, political  
 5 subdivision, state agency, or any agent thereof, who is  
 6 subject to the jurisdiction of the courts of this state  
 7 under Rule 4B of the Montana Rules of Civil Procedure.

8 {6}{7} "Support order" means an order of the district  
 9 court of the state of Montana, an order of a court of  
 10 appropriate jurisdiction of another state, an administrative  
 11 order established pursuant to proceedings under part 2 of  
 12 this chapter, or an order established by administrative  
 13 hearing process of an agency of another state with functions  
 14 similar to those of the department set forth in part 2 of  
 15 this chapter, that provides a set and determinable amount  
 16 for temporary or final periodic payment of funds for the  
 17 support of a child. Support order further includes the  
 18 following:

19 (a) an order for reimbursement of public assistance  
 20 money paid by a public agency for the benefit of a minor  
 21 child;

22 (b) an order for maintenance to be paid to a former  
 23 spouse when the former spouse is the custodial parent of a  
 24 child for whom child support is awarded under the same  
 25 order; and

1 (c) an order requiring payment of interest due on  
 2 unpaid judgments for child support."

3 **Section 7.** Section 40-5-411, MCA, is amended to read:

4 "40-5-411. Income Immediate income withholding. ~~{1}~~--If  
 5 an---obligation---for---support---is---being---enforced---by---the  
 6 department-pursuant-to-Title-IV-B-of-the-Social-Security-Act  
 7 and-the-obligation-has-been-established-as-required--by--law  
 8 or--administrative--process,--income--due--or--to-become-due  
 9 within-this-state-to-the-obligor-is-subject--to--withholding  
 10 procedures-under-this-part-if:

11 (a)--except--as--provided--in--40-4-284--and--40-6-116,--a  
 12 support-obligation--is--initially--decreed--and--ordered--or  
 13 modified--after--January--17--1990,--by--a--district-court-or  
 14 administrative-process,--regardless-of-whether-child--support  
 15 payments-are-in-arrears,--or

16 (b)--the-obligor-is-found-to-owe-a-combination-of-unpaid  
 17 child-support-under-a-support-order-in-an-amount-equal-to-or  
 18 in-excess--of--1--month's--support--payment: (1) Except as  
 19 provided in subsection (4), in the case of a child support  
 20 order, whether temporary or final, that is issued by a court  
 21 or administrative authority of this state after January 1,  
 22 1990, the income of the obligor is subject to immediate  
 23 withholding under this part regardless of whether support  
 24 payments are in arrears.

25 (2) When the requirements of this part have been met

1 ~~the department, without necessity for amendment of the~~  
 2 ~~support order or further order by a court or other entity,~~  
 3 ~~shall issue an order directing the obligor's employer or~~  
 4 ~~other payor to withhold and deliver to the department such~~  
 5 ~~amount of the obligor's income as will be sufficient to meet~~  
 6 ~~the support obligation imposed by the support order and to~~  
 7 ~~defray arrearages, if any, due when the withholding order~~  
 8 ~~takes place. After October 1, 1991, when a support order of~~  
 9 ~~another state is registered in Montana under the provisions~~  
 10 ~~of 40-5-137 or other applicable law, the support obligation~~  
 11 ~~is subject to immediate income withholding under this~~  
 12 ~~section.~~

13 ~~(3) The provisions for income withholding under this~~  
 14 ~~part take precedence over any other law or court order. The~~  
 15 ~~department may direct the payor of income to the obligor to~~  
 16 ~~commence the withholding of the obligor's income on:~~

17 ~~(a) the effective date of the support order or the date~~  
 18 ~~of registration of the support order; or~~

19 ~~(b) the date, if any, that the department becomes~~  
 20 ~~authorized by law to provide child support enforcement~~  
 21 ~~services.~~

22 ~~(4) An obligor's income is not subject to immediate~~  
 23 ~~withholding if the court or administrative authority that~~  
 24 ~~issued or modified the support order finds:~~

25 ~~(a) that there is good cause not to require immediate~~

1 ~~withholding; or~~

2 ~~(b) that there is an alternative arrangement between~~  
 3 ~~the parties for the payment of support that provides~~  
 4 ~~sufficient security to ensure compliance with the~~  
 5 ~~arrangement.~~

6 ~~(5) For the purposes of subsection (4), any finding of~~  
 7 ~~good cause not to require immediate income withholding must~~  
 8 ~~be based on at least:~~

9 ~~(a) a written determination and explanation by the~~  
 10 ~~court or administrative authority as to why implementation~~  
 11 ~~of immediate income withholding would not be in the best~~  
 12 ~~interests of the child; and~~

13 ~~(b) proof of timely payment of previously ordered~~  
 14 ~~support in cases involving the modification of support~~  
 15 ~~orders.~~

16 ~~(6) Immediate withholding under this section terminates~~  
 17 ~~only:~~

18 ~~(a) upon the conditions provided in 40-5-417; or~~

19 ~~(b) at the request of the obligor if:~~

20 ~~(i) withholding has not been previously terminated and~~  
 21 ~~subsequently initiated under 40-5-412 because of a~~  
 22 ~~delinquency; and~~

23 ~~(ii) and the obligor meets one of the exemptions under~~  
 24 ~~subsection (4)."~~

25 **Section 8.** Section 40-5-412, MCA, is amended to read:

1       \*40-5-412. Initiation of Delinquency income withholding  
 2 procedures. (1) In a case concerning a support obligation  
 3 referred to in 40-5-411 the department shall immediately  
 4 issue an order under 40-5-415 for the payment of current  
 5 support. In the case of support orders not subject to  
 6 immediate income withholding under 40-5-411, including cases  
 7 in which the court or administrative authority has made a  
 8 finding of good cause or determines that an alternative  
 9 arrangement exists, the income of the obligor is subject to  
 10 withholding under this part beginning on the date on which  
 11 the obligor is found to owe unpaid support under the support  
 12 order in an amount equal to or in excess of 1 month's  
 13 support payment. Intervening agreements or orders  
 14 establishing a schedule for payment of delinquent support do  
 15 not prevent income withholding under this part.

16       (2) In any other case, the department shall monitor and  
 17 track all support payments required by the support order. If  
 18 at any time these records indicate that the obligor owes a  
 19 combination of unpaid support equal to or in excess of 1  
 20 month's support, the department shall commence proceedings  
 21 to initiate withholding of the obligor's income as provided  
 22 in this part. Notwithstanding the provisions of subsection  
 23 (1), income withholding must be initiated, without regard to  
 24 whether there is an arrearage, on the earliest of:

25       (a) the date the obligor requests that withholding

1 begin; or

2       (b) at the request of the obligee if the obligor is  
 3 found, after an opportunity for hearing under 40-5-414, to  
 4 be delinquent under the terms of an alternative arrangement  
 5 for the payment of support.

6       (3) To accomplish the purpose of subsection (2)(1), the  
 7 department shall monitor all support payments not otherwise  
 8 subject to immediate withholding. To facilitate monitoring,  
 9 the department by written notice to the obligor may direct  
 10 an obligor who does not owe unpaid child support equal to or  
 11 in excess of 1 month's support payment to pay all support  
 12 through the department, notwithstanding any court order  
 13 directing payments to be made to the obligee or clerk of  
 14 court.

15       (4) Whenever an obligation for support is paid through  
 16 the support enforcement and collections unit of the  
 17 department, the department must forward payment to the  
 18 obligee within 10 days of the department's receipt of  
 19 payment from the obligor. The only basis for contesting  
 20 withholding under this section is a mistake of fact, which  
 21 includes a mistake:

22       (a) concerning the obligor's identity;  
 23       (b) concerning the existence of the support obligation;  
 24       (c) concerning the amount of support to be paid;  
 25       (d) in the determination that the delinquent support

1 amounts owed are equal to or greater than 1 month's support  
2 payment;

3 (e) in computation of delinquent support amounts owed;  
4 or

5 (f) in the allegation that the obligor is in default of  
6 an alternative agreement."

7 **Section 9.** Section 40-5-413, MCA, is amended to read:

8 **"40-5-413. Notice of intent to withhold income.** (1)  
9 Prior to service of an initial order or a modification of an  
10 existing order on the payor under 40-5-415, the department  
11 shall serve upon the obligor a notice of the intended action  
12 if when:

13 (a) the department previously has not issued an order  
14 to withhold and it has determined the obligor owes a  
15 combination of unpaid support equal to or in excess of 1  
16 month's support income withholding is initiated under  
17 40-5-412 because of a delinquency;

18 (b) additional arrearages have accrued subsequent to  
19 the issuance of an order to withhold and the department  
20 proposes to add those arrears to the withholding order; or

21 (c) immediate withholding has commenced for current  
22 support and there are arrearages due for a period prior to  
23 entry of the order to withhold that the department proposes  
24 to add to the withholding order.

25 (2) The notice must contain a statement:

1 (a) of the amount to be withheld, including a  
2 computation showing the period and total amount of the  
3 arrearages as of the date of the notice;

4 (b) that withholding applies to all current and  
5 subsequent payors;

6 (c) of the obligor's right to a hearing under 40-5-414  
7 to contest the implementation initiation of income  
8 withholding or modification of an existing order on the  
9 ground that the intended action is not proper because of  
10 mistake of fact, as provided in 40-5-412(4); and

11 (d) of the period of time within which the obligor must  
12 request a hearing and that failure to request the hearing  
13 within the time limit will result in income withholding  
14 orders being served upon the payor for the amount stated in  
15 the notice; and

16 (e) in those cases in which withholding is being  
17 initiated at the request of an obligee without regard to  
18 whether there is an arrearage as provided in 40-5-412(2), a  
19 statement that the obligor can require the obligee to appear  
20 and show proof that the obligor is not meeting the terms of  
21 the alternative arrangement.

22 (3) The notice must be served upon the obligor  
23 personally or by certified mail."

24 **Section 10.** Section 40-5-414, MCA, is amended to read:

25 **"40-5-414. Hearing.** (1) The To contest the withholding

1 of income initiated under 40-5-412 because of a delinquency,  
 2 an obligor may within 10 days of being served with notice of  
 3 the intended action intent to withhold income under 40-5-413  
 4 file with the department a written request for an  
 5 administrative hearing to be held pursuant to the contested  
 6 case provisions of Title 2, chapter 4, part 6.

7 ~~{2}--In--a--case--initiated--because--an--arrearage--has~~  
 8 ~~accrued--or--because--additional--income--is--to--be--withheld--to~~  
 9 ~~satisfy--additional--arrears--and--in--which--the--obligor~~  
 10 ~~requests--a--hearing--within--the--time--allowed--the--intended~~  
 11 ~~action--may--not--take--effect--until--the--conclusion--of--the~~  
 12 ~~hearing--or--the--date--of--the--hearing--if--the--obligor--fails--to~~  
 13 ~~appear--at--a--scheduled--hearing--~~

14 {3}(2) Venue for the administrative hearing may be in  
 15 the county where the obligor resides if the obligor resides  
 16 in this state, the county in which the payor or the payor's  
 17 agent is located, or the county in which the department or  
 18 any of its regional offices is located.

19 {4}(3) The administrative hearing must be held by  
 20 teleconferencing methods unless the obligor or the  
 21 department expressly requests an in-person hearing before  
 22 the hearing examiner.

23 (4) If the obligor requests a hearing within the 10-day  
 24 period:

25 (a) the delinquency income withholding by the

1 department must be stayed until conclusion of the hearing or  
 2 the date of the hearing if the obligor fails to appear at  
 3 the scheduled hearing. If the obligor is only contesting an  
 4 arrearage amount and is not contesting withholding for  
 5 current support, income withholding for current support is  
 6 not stayed.

7 (b) the department shall, within 45 days of the service  
 8 of the notice of intent to withhold income, inform the  
 9 obligor of the hearing results concerning whether income  
 10 withholding will take place.

11 (5) The department shall issue an order to withhold  
 12 income in accordance with 40-5-415 if:

13 (a) the obligor fails to file a written request for  
 14 hearing with the department within the specified 10-day  
 15 period;

16 (b) the obligor fails to appear at a scheduled hearing;

17 (c) the hearing officer determines from the evidence  
 18 that the obligor owes unpaid support equal to or in excess  
 19 of 1 month's support obligation and the amount of arrearages  
 20 owing is determined and adjudged to be a fixed and certain  
 21 sum; or

22 (d) in cases in which income withholding is being  
 23 initiated at the request of an obligee without regard to  
 24 whether there is an arrearage, the hearing examiner  
 25 determines from the evidence that the obligor did not meet

1 the terms of the alternative arrangement.  
 2 ~~(5)(6)~~ For purposes of the hearing process, arrearages  
 3 of support must be computed on the basis of the amount owed  
 4 and unpaid on the date the obligor was served with the  
 5 notice of intent to withhold income,~~and the fact that the~~  
 6 ~~obligor may have later paid the arrearage does not remove~~  
 7 ~~from the hearing examiner the authority to direct the~~  
 8 ~~department to order income withholding.~~ When the department  
 9 is enforcing a current support obligation, payment of the  
 10 arrears after service of the notice is not a basis for not  
 11 initiating income withholding.  
 12 ~~(6)(7)~~ In a case initiated because an arrearage has  
 13 accrued or because additional income is being withheld to  
 14 satisfy additional arrearages, the obligor, within 45 days  
 15 of service of the notice of intent to withhold income, must  
 16 be informed of the hearing decision on whether income  
 17 withholding will take place.  
 18 ~~(7)(8)~~ If the obligor fails to request a hearing within  
 19 10 days or fails to appear at a scheduled hearing or if the  
 20 hearing examiner determines that the obligor owes a  
 21 combination of unpaid support equal to or in excess of 1  
 22 month's support obligation, the department shall proceed  
 23 with the intended action in accordance with 40-5-415."  
 24 **Section 11.** Section 40-5-415, MCA, is amended to read:  
 25 "40-5-415. Order to withhold income. (1) When the

1 requirements of this part have been met, the department  
 2 shall immediately serve an order or modification order to  
 3 withhold and deliver income upon any payor or combination of  
 4 payors. The order must:  
 5 (a) direct the payor and successor payors to withhold  
 6 from the obligor's income each month the amount specified in  
 7 the order if sufficient funds are available;  
 8 (b) direct the payor to deliver the amount withheld to  
 9 the department in the same month in which the funds were  
 10 withheld;  
 11 (c) state that the order is binding on the payor until  
 12 further notice by the department; and  
 13 (d) state the rights and duties of the payor under this  
 14 part; and  
 15 (e) include a statement that the obligor is required  
 16 under a support order to provide health insurance coverage  
 17 for the obligor's child, if appropriate.  
 18 (2) An order or modification order to withhold and  
 19 deliver the obligor's income made under this section is  
 20 binding upon the payor immediately upon service of the order  
 21 upon the payor. Service of the order or modification order  
 22 to withhold may be made either personally or by certified  
 23 mail.  
 24 (3) Whenever there is more than one payor, the  
 25 department may, in its discretion, apportion the total



1 amount to be withheld each month among payors."

2 **Section 12.** Section 40-5-416, MCA, is amended to read:

3 **"40-5-416. Determination of amount of income to be**  
4 **withheld.** (1) (a) Subject to the limitations provided in  
5 subsection (2), the amount of funds to be withheld each  
6 month from the obligor's income must be the amount of money  
7 necessary to pay current installments of support as they  
8 become due and payable.

9 (b) If income is being withheld to satisfy an  
10 arrearage, the amount of funds to be withheld must include  
11 the greater of:

12 (i) the amount of money that, when deducted in equal  
13 amounts each month, will pay all outstanding support  
14 arrearages and interest, if any, within 2 years; or

15 (ii) 25% of the obligor's income.

16 (c) If income is being withheld ~~to satisfy an arrearage~~  
17 under this part, the department may allow a fee not to  
18 exceed \$5 each month, which may be withheld by the payor as  
19 compensation for the administrative costs of each  
20 withholding.

21 (2) The maximum amounts withheld from the obligor's  
22 wages or salaries, including fees, may not exceed the  
23 maximum amount permitted under section 303(b) of the federal  
24 Consumer Credit Protection Act, 15 U.S.C. 1673(b), as  
25 amended.

1 (3) At any time, if the obligor can show that  
2 substantial hardship will result if the maximum permissible  
3 withholding is implemented or continued, the department for  
4 cause shown may in its discretion determine a lesser amount  
5 to be withheld each month in satisfaction of support  
6 arrearages."

7 **Section 13.** Section 40-5-417, MCA, is amended to read:

8 **"40-5-417. Modification or termination of withholding**  
9 **orders.** (1) The department may at any time modify the order  
10 to withhold income to:

11 (a) reflect payment in full of the arrearages by income  
12 withholding or otherwise;

13 (b) recognize an increase or decrease in the support  
14 order; or

15 (c) indicate any other reason the amount to be withheld  
16 is to be reduced or changed.

17 (2) If an arrearage occurs while the department is  
18 collecting an amount of money necessary to pay current  
19 installments of support as they become due and payable, the  
20 department may adjust the amount of income required to be  
21 withheld to also satisfy the arrearage, as provided in this  
22 part.

23 (3) An income withholding order terminates only when  
24 the department is no longer authorized under the law to  
25 collect support or, when appropriate, services rendered

1 under 40-5-203 have come to an end or when the obligation to  
 2 pay support is terminated and all arrearages are paid in  
 3 full, whichever occurs first.

4 (4) The payment in full of any arrearage amount may not  
 5 be the sole basis for termination of withholding as long as  
 6 there is a support obligation enforceable by the  
 7 department."

8 **Section 14.** Section 40-5-421, MCA, is amended to read:

9 "40-5-421. Duties of payor. (1) A payor who has been  
 10 served with an order to withhold and deliver income shall  
 11 deduct the amount designated in the order beginning not  
 12 later than the first pay period that occurs after 14 days  
 13 from the service of the order. The payor shall, within 10  
 14 working days of the date the obligor is paid, promptly  
 15 deliver the amount withheld to the department as directed by  
 16 the order or in accordance with any subsequent modification  
 17 of the order received from the department. The payor shall  
 18 include with the payment a statement indicating the date the  
 19 amount was withheld from the obligor's income.

20 ~~(2) If the obligor's pay periods are at intervals of~~  
 21 ~~less than 1 month, the payor may withhold an equal amount at~~  
 22 ~~each pay period cumulatively sufficient to pay the monthly~~  
 23 ~~withholding as directed by the withholding order.~~

24 ~~(3)(2)~~ Whenever the payor is obligated to withhold  
 25 income for more than one obligor, the payor may combine all

1 amounts withheld into a single payment for that month with  
 2 the portion thereof which is attributable to each obligor  
 3 separately designated.

4 ~~(4)(3)~~ Whenever there is more than one order for  
 5 withholding against a single obligor, the payor must comply  
 6 with the orders in the sequence in which they were served  
 7 upon the payor and must honor all withholding orders to the  
 8 extent that the total amount withheld from the obligor's  
 9 wages or salary does not exceed the limits set in 40-5-416.

10 ~~(5)(4)~~ The payor must promptly notify the department of  
 11 the termination of the obligor's employment or other source  
 12 of income and provide the obligor's last-known address and  
 13 the name and address of the obligor's new employer or other  
 14 source of income, if known to the payor."

15 **Section 15.** Section 40-5-433, MCA, is amended to read:

16 "40-5-433. Additional duties of department in  
 17 interstate income withholding. ~~(1) Unless the public agency~~  
 18 ~~of the foreign jurisdiction makes application to the~~  
 19 ~~department for additional services, the department is not~~  
 20 ~~required to locate the obligor or to locate payors of income~~  
 21 ~~to the obligor. If the application for interstate service~~  
 22 ~~provided for in 40-5-431 and 40-5-432 fails to provide this~~  
 23 ~~information or the information is determined to be~~  
 24 ~~incorrect, the department may return the application without~~  
 25 ~~further proceeding under this part.~~

1       †2†(1) If the department determines that the obligor is  
 2 no longer employed in this state or no longer derives income  
 3 within this state, the department shall promptly notify the  
 4 agency which requested income withholding of the changes and  
 5 shall forward to that agency all information it has with  
 6 respect to the obligor's new address and the name and  
 7 address of the obligor's new employer or other source of  
 8 income.

9       †3†(2) The department shall promptly transmit payments  
 10 received on an income withholding order to the agency or  
 11 person designated in the interstate application."

12       **NEW SECTION. Section 16. Immediate income deductions.**

13       (1) Notwithstanding any provision in this part requiring a  
 14 delinquency as a prerequisite to an order for income  
 15 deductions, except as provided in subsection (2), the  
 16 salaries and wages of a person obligated to pay child  
 17 support by an order of a district court issued after October  
 18 1, 1991, are subject to an immediate deduction order under  
 19 40-5-308 on the effective date of the order, regardless of  
 20 whether there is a delinquency.

21       (2) An obligor's salaries and wages are not subject to  
 22 deduction under this section in any case in which the  
 23 district court finds:

24       (a) that there is good cause not to require immediate  
 25 deduction; or

1       (b) that there is an alternative arrangement between  
 2 the parties for the payment of support that provides  
 3 sufficient security to ensure compliance with the  
 4 arrangement.

5       (3) (a) For the purposes of subsection (2), a finding  
 6 of good cause not to require immediate deduction must, at a  
 7 minimum, be based on:

8       (i) a written determination and explanation by the  
 9 district court as to why implementation of immediate  
 10 deductions is not in the best interests of the child; and

11       (ii) in cases involving the modification of support  
 12 orders, proof of timely payment of previously ordered  
 13 support.

14       (b) As used in subsection (2)(b), "alternative  
 15 arrangement" means a written agreement that is signed by the  
 16 obligor and obligee and, in cases in which there is an  
 17 assignment of support rights under 53-2-613, signed by the  
 18 department of social and rehabilitation services, and that  
 19 has been approved and entered into the record by the  
 20 district court that issued or modified the support order.

21       (4) The clerk of court shall administer immediate  
 22 income deductions under this section. The clerk of court, at  
 23 any time after docketing the support order or modification  
 24 of a support order, at the request of the obligee, and  
 25 without need for amendment to the support order or for any

1 further action by the district court, shall issue the order  
2 for income deductions provided for by 40-5-308 for service  
3 upon the obligor's employer. The deduction order must direct  
4 the employer to promptly deliver the amount deducted to the  
5 clerk of court for distribution to the obligee.

6 (5) Wage deductions under this section may be  
7 terminated only when:

8 (a) the obligation to pay support has terminated and  
9 all arrearages are paid in full;

10 (b) the obligor requests termination and the obligee  
11 and obligor have entered into an alternative arrangement as  
12 set forth in subsection (2)(b); or

13 (c) the department has superseded the deduction order  
14 under authority of Title 40, chapter 5, part 4.

15 (6) If a delinquency occurs subsequent to issuance of  
16 an immediate deduction order or if arrearages occur prior to  
17 beginning the deductions, the arrearages may be added to the  
18 deduction order only after compliance with the notice of  
19 hearing requirements of 40-5-305.

20 (7) (a) After October 1, 1991, whenever a support order  
21 is registered as provided by 40-5-137 or other law, the  
22 support order is subject to immediate orders to deduct  
23 income under this section.

24 (b) Withholding income under this section must be  
25 imposed when an obligor has wages or salaries derived from

1 within this state and the support order was issued in  
2 another state.

3 (8) This section applies only to support orders that  
4 are not being enforced by the department under Title IV-D of  
5 the Social Security Act. The withholding of income for  
6 support orders being enforced by the department is provided  
7 for in Title 40, chapter 5, part 4, and those procedures, if  
8 applicable, supersede the provisions of this section.

9 **Section 17.** Section 40-5-309, MCA, is amended to read:

10 **"40-5-309. Amount to be deducted from income.** (1) The  
11 amount of money to be deducted each pay period from the  
12 obligor's income shall be:

13 (a) (i) the amount of money necessary to pay current  
14 installments of child support as they become due and  
15 payable; plus

16 (ii) the amount of money which, when deducted in equal  
17 amounts each payday, will pay off all outstanding child  
18 support payments delinquent within 2 years; or

19 (b) not less than 25% of the obligor's disposable  
20 earnings but ~~may not be more than the maximum amount~~  
21 ~~allowable by federal garnishment law if the sum provided in~~  
22 ~~subsection (1)(a) exceeds that amount.~~

23 (2) The district court may allow a fee of not to exceed  
24 \$5 per deduction, which the employer may deduct from the  
25 obligor's wages or salary for the expense of administering

1 the deduction.

2 (3) The total amount to be deducted under subsections  
 3 (1) and (2) may not exceed the maximum amount permitted  
 4 under section 303(b) of the Consumer Credit Protection Act,  
 5 15 U.S.C. 1673(b), as amended.

6 ~~(3)~~(4) The Except as provided in [section 16], the  
 7 child support income deduction shall cease when there is no  
 8 past-due child support owing unless the district court  
 9 orders continued income deductions for payment of child  
 10 support installments as they become due and payable."

11 NEW SECTION. Section 18. Health insurance coverage --  
 12 order of enrollment. (1) Whenever the obligor is required by  
 13 a court or administrative order or is required under  
 14 40-5-208(1)(b) to provide health insurance coverage for a  
 15 child and the obligor fails to provide the coverage or lets  
 16 it lapse, the department may enforce the obligation under  
 17 this section if a payor of income to an obligor has a health  
 18 insurance plan which can be extended to cover the obligor's  
 19 child.

20 (2) (a) Prior to service of an initial order of  
 21 enrollment on a payor, the department shall serve the  
 22 obligor a notice of its intent to order an enrollment, by  
 23 certified mail or by personal service.

24 (b) Within 20 days after service of the notice, the  
 25 obligor may provide written proof to the department that

1 health insurance coverage for the child has been obtained or  
 2 applied for. If proof is received by the department within  
 3 20 days after service, further action may not be taken by  
 4 the department except in the event of a lapse of coverage as  
 5 provided in subsection (3). If proof of health insurance  
 6 coverage is not timely received by the department, an order  
 7 of enrollment may be issued in accordance with subsection  
 8 (3).

9 (3) If the obligor fails to timely provide proof of  
 10 coverage or if after timely proof of coverage the obligor  
 11 lets the coverage lapse, the department may, without further  
 12 notice to the obligor, serve an order of enrollment on the  
 13 payor. The payor may be the same payor who is subject to an  
 14 order to withhold under this part or any other payor or  
 15 subsequent payor.

16 (4) (a) Upon receipt of an order of enrollment, the  
 17 payor shall respond to the department within 20 days and  
 18 confirm that the child:

19 (i) has been enrolled in the health insurance plan;  
 20 (ii) will be enrolled in the next enrollment period; or  
 21 (iii) cannot be covered because the child resides  
 22 outside the plan's service area or the contracted terms of  
 23 the plan do not permit an extension of coverage to the  
 24 child.

25 (b) Upon enrollment of the child, the payor shall

1 withhold from the obligor's income an amount equal to the  
2 required premium, if any, and apply the withheld amount to  
3 the premium as necessary.

4 (c) If more than one plan is offered by the payor and  
5 each plan may be extended to the child, the child must be  
6 enrolled in the same plan as the obligor. If the obligor's  
7 plan does not provide coverage that is accessible to the  
8 child, the child must be enrolled in the least expensive  
9 plan available to the obligor.

10 (d) Once an initial order of enrollment is authorized  
11 under this section, the authority to issue orders to  
12 subsequent payors and to bind payors to the orders  
13 terminates only when:

14 (i) the department is no longer providing enforcement  
15 services;

16 (ii) the obligation to provide health insurance coverage  
17 is terminated according to law; or

18 (iii) the department finds under subsection (5) that the  
19 premium charged to the obligor is not reasonable under the  
20 circumstances of the obligor's case.

21 (e) A payor served with an order of enrollment shall  
22 inform the department of the name of the health insurance  
23 coverage provider or insurer and the extent of the coverage.  
24 The payor shall make available to the department or obligee  
25 any necessary claim forms or enrollment membership cards. If

1 coverage is terminated for any reason, the payor shall  
2 inform the department of the termination within 20 days of  
3 the termination date.

4 (5) (a) Whenever an obligor is being charged with a  
5 premium under subsection (3) and the obligor believes the  
6 amount of the premium to be unreasonable under the  
7 circumstances, the obligor may make a written request to the  
8 department for an administrative hearing to determine the  
9 reasonableness of the premium charge.

10 (b) The department shall schedule the hearing within 20  
11 days after receipt of the obligor's request. The hearing  
12 must be conducted by telephone conferencing methods unless  
13 the hearing officer determines an in-person hearing is  
14 appropriate.

15 (c) If the hearing officer finds that the premium  
16 charged the obligor is causing an undue hardship on the  
17 obligor or the child, the department shall withdraw any  
18 order of enrollment served on a payor. A withdrawal is  
19 temporary and remains in effect only until a significant  
20 change in circumstances occurs, such as an improvement in  
21 the obligor's ability to pay the premium or an increase in  
22 the child's need for health insurance coverage. Upon a  
23 change of circumstances, the department may again serve the  
24 order of enrollment on the payor. After service of the  
25 order, the obligor may request an administrative hearing to

1 determine the reasonableness of premiums considering the new  
2 circumstances.

3 (d) If the hearing officer finds that the premium is  
4 reasonable under the circumstances, the obligor may not  
5 request any further hearings under this subsection (5)  
6 unless there is a significant change in circumstances from  
7 that existing at the time the finding was made.

8 (6) A notice under this section may be combined with a  
9 notice of intent to withhold income under 40-5-413 or with  
10 any other notice served on an obligor under part 2 of this  
11 chapter.

12 (7) This section may not be construed to limit the  
13 right of an obligee or the department to bring any other  
14 action available under the law to enforce an obligation to  
15 provide health insurance coverage for a child.

16 (8) This section may not be construed to require a  
17 health maintenance organization, health care service  
18 provider, or insurer to extend coverage to a child who  
19 resides outside its service area or to deviate from  
20 contractual provisions and restrictions.

21 (9) An obligor whose child is enrolled in a health  
22 insurance plan under this section shall cooperate with the  
23 insurer, health care service provider, department, and  
24 child's custodian to obtain and use the health insurance  
25 plan.

1 NEW SECTION. **Section 19. Liability of payor --**

2 **penalties.** (1) A payor is liable for a fine of up to \$1,000  
3 for each instance in which the payor fails or refuses,  
4 within 20 days of receipt of an order of enrollment, to:

5 (a) enroll the obligor's child in the health insurance  
6 plan; or

7 (b) make a written response to the department, stating  
8 that the child:

9 (i) will be enrolled in the next available open  
10 enrollment period; or

11 (ii) cannot be covered and explaining the reasons why  
12 coverage cannot be provided.

13 (2) A payor who enrolls a child in a health insurance  
14 plan in compliance with an order of enrollment under  
15 [section 18] is exempt from any liability to the obligor  
16 that may result from the enrollment.

17 NEW SECTION. **Section 20. Health insurance coverage --**

18 **notice of intent to purchase.** (1) The department may serve a  
19 notice of intent to purchase health insurance coverage on an  
20 obligor by certified mail or personal service, when:

21 (a) the obligor is ordered by a court or administrative  
22 order or is required under 40-5-208(1)(b) to provide health  
23 insurance coverage for a child;

24 (b) the obligor fails to provide such coverage or lets  
25 it lapse;

1 (c) there is no payor upon whom an order of enrollment  
2 under [section 18] is applicable; and

3 (d) the child is currently eligible for medical  
4 assistance benefits under Title 53.

5 (2) The notice must specify the type and cost of the  
6 proposed health insurance coverage. Within 20 days of the  
7 date of service of the notice, the obligor shall:

8 (a) provide written proof to the department that the  
9 obligor has either applied for or obtained coverage  
10 accessible to the child; or

11 (b) request an administrative hearing to show that the  
12 proposed purchase of coverage and the premium chargeable to  
13 the obligor will cause undue hardship.

14 (3) If a hearing is requested, the department shall  
15 schedule the hearing within 20 days of the receipt of the  
16 request. The hearing must be held by telephone conferencing  
17 methods unless the hearing officer determines that an  
18 in-person hearing is appropriate.

19 (4) If the obligor fails to timely provide written  
20 proof of coverage or if the hearing officer finds that the  
21 proposed purchase of coverage will not cause an undue  
22 hardship on the obligor, the department shall purchase the  
23 health insurance coverage specified in the notice. The  
24 amount of the premium may be added to the obligor's child  
25 support debt and may be collected without further notice by

1 income withholding under this part or by any other remedy  
2 available to the department.

3 (5) Health insurance coverage purchased under this  
4 section must be continued by the department until:

5 (a) the child is no longer eligible for medical  
6 assistance benefits;

7 (b) the obligor is no longer responsible under the law  
8 for providing coverage for the child;

9 (c) the obligor provides written proof to the  
10 department that other coverage accessible to the child has  
11 been obtained; or

12 (d) relief is granted under subsection (6).

13 (6) (a) If a change of circumstances occurs after  
14 health insurance coverage is purchased and the obligor  
15 believes the change makes the provision of health insurance  
16 coverage an undue hardship, the obligor may make a written  
17 request for an administrative hearing to reconsider the  
18 matter of continuing to purchase coverage.

19 (b) If a hearing is requested, the department shall  
20 schedule the hearing within 20 days of the receipt of the  
21 request. The hearing must be conducted by telephone  
22 conferencing methods unless the hearing officer determines  
23 that an in-person hearing is appropriate.

24 (c) If the hearing officer finds that the continued  
25 purchase of coverage will cause undue hardship on the



1 obligor, the department shall terminate the coverage.

2 (d) If the hearing officer finds that the continued  
3 purchase of coverage will not cause undue hardship, the  
4 department shall continue to purchase the coverage, as  
5 appropriate, under the provisions of subsection (5).

6 (7) An obligor whose child is enrolled in a health  
7 insurance plan under this section shall cooperate with the  
8 insurer, health care provider, department, and child's  
9 custodian to obtain and use the health insurance plan.

10 NEW SECTION. Section 21. Payors to provide information  
11 -- exemption from liability. (1) For the purposes of this  
12 part, upon written request by the department, a payor or  
13 former payor and any labor union of which the obligor is or  
14 may have been a member shall provide the department with the  
15 following information, if known, regarding the obligor:

- 16 (a) last-known residential address;
- 17 (b) social security number;
- 18 (c) dates of employment or union membership;
- 19 (d) amounts of wages, salaries, commissions, and other  
20 earnings paid to the obligor during any period when the  
21 department provided support enforcement services; and
- 22 (e) whether health insurance coverage is or was  
23 available to the obligor through the payor or union and, if  
24 so:
- 25 (i) the name of the insurer or health care provider;

- 1 (ii) the policy numbers or other identifiers; and
- 2 (iii) the persons covered.

3 (2) A payor who discloses information to the department  
4 in compliance with this section is exempt from any liability  
5 to the obligor that may result from such disclosure.

6 NEW SECTION. Section 22. Repealer. Section 40-5-425,  
7 MCA, is repealed.

8 NEW SECTION. Section 23. Codification instruction. (1)  
9 [Section 16] is intended to be codified as an integral part  
10 of Title 40, chapter 5, part 3, and the provisions of Title  
11 40, chapter 5, part 3, apply to [section 16].

12 (2) [Sections 18 through 21] are intended to be  
13 codified as an integral part of Title 40, chapter 5, part 4,  
14 and the provisions of Title 40, chapter 5, part 4, apply to  
15 [sections 18 through 21].

16 NEW SECTION. Section 24. Severability. If a part of  
17 [this act] is invalid, all valid parts that are severable  
18 from the invalid part remain in effect. If a part of [this  
19 act] is invalid in one or more of its applications, the part  
20 remains in effect in all valid applications that are  
21 severable from the invalid applications.

22 NEW SECTION. SECTION 25. EFFECTIVE DATE. [THIS ACT]  
23 IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-