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. COMMITTEE RECOMMEND BILL MARCH 22, 1991 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

INTRODUCED AND REFERRED TO COMMITTEE MARCH 28, 1991 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. 9d3
2	INTRODUCED BY Nacko A. Cisio
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
.0	THROUGH INCOME WITHHOLDING; AMENDING SECTIONS 40-4-204,
.1	40-5-226, 40-5-304, 40-5-309, 40-5-402, 40-5-403, 40-5-411,
.2	40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417,
.3	40-5-421, 40-5-433, AND 40-6-116, MCA; AND REPEALING SECTION
.4	40-5-425, MCA."
.5	
.6	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
.7	Section 1. Section 40-4-204, MCA, is amended to read:
.8	"40-4-204. Child support orders to address health
9	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 as
23	amount reasonable or necessary for his support, without
24	regard to marital misconduct.
) e	(2) Mbs south shall assessed all aslaman 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
	INTRODUCED BILL -2- HG 923

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

- (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.
- (4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:
- (a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.
- (b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

- (c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.
- (d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.
- (e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.
- (5)--(a)-Except-as-provided-in-subsection--(5)(b)7--each district--court--judgment7--decree7--or-order-establishing-a child-support-obligation-under-this-title7-whether-temporary or-final7-and-each-modification-of-an-existing-child-support 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-407-chapter-57-part-47-and
 - fii)-include--the--obligor-s--social-security-number-and
 the-name-and-address-of-the-obligor-s-employer--and--of--any
 other-payor-of-income-to-the-obligor
 - tb)--Income-is-not-subject-to-automatic-withholding-if:

2	finds-that-there-is-goodcausenottorequireautomatic
3	income-withholding;-or
4	(ii)-theobligeeandobligoragreein-writing-to-an
5	alternativearrangementregardingthepaymentofchild
6	supportthatprovidessufficientsecuritytoensure
7	compliance-with-their-agreement:-The-security-is-in-addition
8	to-the-child-support-obligation:
9	<pre>(c)When-a-judgmenty-decree,-or-order-for-child-support</pre>
10	isenteredor-modified-and-automatic-income-withholding-is
11	orderedanobligeewhoisnotarecipientofpublic
12	assistanceshall-apply-for-the-support-enforcement-services
13	of-the-department-pursuanttoTitleIV-DoftheSocial
14	Security-Act-for-the-collection-of-support-through-automatic
15	incomewithholdingunderTitle-40;-chapter-5;-part-4:-The
16	departmentshallaccepttheapplicationPendingan
17	application; the department shall immediately implement
18	automaticincome-withholding-and-hold-any-amounts-collected
19	intrustfortheobligeeuntiltheobligeemakes
20	application-
21	<pre>+d)Whenautomatic-income-withholding-is-ordered-under</pre>
22	subsection-(5)(a);-theclerkofcourtshallimmediately
23	forward-a-copy-of-the-order-to-the-department-
24	fe}ifan-obligor-is-not-subject-to-income-withholding

fit--the--obligee--or-obligor-demonstrates-and-the-court

judgment--or--order-must-include-a-warning-statement-that-if
the-obligor-is-delinquent-in-the--payment--of--support;--the
obligor's--income--may--be--subject--to--income--withholding
procedures--under--Title-40;-chapter-5;-part-3-or-4:-Pailure
to-include-a-warning-statement-in-a-judgment-or--order--does
not-preclude-the-use-of-withholding-procedures:

(5) (a) Unless the court makes a written exception
under (section 16) or 40-5-411 and the exception is included
in the support order, a support obligation established by
judgment, decree, or order under this section, whether
temporary or final, and each modification of an existing
support obligation under 40-4-208 must be enforced by
immediate or delinquency income withholding, or both, under

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title

Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in [section 16] or 40-5-411

or that provides for a payment arrangement inconsistent with

this section is nevertheless subject to withholding for the

payment of support without need for an amendment to the

support order or for any further action by the court.

25 40, chapter 5, part 3 or 4. Failure to include a warning

or-is-exempted-from-income-withholding;-the--district--court

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- statement in a judgment or order does not preclude the use
 for 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:

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- 12 <u>(a) the name and address of the parent's current</u>
 13 employer;
- (b) whether the parent has access to health insurance
 through an employer or other group; and
- 16 (c) if insurance coverage is available, the health
 17 insurance policy information.
 - t6†(7) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the

- judgment or order does not preclude the imposition of
 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.
 - (2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.
 - (3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.
 - (b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.
 - (c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

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- 1 (4) (a) Support judgments or orders ordinarily shall be 2 for periodic payments which may vary in amount.
 - (b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.
- 6 (c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.
 - (5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of 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;
 - (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:

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- 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:

- the value of services contributed by the custodial 2 parent;
- 3 (i) the cost of day care for the child; and
- (k) any custody arrangement that is ordered or decided 5 upon.
- (6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the 7 child support obligation by applying the standards in this 8 section and the uniform child support quidelines adopted by the department of social and rehabilitation services 10 pursuant to 40-5-209, unless the court finds by clear and 11 12 convincing evidence that the application of the standards 13 and guidelines is unjust to the child or to any of the
- 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 and quidelines is unjust to the child or a party or is 18 19 inappropriate in that particular case.

parties or is inappropriate in that particular case.

- 20 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's 22 support, the court shall state its reasons for not ordering child support. 23
- (7) The judgment or order concerning child support and 25 each modification of a judgment or order for child support

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order-must:

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

- (a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.
- (b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.
- (c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.
- (d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.
- (0)--(a)-Except-as-provided-in-subsection--(0)(b);--each
 district--court--judgment--or--order--establishing--a--child
 support--obligation--under--this--part;-whether-temporary-or
 final;-and-each-modification-of-an--existing--child--support

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-407-chapter-57-part-47-and

tit)-include-the-obligor's-social--security--number--and
the--name--and--address-of-the-obligor's-employer-and-of-any
other-payor-of-income-to-the-obligor;

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

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

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

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- application; --the--department--shall--immediately--implement
 automatic--income-withholding-and-hold-any-amounts-collected
 in--trust--for--the--obligee---until---the---obligee---makes
 application:

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

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- 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.

+9+(10) If the department of social and rehabilitation

- services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain
- 17 40-5-208. Failure to include a warning statement in the

and maintain health insurance coverage as provided in

- 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 nearing officer, the

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administrative hearing may be held:

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- (a) in the county of residence or other county convenient to the obligor or obligee; or
- (b) in the county in which the department or any of its offices are located.
- 6 (3) If a hearing is requested, it must be scheduled 7 within 20 days.
 - (4) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with such determination.
 - (5) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.
 - (6) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the notice.
 - (7) Within 20 days of the hearing, the hearing officer shall enter a final decision decision and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253

- and the provisions of the Montana Administrative Procedure
 Act.
- 3 (8) If a support order is established under this part, any party may file a verified petition with the department alleging facts constituting a material change of circumstances. Upon the filing of such petition, the 7 department shall issue an order to the nonpetitioning party 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.
 - (9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.
 - (10) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time

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

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

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

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

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

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

- (2) Child support payments may be considered delinquent under this part only in reference to a court order setting child support payments.
- immediate income withholding under [section 16], including cases in which the court or administrative authority has made a finding of good cause or alternative arrangement, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to be delinquent in the payment of support due under a support order in an amount equal to at least 3 months' support payments. Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part. For the purposes of this section, "alternative arrangement" has the meaning provided in [section 16(3)(b)]."
- 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 quarantee the support of dependent children by the person

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

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- 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.
 - (3) When the requirements of this part are met, an employer or other payor of income to a person having a support obligation under a court or administrative order must be directed to withhold from the person's income in an amount sufficient to meet the support obligation and to defray any arrearages that are due or may become due.
 - (4) Unless an exception under 40-5-411(4) is contained in a support order, withholding of income is required under this part without need for any amendment to the support order involved or any action by the court or entity that issued the support order even though the support order did not address withholding or the support order provided for other payment arrangements.
- 21 (5) Withholding, once commenced, applies to all current 22 and subsequent payors of income to a person obliqated to pay 23 support until the withholding is terminated as provided by 24 this part.
- 25 (6) The provisions for income withholding under this

- part take precedence over any other law or court order." 1
- Section 6. Section 40-5-403, MCA, is amended to read: 2
- *40-5-403. Definitions. As used in this part, the 3 following definitions apply: 4
- (1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and signed by the department in the case of an assignment of rights under 7 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or 9 modifying the support order.
- $(\pm 1)(2)$ "Department" means the department of social and 11 rehabilitation services provided for in 2-15-2201. 12
- (3) "Income" means any form of periodic payment to a 13 person, including earnings and wages. However, income does 14 15 not include:
- (a) any amount required by law to be withheld, other 16 than creditor claims, including federal, state, and local 17 18 taxes and social security; and
- (b) any amounts exempted from judgment, execution, or 19 20 attachment by federal or state law.
- (4) "Obligee" means either a person to whom a duty 21 of support is owed or a public agency of this or another 22 state to which a person has assigned the right to receive 23
- (4)(5) "Obligor" means a person who owes a duty to make 25

current and accrued support payments.

payments are in arrears.

1 payments under a support order.

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(57(6) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

t6)(7) "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the 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."

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

"40-5-411. Income Immediate income withholding. (1)--If

an--obligation--for--support--is--being--enforced--by--the

department-pursuant-to-Title-IV-B-of-the-Social-Security-Act

and-the-obligation-has-been-established-as-required--by--law

or--administrative--processy--income--due--or--to-become-due

within-this-state-to-the-obligor-is-subject--to--withholding

procedures-under-this-part-if:

(a)--except--as--provided--in--40-4-204--and-40-6-1167-a support-obligation--is--initially--decreed--and--ordered--or modified--after--danuary--17--19907--by--a-district-court-or administrative-process7-regardless-of-whether-child--support payments-are-in-arrears7-or

(b)--the-obligor-is-found-to-owe-a-combination-of-unpaid child-support-under-a-support-order-in-an-amount-equal-to-or in--excess--of--i--month's--support--payment: (1) Except as provided in subsection (4), in the case of a child support order, whether temporary or final, that is issued by a court or administrative authority of this state after January 1, 1990, the income of the obligor is subject to immediate withholding under this part regardless of whether support

(2) When-the-requirements-of-this-part-have--been--metz

1	thedepartment;withoutnecessityforamendmentof-the
2	support-order-or-further-order-by-a-court-orotherentity;
3	shallissueanorderdirecting-the-obligor-s-employer-or
4	other-payor-to-withhold-and-deliver-to-thedepartmentsuch
5	amount-of-the-obligor's-income-as-will-be-sufficient-to-meet
6	thesupportobligation-imposed-by-the-support-order-and-to
7	defray-arrearages;-if-any;-due-whenthewithholdingorder
8	takesplace: 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.

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- (3) The-provisions-for-income--withholding--under--this part--take-precedence-over-any-other-law-or-court-order: The department may direct the payor of income to the obligor to 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

L	Wĺ	th	iho	1d:	ing;	or

- 2 (b) that there is an alternative arrangement between the parties for the payment of support that provides sufficient security to ensure compliance with the arrangement. 5
- 6 (5) For the purposes of subsection (4), any finding of good cause not to require immediate income withholding must be based on at least:
- q (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
- 13 (b) proof of timely payment of previously ordered 14 support in cases involving the modification of support
- 15 orders.

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- 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:

interests of the child; and

- 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:

"40-5-412. Initiation-of Delinquency income withholding
procedures. (1) Ina-case-concerning-a-support-obligation
referred-to-in-40-5-4117-thedepartmentshallimmediately
${\tt issueanorderunder40-5-415-for-the-payment-of-current}$
support: In the case of support orders not subject to
immediate income withholding under 40-5-411, including cases
in which the court or administrative authority has made a
finding of good cause or determines that an alternative
arrangement exists, the income of the obligor is subject to
withholding under this part beginning on the date on which
the obligor is found to owe unpaid support under the support
order in an amount equal to or in excess of 1 month's
support payment. Intervening agreements or orders
establishing a schedule for payment of delinquent support do
not prevent income withholding under this part.

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

begin; or

- (b) at the request of the obligee if the obligor is

 found, after an opportunity for hearing under 40-5-414, to

 be delinquent under the terms of an alternative arrangement

 for the payment of support.
 - (3) To accomplish the purpose of subsection (2)(1), the department shall monitor all support payments not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1 month's support payment to pay all support through the department, notwithstanding any court order directing payments to be made to the obligee or clerk of court.
- (4) Whenever-an-obligation-for-support-is-paid--through
 the---support---enforcement--and--collections--unit--of--the
 department;-the--department--must--forward--payment--to--the
 obligee--within--l0--days--of--the--department's--receipt-of
 payment-from-the-obligor: The only basis for contesting
 withholding under this section is a mistake of fact, which
 includes a mistake:
 - (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;
 - (d) in the determination that the delinquent support

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1	amounts owed are equal to or greater than 1 month's suppor
2	payment;
3	(e) in computation of delinquent support amounts owed
4	<u>or</u>

- (f) in the allegation that the obligor is in default of an alternative agreement."
- 7 Section 9. Section 40-5-413, MCA, is amended to read:

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- "40-5-413. Notice of intent to withhold income. (1)
 Prior to service of an initial order or a modification of an
 existing order on the payor under 40-5-415, the department
 shall serve upon the obligor a notice of the intended action
 if when:
- (a) the--department--previously-has-not-issued-an-order to-withhold--and--it--has--determined--the--obligor--owes--a combination--of--unpaid--support--equal-to-or-in-excess-of-1 month's--support income withholding is initiated under 40-5-412 because of a delinquency;
- (b) additional arrearages have accrued subsequent to the issuance of an order to withhold and the department proposes to add those arrears to the withholding order; or
- (c) immediate withholding has commenced for current support and there are arrearages due for a period prior to entry of the order to withhold that the department proposes to add to the withholding order.
- (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;

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- 4 (b) that withholding applies to all current and subsequent payors;
- 6 (c) of the obligor's right to a hearing under 40-5-414
 7 to contest the <u>implementation</u> 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
 - (d) of the period of time within which the obligor must request a hearing and that failure to request the hearing within the time limit will result in income withholding orders being served upon the payor for the amount stated in 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."
- Section 10. Section 40-5-414, MCA, is amended to read:
- 25 "40-5-414. Hearing. (1) The To contest the withholding

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

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- t2)--In--a--case--initiated--because--an--arrearage--has accrued--or--because--additional-income-is-to-be-withheld-to satisfy-additional--arrearages--and--in--which--the--obligor requests--a--hearing--within--the-time-allowed,-the-intended action-may-not-take--effect--until--the--conclusion--of--the hearing--or--the-date-of-the-hearing-if-the-obligor-fails-to appear-at-a-scheduled-hearing-
- t3)(2) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.
- (4)(2) The administrative hearing must be held by teleconferencing methods unless the obligor or the department expressly requests an in-person hearing before the hearing examiner.
- 23 (4) If the obligor requests a hearing within the 10-day 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.

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- 7 (b) the department shall, within 45 days of the service
 - 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;
 - (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 <u>initiated</u> 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

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

t6;(7) In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.

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

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

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

requirements of this part have been met, the department
shall immediately serve an order or modification order to
withhold and deliver income upon any payor or combination of
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;
 - (b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;
- (c) state that the order is binding on the payor until further notice by the department; and
- (d) state the rights and duties of the payor under thispart; and
 - (e) include a statement that the obligor is required under a support order to provide health insurance coverage for the obligor's child, if appropriate.
 - (2) An order or modification order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order or modification order to withhold may be made either personally or by certified 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."
- 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.

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- 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.
 - (2) The maximum amounts withheld from the obligor's wages or salaries, including fees, may not exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b), as 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."
- 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;
- (b) recognize an increase or decrease in the support 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

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

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

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

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

(2)--If-the-obligor's-pay-periods-are--at--intervals--of less-than-1-monthy-the-payor-may-withhold-an-equal-amount-at each--pay--period-cumulatively-sufficient-to-pay-the-monthly withholding-as-directed-by-the-withholding-order-

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

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

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

f5}(4) The payor must promptly notify the department of the termination of the obligor's employment or other source of income and provide the obligor's last-known address and the name and address of the obligor's new employer or other source of income, if known to the payor."

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

"40-5-433. Additional duties of department in interstate income withholding. (i)-Unless-the-public-agency of---the--foreign--jurisdiction--makes--application--to--the department-for-additional-services; the--department--is--not required-to-locate-the-obligor-or-to-locate-payors-of-income to--the--obligor:--if-the-application-for-interstate-service provided-for-in-40-5-431-and-40-5-432-fails-to-provide--this information---or---the---information---is--determined--to--be incorrect; the-department-may-return-the-application-without further-proceeding-under-this-part;

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

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- 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.
 - (1) Notwithstanding any provision in this part requiring a delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2), the salaries and wages of a person obligated to pay child support by an order of a district court issued after October 1, 1991, are subject to an immediate deduction order under 40-5-308 on the effective date of the order, regardless of 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:
- 6 (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 arrangement" means a written agreement that is signed by the obligor and obligee and, in cases in which there is an assignment of support rights under 53-2-613, signed by the department of social and rehabilitation services, and that has been approved and entered into the record by the district court that issued or modified the support order.
 - (4) The clerk of court shall administer immediate income deductions under this section. The clerk of court, at any time after docketing the support order or modification of a support order, at the request of the obligee, and without need for amendment to the support order or for any

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

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- (5) Wage deductions under this section may be terminated only when:
- (a) the obligation to pay support has terminated and all arrearages are paid in full;
 - (b) the obligor requests termination and the obligee and obligor have entered into an alternative arrangement as set forth in subsection (2)(b); or
- (c) the department has superseded the deduction order under authority of Title 40, chapter 5, part 4.
 - (6) If a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages occur prior to beginning the deductions, the arrearages may be added to the deduction order only after compliance with the notice of hearing requirements of 40-5-305.
 - (7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-137 or other law, the support order is subject to immediate orders to deduct income under this section.
- 24 (b) Withholding income under this section must be 25 imposed when an obligor has wages or salaries derived from

- within this state and the support order was issued in another state.
 - (8) This section applies only to support orders that are not being enforced by the department under Title IV-D of the Social Security Act. The withholding of income for support orders being enforced by the department is provided for in Title 40, chapter 5, part 4, and those procedures, if applicable, supersede the provisions of this section.
 - Section 17. Section 40-5-309, MCA, is amended to read:

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

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- (a) (i) the amount of money necessary to pay current installments of child support as they become due and payable; plus
- (ii) the amount of money which, when deducted in equal amounts each payday, will pay off all outstanding child support payments delinquent within 2 years; or
- (b) not less than 25% of the obligor's disposable earnings but--may--not--be--more--than--the--maximum--amount allowable--by-federal-garnishment-law-if-the-sum-provided-in subsection-(1)(a)-exceeds-that-amount.
 - (2) The district court may allow a fee of not to exceed \$5 per deduction, which the employer may deduct from the 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
- 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

- health insurance coverage for the child has been obtained or
- 2 applied for. If proof is received by the department within
 - 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
 - of enrollment may be issued in accordance with subsection
- 8 (3).

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- 9 (3) If the obligor fails to timely provide proof of
- 10 coverage or if after timely proof of coverage the obligor
- 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:
 - (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
 - the plan do not permit an extension of coverage to the
- 24 child.
- 25 (b) Upon enrollment of the child, the payor shall

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

- (c) If more than one plan is offered by the payor and each plan may be extended to the child, the child must be enrolled in the same plan as the obligor. If the obligor's plan does not provide coverage that is accessible to the child, the child must be enrolled in the least expensive plan available to the obligor.
- (d) Once an initial order of enrollment is authorized under this section, the authority to issue orders to subsequent payors and to bind payors to the orders terminates only when:
- (i) the department is no longer providing enforcement services;
 - (ii) the obligation to provide health insurance coverage is terminated according to law; or
 - (iii) the department finds under subsection (5) that the premium charged to the obligor is not reasonable under the circumstances of the obligor's case.
 - (e) A payor served with an order of enrollment shall inform the department of the name of the health insurance coverage provider or insurer and the extent of the coverage. The payor shall make available to the department or obligee any necessary claim forms or enrollment membership cards. If

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

- (5) (a) Whenever an obligor is being charged with a premium under subsection (3) and the obligor believes the amount of the premium to be unreasonable under the circumstances, the obligor may make a written request to the department for an administrative hearing to determine the reasonableness of the premium charge.
- (b) The department shall schedule the hearing within 20 days after receipt of the obligor's request. The hearing must be conducted by telephone conferencing methods unless the hearing officer determines an in-person hearing is appropriate.
- (c) If the hearing officer finds that the premium charged the obligor is causing an undue hardship on the obligor or the child, the department shall withdraw any order of enrollment served on a payor. A withdrawal is temporary and remains in effect only until a significant change in circumstances occurs, such as an improvement in the obligor's ability to pay the premium or an increase in the child's need for health insurance coverage. Upon a change of circumstances, the department may again serve the order of enrollment on the payor. After service of the order, the obligor may request an administrative hearing to

determine the reasonableness of premiums considering the new circumstances.

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- (d) If the hearing officer finds that the premium is reasonable under the circumstances, the obligor may not request any further hearings under this subsection (5) unless there is a significant change in circumstances from that existing at the time the finding was made.
- (6) A notice under this section may be combined with a notice of intent to withhold income under 40-5-413 or with any other notice served on an obligor under part 2 of this chapter.
- (7) This section may not be construed to limit the right of an obligee or the department to bring any other action available under the law to enforce an obligation to provide health insurance coverage for a child.
- (8) This section may not be construed to require a health maintenance organization, health care service provider, or insurer to extend coverage to a child who resides outside its service area or to deviate from contractual provisions and restrictions.
- (9) An obligor whose child is enrolled in a health insurance plan under this section shall cooperate with the insurer, health care service provider, department, and child's custodian to obtain and use the health insurance plan.

- NEW SECTION. Section 19. Liability of payor -
 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
- 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;

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

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- (d) the child is currently eligible for medical assistance benefits under Title 53.
- (2) The notice must specify the type and cost of the proposed health insurance coverage. Within 20 days of the date of service of the notice, the obligor shall:
 - (a) provide written proof to the department that the obligor has either applied for or obtained coverage accessible to the child; or
 - (b) request an administrative hearing to show that the proposed purchase of coverage and the premium chargeable to the obligor will cause undue hardship.
 - (3) If a hearing is requested, the department shall schedule the hearing within 20 days of the receipt of the request. The hearing must be held by telephone conferencing methods unless the hearing officer determines that an in-person hearing is appropriate.
- (4) If the obligor fails to timely provide written proof of coverage or if the hearing officer finds that the proposed purchase of coverage will not cause an undue hardship on the obligor, the department shall purchase the health insurance coverage specified in the notice. The amount of the premium may be added to the obligor's child support debt and may be collected without further notice by

- income withholding under this part or by any other remedy
 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 law8 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).
 - (6) (a) If a change of circumstances occurs after health insurance coverage is purchased and the obligor believes the change makes the provision of health insurance coverage an undue hardship, the obligor may make a written request for an administrative hearing to reconsider the matter of continuing to purchase coverage.
 - (b) If a hearing is requested, the department shall schedule the hearing within 20 days of the receipt of the request. The hearing must be conducted by telephone conferencing methods unless the hearing officer determines 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

- obligor, the department shall terminate the coverage.
- (d) If the hearing officer finds that the continued 2 purchase of coverage will not cause undue hardship, the department shall continue to purchase the coverage, as appropriate, under the provisions of subsection (5).
 - (7) An obligor whose child is enrolled in a health insurance plan under this section shall cooperate with the insurer, health care provider, department, and child's custodian to obtain and use the health insurance plan.
 - NEW SECTION. Section 21. Payors to provide information -- exemption from liability. (1) For the purposes of this part, upon written request by the department, a payor or former payor and any labor union of which the obligor is or may have been a member shall provide the department with the following information, if known, regarding the obligor:
 - (a) last-known residential address;
- (b) social security number; 17

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- (c) dates of employment or union membership;
- (d) amounts of wages, salaries, commissions, and other 19 earnings paid to the obligor during any period when the 20 department provided support enforcement services; and 21
- (e) whether health insurance coverage is or was 22 available to the obligor through the payor or union and, if 23 24 so:
 - (i) the name of the insurer or health care provider;

- 1 (ii) the policy numbers or other identifiers; and
- (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
- to the obligor that may result from such disclosure.
- NEW SECTION. Section 22. Repealer. Section 40-5-425,
- MCA, is repealed. 7

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- NEW SECTION. Section 23. Codification instruction. (1)
- [Section 16] is intended to be codified as an integral part
- of Title 40, chapter 5, part 3, and the provisions of Title 10
- 40, chapter 5, part 3, apply to [section 16]. 11
- 12 (2) [Sections 18 through 21] are intended to be
- 13 codified as an integral part of Title 40, chapter 5, part 4,
 - and the provisions of Title 40, chapter 5, part 4, apply to
- 15 [sections 18 through 21].
- NEW SECTION. Section 24. Severability. If a part of 16
- 17 [this act] is invalid, all valid parts that are severable
- from the invalid part remain in effect. If a part of [this 18
- act] is invalid in one or more of its applications, the part 19
- remains in effect in all valid applications that are 20
- 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

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Office of Budget and Program Planning

PAULA'A. DARKO, PRIMARY SPONSOR

DATE

Fiscal Note for HB0923, as introduced

HB 923

Fiscal Note Request, $\underline{HB0923}$, as introduced Form BD-15 Page 2

FISCAL IMPACT:

Department of Social and Rehabilitation Services:

		FY '92_			FY '93	
Revenues:	<u>Current Law</u>	Proposed Law	<u>Difference</u>	Current Law	Proposed Law	Difference
Medicaid Savings	0	108,575	108,575	0	340,946	340,946
Revenue Distribution:						
General Fund	0	30.455	30,455	0	95,226	95,226
Federal Special	0	78,120	78,120	0	245,720	<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.

LC 1231/01 RE-REFERRED AND

APPROVED BY COMMITTEE ON JUDICIARY

1	House BILL NO. 923
2	INTRODUCED BY Alacko Dichor
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
LO	THROUGH INCOME WITHHOLDING; AMENDING SECTIONS 40-4-204,
1	40-5-226, 40-5-304, 40-5-309, 40-5-402, 40-5-403, 40-5-411,
. 2	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
L 4	40-5-425, MCA."
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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.

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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;
.0	(f) the age of the child;
.1	(g) the cost of day care for the child;
.2	(h) any custody arrangement that is ordered or decided
. 3	upon; and
.4	(i) the needs of any person, other than the child, whom
.5	either parent is legally obligated to support.
6	(3) (a) Whenever a court issues or modifies an order
17	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
90	the department of social and rehabilitation services
21	pursuant to 40-5-209, unless the court finds by clear and

parties or is inappropriate in that particular case.

convincing evidence that the application of the standards

and guidelines is unjust to the child or to any of the

(b) If the court does not apply these standards and

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

- (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.
- (4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:
- (a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.
- (b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

- (c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.
- (d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.
- (e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.
- (5)--ta)-Except-as-provided-in-subsection--(5)tb)---each district--court--judgment,--decree,--or-order-establishing-a child-support-obligation-under-this-title,-whether-temporary or-final,-and-each-modification-of-an-existing-child-support order-must;
- ti)--provide-that-the-amount-of-child--support--must--be
 withheld---from---the--obligor's--income--and--paid--to--the
 department--pursuant--to--procedures--established---by---the
 department-under-Title-407-chapter-57-part-47-and
- fit-include--the--obligor+s--social-security-number-and
 the-name-and-address-of-the-obligor+s-employer--and--of--any
 other-payor-of-income-to-the-obligor;
- fb)==Income=is=not=subject=to=automatic=withholding=if:

1	fiftheobligeeor-obligor-demonstrates-and-the-codit
2	finds-that-there-is-goodcausenottorequireautomatic
3	income-withholding;-or
4	<pre>fit)-theobligeeandobligoragreein-writing-to-an</pre>
5	alternativearrangementregardingthepaymentofchild
6	supportthatprovidessufficientsecuritytoensure
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	isenteredor-modified-and-automatic-income-withholding-is
11	ordered;-anobligeewhoisnotarecipientofpublic
12	assistanceshall-apply-for-the-support-enforcement-services
13	of-the-department-pursuanttoTitleIV-DoftheSocial
14	Security-Act-for-the-collection-of-support-through-automatic
15	incomewithholdingunderTitle-40;-chapter-5;-part-4;-The
16	departmentshallaccepttheapplication:Pendingar
17	application,thedepartmentshallimmediatelyimplement
18	automaticincome-withholding-and-hold-any-amounts-collected
19	intrustfortheobligeeuntiltheobligeemakes
20	application-
21	(d)Whenautomatic-income-withholding-is-ordered-under
22	subsection-(5)(a);-theclerkofcourtshallimmediately
23	forward-a-copy-of-the-order-to-the-department:
24	(e)ifan-obligor-is-not-subject-to-income-withholding
25	ormis-exempted-from-income-withholding;-thedistrictcour

l	judgmentororder-must-include-a-warning-statement-that-if
2	the-obligor-is-delinquent-in-thepaymentofsupport;the
3	obligor'sincomemaybesubjecttoincomewithholding
4	proceduresunderTitle-40;-chapter-5;-part-3-or-4;-Pailure
5	to-include-a-warning-statement-in-a-judgment-ororderdoes
6	not-preclude-the-use-of-withholding-procedures-
7	(5) (a) Unless the court makes a written exception
В	under [section 16] or 40-5-411 and the exception is included
9	in the support order, a support obligation established by
0	judgment, decree, or order under this section, whether
1	temporary or final, and each modification of an existing
2	support obligation under 40-4-208 must be enforced by
3	immediate or delinquency income withholding, or both, under
4	Title 40, chapter 5, part 3 or 4. A support order that omits
5	the written exceptions provided in [section 16] or 40-5-411
6	or that provides for a payment arrangement inconsistent with
7	this section is nevertheless subject to withholding for the
8	payment of support without need for an amendment to the
9	support order or for any further action by the court.
0	(b) If an obligor is exempt from immediate income
1	withholding, the district court judgment or order must
2	include a warning statement that if the obligor is
3	delinquent in the payment of support, the obligor's income
4	may be subject to income withholding procedures under Title
5	40, chapter 5, part 3 or 4. Failure to include a warning

- statement in a judgment or order does not preclude the use
 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
- obligation must include a provision requiring the parent
 - 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;

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- (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
 - 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

- judgment or order does not preclude the imposition of
 sanctions under 40-5-208."
 - 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
 - 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
 - 40-6-123.

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- 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
- of bond or other security for the payment of the judgment,
- or any other matter in the best interest of the child.
- 18 (b) Except when the financial responsibility of a
 - 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.
 - (c) The judgment or order may direct the father to pay
- 24 the reasonable expenses of the mother's pregnancy and
- 25 confinement.

- (4) (a) Support judgments or orders ordinarily shall be
 for periodic payments which may vary in amount.
- 3 (b) In the best interest of the child, a lump-sum4 payment or the purchase of an annuity may be ordered in lieu5 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;
 - (d) the earning ability of the parents;
- (e) the need and capacity of the child for education,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) (a) Whenever a court issues or modifies an order 6 concerning child support, the court shall determine the 7 child support obliqation by applying the standards in this 8 section and the uniform child support quidelines adopted by 9 the department of social and rehabilitation services 10 pursuant to 40-5-209, unless the court finds by clear and 11 convincing evidence that the application of the standards 12 and quidelines is unjust to the child or to any of the 13 14 parties or is inappropriate in that particular case.
- (b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of such standards and guidelines is unjust to the child or a party or is 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

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

- (a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.
- (b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.
- (c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.
- (d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.
- (8)--(a)-Except-as-provided-in-subsection--(8)(b);--each
 district--court--judgment--or-order--establishing--a--child
 support--obligation--under--this--part;-whether-temporary-or
 final;-and-each-modification-of-an--existing--child--support

2	(i)providethattheamount-of-child-support-must-be
3	withheldfromtheobligor-sincomeandpaidtothe
4	departmentpursuanttoproceduresestablishedbythe

5 department-under-Title-407-chapter-57-part-47-and

order-must:

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

fb}--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

tity-the-obligee-and-obligor--agree--in--writing--to--an alternative--arrangement--regarding--the--payment--of--child support---that---provides---sufficient--security--to--ensure compliance-with-their-agreement.-The-security-is-in-addition to-the-child-support-obligation:

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

LC 1231/01

application; --the--department--shall--immediately--implement
automatic--income-withholding-and-hold-any-amounts-collected
in--trust--for--the--obligee---until---the---obligee---makes
application:

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- (d)--When--automatic-income-withholding-is-ordered-under
 subsection-(8)(a);-the--elerk--of--court--shall--immediately
 forward-a-copy-of-the-order-to-the-department;
- (8) Unless an exception is found under [section 16] or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforceable by immediate or delinquency withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.
- (9) For the purposes of income withholding as provided in subsection (8), whenever the district court establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is

- l 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;
- (b) whether the parent has access to health insurance
 through an employer or other group; and
- 8 (c) if insurance coverage is available, the health
 9 insurance policy information.
- 10 f9f(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 district court order or modification of an order must 13 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."
- 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

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administrative hearing may be held:

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- (a) in the county of residence or other county convenient to the obligor or obligee; or
- (b) in the county in which the department or any of its offices are located.
 - (3) If a hearing is requested, it must be scheduled within 20 days.
 - (4) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with such determination.
 - (5) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.
 - (6) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the notice.
- (7) Within 20 days of the hearing, the hearing officer 22 23 shall enter a final decision and order. The determination of the hearing officer constitutes a final 24 agency decision, subject to judicial review under 40-5-253 25

- and the provisions of the Montana Administrative Procedure 1 2 Act.
- (8) If a support order is established under this part, any party may file a verified petition with the department alleging facts constituting a material change of circumstances. Upon the filing of such petition, the department shall issue an order to the nonpetitioning party 7 to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear 9 and show cause, together with a copy of the verified 10 petition, must be served by the petitioner upon all other 11 parties in the manner provided by this part. Upon receipt of 12 proof of service, the department shall schedule a hearing 13 not less than 15 or more than 30 days from the date of 14 service, unless extended for good cause shown. Prospective 15 modification may be ordered but only upon a showing of good 16 cause and material change of circumstances. 17
- (9) A support debt determined pursuant to this section 18 is subject to collection action without further necessity of 19 action by the hearing officer. 20
- (10) A support debt or a support responsibility 21 determined under this part by reason of the obligor's 22 failure to request a hearing under this part or failure to 23 appear at a scheduled hearing may be vacated, upon the 24 motion of an obligor, by the hearing officer within the time 25

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

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

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

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

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

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

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

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

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

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

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- (2) This part applies to all support obligations being 5 enforced or collected by the department of social and rehabilitation services pursuant to Title IV-D of the Social 7 Security Act.
 - (3) When the requirements of this part are met, an employer or other payor of income to a person having a support obligation under a court or administrative order must be directed to withhold from the person's income in an amount sufficient to meet the support obligation and to defray any arrearages that are due or may become due.
 - (4) Unless an exception under 40-5-411(4) is contained in a support order, withholding of income is required under this part without need for any amendment to the support order involved or any action by the court or entity that issued the support order even though the support order did not address withholding or the support order provided for other payment arrangements.
 - (5) Withholding, once commenced, applies to all current and subsequent payors of income to a person obligated to pay support until the withholding is terminated as provided by this part.
- 25 (6) The provisions for income withholding under this

- part take precedence over any other law or court order." 1
- Section 6. Section 40-5-403, MCA, is amended to read: 2
- *40-5-403. Definitions. As used in this part, the following definitions apply:
- (1) "Alternative arrangement" means a written agreement 5 signed by the obligor and obligee, and signed by the
- department in the case of an assignment of rights under
- 53-2-613, that has been approved and entered in the record
- of the court or administrative authority issuing or
- modifying the support order. 10

- tit(2) "Department" means the department of social and 11 rehabilitation services provided for in 2-15-2201. 12
- (2)(3) "Income" means any form of periodic payment to a 13 person, including earnings and wages. However, income does 14 15 not include:
- (a) any amount required by law to be withheld, other 16 than creditor claims, including federal, state, and local 17 taxes and social security; and
- (b) any amounts exempted from judgment, execution, or 19 attachment by federal or state law. 20
- +3+(4) "Obligee" means either a person to whom a duty 21 of support is owed or a public agency of this or another 22
- state to which a person has assigned the right to receive 23
- 24 current and accrued support payments.
- (4)(5) "Obligor" means a person who owes a duty to make 25

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.
 - t6)(7) "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:
 - (a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;
 - (b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded under the same order; and

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

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

"40-5-411. Income Immediate income withholding. (+)--If an---obligation---for--support--is--being--enforced--by--the department-pursuant-to-Pitle-IV-D-of-the-Social-Security-Act and-the-obligation-has-been-established-as-required--by--law or--administrative--process;--income--due--or--to-become-due within-this-state-to-the-obligor-is-subject--to--withholding procedures-under-this-part-if:

fa;--except--as--provided--in--40-4-204--and-40-6-1167-a
support-obligation--is--initially--decreed--and--ordered--or
modified--after--January--1;--1990;--by--a-district-court-or
administrative-process;-regardless-of-whether-child--support
payments-are-in-arrears;-or

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

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

thedepartment;withoutnecessityforamendmentof-the
support-order-or-further-order-by-a-court-orotherentity;
shallissueanorderdirecting-the-obligor's-employer-or
other-payor-to-withhold-and-deliver-to-thedepartmentsuch
amount-of-the-obligor's-income-as-will-be-sufficient-to-meet
thesupportobligation-imposed-by-the-support-order-and-to
defray-arrearages;-if-any;-due-whenthewithholdingorder
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takes place: After October 1, 1991, when a support order of
takes place. After October 1, 1991, when a support order of another state is registered in Montana under the provisions
another state is registered in Montana under the provisions

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- (3) The-provisions-for-income--withholding--under--this part--take-precedence-over-any-other-law-or-court-order. The department may direct the payor of income to the obligor to commence the withholding of the obligor's income on:
- (a) the effective date of the support order or the date 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:
 - (a) that there is good cause not to require immediate

l	withholding; or
-	withinoiding, 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
- 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
- (b) at the request of the obligor if:

interests of the child; and

- 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)."
- Section 8. Section 40-5-412, MCA, is amended to read:

"40-5-412. Initiation-of Delinquency income withholding
procedures. (1) Ina-case-concerning-a-support-obligation
referred-to-in-48-5-411;-thedepartmentshallimmediatel
issueanorderunder40-5-415-for-the-payment-of-curren
support: In the case of support orders not subject to
immediate income withholding under 40-5-411, including case
in which the court or administrative authority has made
finding of good cause or determines that an alternative
arrangement exists, the income of the obligor is subject to
withholding under this part beginning on the date on whic
the obligor is found to owe unpaid support under the suppor
order in an amount equal to or in excess of 1 month'
support payment. Intervening agreements or order
establishing a schedule for payment of delinquent support d
not prevent income withholding under this part.

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

1	begin;	OF
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- 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.
 - (3) To accomplish the purpose of subsection (2)(1), the department shall monitor all support payments not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1 month's support payment to pay all support through the department, notwithstanding any court order directing payments to be made to the obligee or clerk of court.
 - (4) Whenever-an-obligation-for-support-is-paid-through the---support---enforcement--and--collections--unit--of--the department,-the--department--must--forward--payment--to--the obligee--within--10--days--of--the--department's--receipt-of payment-from-the-obligor. The only basis for contesting withholding under this section is a mistake of fact, which includes a mistake:
 - (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

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

3 (e) in computation of delinquent support amounts owed;
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24 25 (f) in the allegation that the obligor is in default of an alternative agreement."

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

- "40-5-413. Notice of intent to withhold income. (1) Prior to service of an initial order or a modification of an existing order on the payor under 40-5-415, the department shall serve upon the obligor a notice of the intended action if when:
- (a) the--department--previously-has-not-issued-an-order to-withhold--and--it--has--determined--the--obligor--owes--a combination--of--unpaid--support--equal-to-or-in-excess-of-1 month's--support income withholding is initiated under 40-5-412 because of a delinquency;
- (b) additional arrearages have accrued subsequent to the issuance of an order to withhold and the department proposes to add those arrears to the withholding order; or
- (c) immediate withholding has commenced for current support and there are arrearages due for a period prior to entry of the order to withhold that the department proposes to add to the withholding order.
- (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 subsequent payors;
 - (c) of the obligor's right to a hearing under 40-5-414 to contest the implementation initiation of income withholding or modification of an existing order on the ground that the intended action is not proper because of 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."
- Section 10. Section 40-5-414, MCA, is amended to read:
- 25 "40-5-414. Hearing. (1) The To contest the withholding

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

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- (2)--In-a--case--initiated--because--an--arrearage--has accrued--or--because--additional-income-is-to-be-withheld-to satisfy-additional--arrearages--and--in--which--the--obligor requests--a--hearing--within--the-time-allowedy-the-intended action-may-not-take--effect--until--the--conclusion--of--the hearing--or--the-date-of-the-hearing-if-the-obligor-fails-to appear-at-a-scheduled-hearing-
- (3)(2) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.
- (4)(3) The administrative hearing must be held by teleconferencing methods unless the obligor or the department expressly requests an in-person hearing before the hearing examiner.
- 23 (4) If the obligor requests a hearing within the 10-day period:
 - (a) the delinquency income withholding by the

- department must be stayed until conclusion of the hearing or the date of the hearing if the obligor fails to appear at
- 3 the scheduled hearing. If the obligor is only contesting an

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
 - obligor of the hearing results concerning whether income
- 10 withholding will take place.
- 11 (5) The department shall issue an order to withhold
- 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;

- (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
- (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

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the terms of the alternative arrangement.

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of support must be computed on the basis of the amount owed and unpaid on the date—the obligor—was served with the notice of intent to withhold income;—and—the—fact—that—the obligor—may—have—later—paid—the—arrearage—does——not—remove from—the—hearing—examiner—the—authority—to—direct—the department—to—order—income—withholding. When the department is enforcing a current support obligation, payment of the arrearage after service of the notice is not a basis for not initiating income withholding.

f6f(7) In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.

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

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

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

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

- (a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;
- (b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;
- (c) state that the order is binding on the payor until further notice by the department; and
- (d) state the rights and duties of the payor under this 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.
 - (2) An order or modification order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order or modification order to withhold may be made either personally or by certified mail.
- 24 (3) Whenever there is more than one payor, the 25 department may, in its discretion, apportion the total

- amount to be withheld each month among payors."
- Section 12. Section 40-5-416, MCA, is amended to read:
- "40-5-416. Determination of amount of income to be withheld. (1) (a) Subject to the limitations provided in subsection (2), the amount of funds to be withheld each month from the obligor's income must be the amount of money necessary to pay current installments of support as they become due and payable.
 - (b) If income is being withheld to satisfy an arrearage, the amount of funds to be withheld must include the greater of:
 - (i) the amount of money that, when deducted in equal amounts each month, will pay all outstanding support arrearages and interest, if any, within 2 years; or
 - (ii) 25% of the obligor's income.

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- (c) If income is being withheld to-satisfy-an-arrearage under this part, the department may allow a fee not to exceed \$5 each month, which may be withheld by the payor as compensation for the administrative costs of each withholding.
- (2) The maximum amounts withheld from the obligor's wages or salaries, including fees, may not exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

- (3) At any time, if the obligor can show that substantial hardship will result if the maximum permissible withholding is implemented or continued, the department for cause shown may in its discretion determine a lesser amount to be withheld each month in satisfaction of support arrearages."
- Section 13. Section 40-5-417, MCA, is amended to read:
 "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:

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- 11 (a) reflect payment in full of the arrearages by income 12 withholding or otherwise;
- (b) recognize an increase or decrease in the support order; or
- 15 (c) indicate any other reason the amount to be withheld 16 is to be reduced or changed.
- (2) If an arrearage occurs while the department is collecting an amount of money necessary to pay current installments of support as they become due and payable, the department may adjust the amount of income required to be withheld to also satisfy the arrearage, as provided in this
- 22 part.

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

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

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

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

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

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

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

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

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

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

"40-5-433. Additional duties of department in interstate income withholding. (i)-Unless-the-public--agency of---the--foreign--jurisdiction--makes--application--to--the department-for-additional-services; the--department--is--not required-to-locate-the-obligor-or-to-locate-payors-of-income to--the--obligor---if-the-application-for-interstate-service provided-for-in-40-5-431-and-40-5-432-fails-to-provide--this information---or---the---information--is--determined--to--be incorrect; the-department-may-return-the-application-without further-proceeding-under-this-part;

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t2;(1) If the department determines that the obligor is no longer employed in this state or no longer derives income within this state, the department shall promptly notify the agency which requested income withholding of the changes and shall forward to that agency all information it has with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income.

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- 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.
 - (1) Notwithstanding any provision in this part requiring a delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2), the salaries and wages of a person obligated to pay child support by an order of a district court issued after October 1, 1991, are subject to an immediate deduction order under 40-5-308 on the effective date of the order, regardless of whether there is a delinquency.
 - (2) An obligor's salaries and wages are not subject to deduction under this section in any case in which the 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.
 - (b) As used in subsection (2)(b), "alternative arrangement" means a written agreement that is signed by the obligor and obligee and, in cases in which there is an assignment of support rights under 53-2-613, signed by the department of social and rehabilitation services, and that has been approved and entered into the record by the 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

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

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- (5) Wage deductions under this section may be terminated only when:
- 8 (a) the obligation to pay support has terminated and9 all arrearages are paid in full;
 - (b) the obligor requests termination and the obligee and obligor have entered into an alternative arrangement as set forth in subsection (2)(b); or
 - (c) the department has superseded the deduction order under authority of Title 40, chapter 5, part 4.
 - (6) If a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages occur prior to beginning the deductions, the arrearages may be added to the deduction order only after compliance with the notice of hearing requirements of 40-5-305.
 - (7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-137 or other law, the support order is subject to immediate orders to deduct income under this section.
- 24 (b) Withholding income under this section must be 25 imposed when an obligor has wages or salaries derived from

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

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- (8) This section applies only to support orders that are not being enforced by the department under Title IV-D of the Social Security Act. The withholding of income for support orders being enforced by the department is provided for in Title 40, chapter 5, part 4, and those procedures, if applicable, supersede the provisions of this section.
 - 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:
 - (a) (i) the amount of money necessary to pay current installments of child support as they become due and payable; plus
 - (ii) the amount of money which, when deducted in equal amounts each payday, will pay off all outstanding child support payments delinquent within 2 years; or
 - (b) not less than 25% of the obligor's disposable earnings but--may--not--be--more--than--the--maximum--amount allowable--by-federal-garnishment-law-if-the-sum-provided-in subsection-(1)(a)-exceeds-that-amount.
 - (2) The district court may allow a fee of not to exceed \$5 per deduction, which the employer may deduct from the obligor's wages or salary for the expense of administering

- 1 the deduction.
- 2 (3) The total amount to be deducted under subsections
- (1) and (2) may not exceed the maximum amount permitted
- under section 303(b) of the Consumer Credit Protection Act,
- 15 U.S.C. 1673(b), as amended.
- (3)(4) The Except as provided in [section 16], the 6
- 7 child support income deduction shall cease when there is no
- past-due child support owing unless the district court
- 9 orders continued income deductions for payment of child
- support installments as they become due and payable." 10
- 11 NEW SECTION. Section 18. Health insurance coverage --
- order of enrollment. (1) Whenever the obligor is required by 12
- a court or administrative order or is required under 13
- 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

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.

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- 20 (2) (a) Prior to service of an initial order of
 - 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
- the department except in the event of a lapse of coverage as
- 5 provided in subsection (3). If proof of health insurance
- coverage is not timely received by the department, an order
- 7 of enrollment may be issued in accordance with subsection
- (3).

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- 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
- payor. The payor may be the same payor who is subject to an 13
- 14 order to withhold under this part or any other payor or
 - subsequent payor.
- 16 (4) (a) Upon receipt of an order of enrollment, the
- 17 payor shall respond to the department within 20 days and
 - confirm that the child:
 - (i) has been enrolled in the health insurance plan;
- (ii) will be enrolled in the next enrollment period; or 20
- 21 (iii) cannot be covered because the child resides
- 22 outside the plan's service area or the contracted terms of
 - the plan do not permit an extension of coverage to the
- child. 24
- 25 (b) Upon enrollment of the child, the payor shall

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

- (c) If more than one plan is offered by the payor and each plan may be extended to the child, the child must be enrolled in the same plan as the obligor. If the obligor's plan does not provide coverage that is accessible to the child, the child must be enrolled in the least expensive plan available to the obligor.
- (d) Once an initial order of enrollment is authorized under this section, the authority to issue orders to subsequent payors and to bind payors to the orders terminates only when:
- (i) the department is no longer providing enforcement services;
- (ii) the obligation to provide health insurance coverage
 is terminated according to law; or
 - (iii) the department finds under subsection (5) that the premium charged to the obligor is not reasonable under the circumstances of the obligor's case.
 - (e) A payor served with an order of enrollment shall inform the department of the name of the health insurance coverage provider or insurer and the extent of the coverage. The payor shall make available to the department or obligee any necessary claim forms or enrollment membership cards. If

- coverage is terminated for any reason, the payor shall inform the department of the termination within 20 days of the termination date.
- (5) (a) Whenever an obligor is being charged with a premium under subsection (3) and the obligor believes the amount of the premium to be unreasonable under the circumstances, the obligor may make a written request to the department for an administrative hearing to determine the reasonableness of the premium charge.
- (b) The department shall schedule the hearing within 20 days after receipt of the obligor's request. The hearing must be conducted by telephone conferencing methods unless the hearing officer determines an in-person hearing is appropriate.
- (c) If the hearing officer finds that the premium charged the obligor is causing an undue hardship on the obligor or the child, the department shall withdraw any order of enrollment served on a payor. A withdrawal is temporary and remains in effect only until a significant change in circumstances occurs, such as an improvement in the obligor's ability to pay the premium or an increase in the child's need for health insurance coverage. Upon a change of circumstances, the department may again serve the order of enrollment on the payor. After service of the order, the obligor may request an administrative hearing to

determine the reasonableness of premiums considering the new 2 circumstances.

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- (d) If the hearing officer finds that the premium is reasonable under the circumstances, the obligor may not request any further hearings under this subsection (5) unless there is a significant change in circumstances from that existing at the time the finding was made.
- (6) A notice under this section may be combined with a notice of intent to withhold income under 40-5-413 or with any other notice served on an obligor under part 2 of this chapter.
- (7) This section may not be construed to limit the right of an obligee or the department to bring any other action available under the law to enforce an obligation to provide health insurance coverage for a child.
- (8) This section may not be construed to require a health maintenance organization, health care service provider, or insurer to extend coverage to a child who resides outside its service area or to deviate from contractual provisions and restrictions.
- (9) An obligor whose child is enrolled in a health insurance plan under this section shall cooperate with the insurer, health care service provider, department, and child's custodian to obtain and use the health insurance plan.

- NEW SECTION. Section 19. Liability of 1 payor penalties. (1) A payor is liable for a fine of up to \$1,000
- for each instance in which the payor fails or refuses,
- within 20 days of receipt of an order of enrollment, to:
- (a) enroll the obligor's child in the health insurance plan; or
- 7 (b) make a written response to the department, stating that the child:
- 9 (i) will be enrolled in the next available open enrollment period; or 10
- 11 (ii) cannot be covered and explaining the reasons why coverage cannot be provided. 12
- 13 (2) A payor who enrolls a child in a health insurance 14 plan in compliance with an order of enrollment under [section 18] is exempt from any liability to the obligor 15 that may result from the enrollment. 16
- 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 obliqor is ordered by a court or administrative 22 order or is required under '9-5-208(1)(b) to provide health 23 insurance coverage for a child:
- (b) the obligor fails to provide such coverage or lets 24 25 it lapse:

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

- (d) the child is currently eligible for medical assistance benefits under Title 53.
- (2) The notice must specify the type and cost of the proposed health insurance coverage. Within 20 days of the date of service of the notice, the obligor shall:
- (a) provide written proof to the department that the obligor has either applied for or obtained coverage accessible to the child; or
- (b) request an administrative hearing to show that the proposed purchase of coverage and the premium chargeable to the obligor will cause undue hardship.
- (3) If a hearing is requested, the department shall schedule the hearing within 20 days of the receipt of the request. The hearing must be held by telephone conferencing methods unless the hearing officer determines that an in-person hearing is appropriate.
- (4) If the obligor fails to timely provide written proof of coverage or if the hearing officer finds that the proposed purchase of coverage will not cause an undue hardship on the obligor, the department shall purchase the health insurance coverage specified in the notice. The amount of the premium may be added to the obligor's child support debt and may be collected without further notice by

- income withholding under this part or by any other remedy
 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
 - (d) relief is granted under subsection (6).
 - (6) (a) If a change of circumstances occurs after health insurance coverage is purchased and the obligor believes the change makes the provision of health insurance coverage an undue hardship, the obligor may make a written request for an administrative hearing to reconsider the matter of continuing to purchase coverage.
 - (b) If a hearing is requested, the department shall schedule the hearing within 20 days of the receipt of the request. The hearing must be conducted by telephone conferencing methods unless the hearing officer determines that an in-person hearing is appropriate.
 - (c) If the hearing officer finds that the continued purchase of coverage will cause undue hardship on the

obligor, the department shall terminate the coverage.

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- (d) If the hearing officer finds that the continued purchase of coverage will not cause undue hardship, the department shall continue to purchase the coverage, as appropriate, under the provisions of subsection (5).
 - (7) An obligor whose child is enrolled in a health insurance plan under this section shall cooperate with the insurer, health care provider, department, and child's custodian to obtain and use the health insurance plan.
 - NEW SECTION. Section 21. Payors to provide information exemption from liability. (1) For the purposes of this part, upon written request by the department, a payor or former payor and any labor union of which the obligor is or may have been a member shall provide the department with the following information, if known, regarding the obligor:
 - (a) last-known residential address;
 - (b) social security number;
 - (c) dates of employment or union membership;
- (d) amounts of wages, salaries, commissions, and other earnings paid to the obligor during any period when the 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:
 - (i) the name of the insurer or health care provider;

- 1 (ii) the policy numbers or other identifiers; and
- 2 (iii) the persons covered.
- (2) A payor who discloses information to the department
 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)
 - [Section 16] is intended to be codified as an integral part
- 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-

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RE-REFERRED AND APPROVED BY COMMITTEE ON APPROPRIATIONS AS AMENDED

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

amount reasonable or necessary for his support, without

(2) The court shall consider all relevant factors,

regard to marital misconduct.

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, who
15	either parent is legally obligated to support.
16	(3) (a) Whenever a court issues or modifies an orde
17	concerning child support, the court shall determine the
18	child support obligation by applying the standards in thi
19	section and the uniform child support guidelines adopted b
20	the department of social and rehabilitation service
21	pursuant to 40-5-209, unless the court finds by clear an
22	convincing evidence that the application of the standard
23	and guidelines is unjust to the child or to any of th
24	parties or is inappropriate in that particular case.

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(b) If the court does not apply these standards and

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

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- 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:
 - (a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.
 - (b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

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- 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.
 - (d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.
 - (e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.
 - (5)--(a)-Except-as-provided-in-subsection--(5)(b); --each district--court--judgment; --decree; --or-order-establishing-a child-support-obligation-under-this-title; -whether-temporary or-final; -and-each-modification-of-an-existing-child-support order-must:
 - (i)--provide-that-the-amount-of-child--support--must--be
 withheld---from---the--obligor's--income--and--paid--to--the
 department--pursuant--to--procedures--established---by---the
 department-under-Title-407-chapter-57-part-47-and
 - fit}-include--the--obligor's--social-security-number-and
 the-name-and-address-of-the-obligor's-employer--and--of--any
 other-payor-of-income-to-the-obligor;
- 25 fbt--Income-is-not-subject-to-automatic-withholding-if+

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1	(i)theobligeeor-obligor-demonstrates-and-the-court
2	finds-that-there-is-goodcausenottorequireautomatic
3	income-withholding;-or
4	<pre>tit)-theobligeeandobligoragreein-writing-to-an</pre>
5	alternativearrangementregardingthepaymentofchild
ó	supportthatprovidessufficientsecuritytoensure
7	compliance-with-their-agreementThe-security-is-in-addition
8	to-the-child-support-obligation.
9	(c)When-a-judgmenty-decreey-or-order-for-child-support
10	isenteredor-modified-and-automatic-income-withholding-is
11	ordered;-anobligeewhoisnotarecipientofpublic
12	assistanceshall-apply-for-the-support-enforcement-services
13	of-the-department-pursuanttoTitleIV-BoftheSocial
14	Security-Act-for-the-collection-of-support-through-automatic
15	incomewithholdingunderTitle-407-chapter-57-part-47-The
16	departmentshallaccepttheapplicationPendingan
17	application; thedepartmentshallimmediatelyimplement
18	automaticincome-withholding-and-hold-any-amounts-collected
19	intrustfortheobligeeuntiltheobligeemakes
20	application
21	(d)Whenautomatic-income-withholding-is-ordered-under
22	subsection-(5)(a);-theelerkofcourtshallimmediately
23	forward-a-copy-of-the-order-to-the-department-
24	<pre>fe}~-Ifan-ebliger-is-not-subject-to-income-withnolding</pre>
25	or-is-exempted-from-income-withholding-thedistrictcourt

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judgment--or--order-must-include-a-warning-statement-that-if the-obliqor-is-delinquent-in-the--payment--of--supporty---the obligor's--income--may--be--subject--to--income--withholding procedures -- under -- Title - 407 -- chapter - 57 -- part -- 3 -- or -- 47 -- Failure to-include-a-warning-statement-in-a-judgment-or--order--does not-preclude-the-use-of-withholding-procedures-

(5) (a) Unless the court makes a written exception under [section 16] or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in (section 16) or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the 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 include a warning statement that if the obligor is 23 delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 25 40, chapter 5, part 3 or 4. Failure to include a warning

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_	statement	in_	a	judgment	or	order	does	not	preclude	th <u>e</u>	use
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- 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:

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- 12 (a) the name and address of the parent's current
 13 employer;
- (b) whether the parent has access to health insurance
 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

40-5-208. Failure to include a warning statement in the

- judgment or order does not preclude the imposition of sanctions under 40-5-208."
- Section 2. Section 40-6-116, MCA, is amended to read:
- "40-6-116. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.
- (2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.
- 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.

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- 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;
- (b) the standard of living and circumstances of the parents;
- 17 (c) the relative financial means of the parents;
- 18 (d) the earning ability of the parents;
- (e) the need and capacity of the child for education,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 quidelines 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 quidelines 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 judament or order concerning child support and 25 each modification of a judgment or order for child support

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order-must:

- must include a provision addressing health insurance
 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.

- (b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.
- (c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.
- (d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obliquation.
- (6)--(a)-Except-as-provided-in-subsection--(8)(b); --each district--court--judgment--or--order--establishing--a--child support--obligation--under--this--part; -whether-temporary-or final; -and-each-modification-of-an--existing--child--support

2	(i)providethattheamount-of-child-support-must-be
3	withheldfromtheobligor'sincomeandpaidtothe
4	departmentpursuanttoproceduresestablishedbythe
5	department-under-Witle-407-chapter-57-part-47-and
6	(ii)-include-the-obligor-s-socialsecuritynumberand
7	thenameandaddress-of-the-obligoris-employer-and-of-ang
8	other-payor-of-income-to-the-obligor:
9	<pre>(b)Income-is-not-subject-to-automatic-withholding-if:</pre>
10	(i)the-obligee-or-obligor-demonstrates-andthecour
11	findsthatthereisgoodcause-not-to-require-automatic
12	income-withholding;-or

- fii)-the-obligee-and-obligor-agree-in-writing-to-an
 alternative-arrangement-regarding-the-payment-of-child
 support--that--provides--sufficient-security-to-ensure
 compliance-with-their-agreement-The-security-is-in-addition
 to-the-child-support-obligation:
- (c)--When-a-judgment--or--order--for--child--support--is
 entered--or--modified--and--automatic--income-withholding-is
 ordered,-an--obligee--who--is--not--a--recipient--of--public
 assistance--shall-apply-for-the-support-enforcement-services
 of-the-department-pursuant--to--fitle--IV-B--of--the--Social
 Security-Act-for-the-collection-of-support-through-automatic
 income--withholding--under--fitle-407-chapter-57-part-47-The
 department--shall--accept--the---application----Pending---an

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1	application,thedepartmentshallimmediatelyimplement
2	automaticincome-withholding-and-hold-any-amounts-collected
3	intrustfortheobligeeuntiltheobligeemakes
4	application:
5	<pre>{d}Whenautomatic-income-withholding-is-ordered-under</pre>
6	subsection-(8)(a)7-theclerkofcourtshallimmediately
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

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providing services under Title IV-D of the Social Security
Act for the enforcement of the judgment, decree, or order,
the department of:
   (a) the name and address of the parent's current
employer;
   (b) whether the parent has access to health insurance
through an employer or other group; and
   (c) if insurance coverage is available, the health
insurance policy information.
   (9)(10) If the department of social and rehabilitation
services is providing or later provides support enforcement
services under Title IV-D of the Social Security Act, each
district court order or modification of an order must
contain a statement providing that the noncustodial parent,
without further order of the court, is required to obtain
and maintain health insurance coverage as provided in
40-5-208. Failure to include a warning statement in the
judgment or order does not preclude the imposition of
sanctions under 40-5-208."
    Section 3. Section 40-5-226, MCA, is amended to read:
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"40-5-226. Administrative hearing -- nature -- place --

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

time -- determinations -- failure to appear -- entry of

final decision and order. (1) The administrative hearing is

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defined as a "contested case".

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administrative hearing may be held:

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- (a) in the county of residence or other county
 convenient to the obligor or obligee; or
- 4 (b) in the county in which the department or any of its offices are located.
- 6 (3) If a hearing is requested, it must be scheduled 7 within 20 days.
 - (4) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with such determination.
 - (5) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.
 - (6) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the notice.
- 22 (7) Within 20 days of the hearing, the hearing officer
 23 shall enter a final decision and order. The
 24 determination of the hearing officer constitutes a final
 25 agency decision, subject to judicial review under 40+5-253

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

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- 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
 - 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
 - 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

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- provided and upon a showing of any of the grounds enumerated
 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
- support order that omits that provision or that provides for
- a payment arrangement inconsistent with this section, is
 nevertheless subject to withholding for the payment of
- 12 nevertheless subject to withholding for the payment of
- 13 support without need for an amendment of the support order
- 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
- 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
- group, and, if so, the health insurance policy information."
- Section 4. Section 40-5-304, MCA, is amended to read:
- 25 "40-5-304. When child support payments considered

- 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
 - payments.

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- (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
- ll cases in which the court or administrative authority has
- 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
- be delinquent in the payment of support due under a support
- 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
- 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

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Ĺ	or	pers	ons	pr	imar:	ily :	respo	ons	ible	for	such	sup	ort	bу
2	ensu	ring	tha	t	the	supp	ort	of	chi	ldren	is	the	high	est
3	prio	rity	in t	he	allo	cation	n of	a	respo	nsible	pare	ent's	inco	me.

- 4 (2) This part applies to all support obligations being
 5 enforced or collected by the department of social and
 6 renabilitation services pursuant to Title IV-D of the Social
 7 Security Act.
- (3) When the requirements of this part are met, an employer or other payor of income to a person having a support obligation under a court or administrative order must be directed to withhold from the person's income in an amount sufficient to meet the support obligation and to 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.

(6) The provisions for income withholding under this

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

- 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 $(\pm)(2)$ "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
- (b) any amounts exempted from judgment, execution, or 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

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payments are in arrears.

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1 payments under a support order.

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2 151(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 subdivision, state agency, or any agent thereof, who is 5 6 subject to the jurisdiction of the courts of this state 7 under Rule 4B of the Montana Rules of Civil Procedure.

t67(7) "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:

- (a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor 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."

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

"40-5-411. Income Immediate income withholding. fty--#f an---obligation---for--support--is--being--enforced--by--the department-pursuant-to-Title-IV-B-of-the-Social-Security-Act and-the-obligation-has-been-established-as-required--by--law or--administrative--processy--income--due--or--to-become-due within-this-state-to-the-obligor-is-subject--to--withholding procedures-under-this-part-if+

ta)--except--as--provided--in--40-4-204--and-40-6-1167-a support-obligation--is--initially--decreed--and--ordered--or modified--after--January--17--19907--by--a-district-court-or administrative-process;-regardless-of-whether-child--support payments-are-in-arrears:-or

tb)--the-obliqor-is-found-to-owe-a-combination-of-unpaid child-support-under-a-support-order-in-an-amount-equal-to-or in--excess--of--1--monthis--support--payment; (1) Except as provided in subsection (4), in the case of a child support order, whether temporary or final, that is issued by a court or administrative authority of this state after January 1, 1990, the income of the obligor is subject to immediate withholding under this part regardless of whether support

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

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1	thedepartmentywithoutnecessityforamendmentof-the
2	support-order-or-further-order-by-a-court-orotherentity;
3	shallissueanorderdirecting-the-obligor-s-employer-or
4	other-payor-to-withhold-and-deliver-to-thedepartmentsuch
5	amount-of-the-obligor's-income-as-will-be-sufficient-to-meet
6	thesupportobligation-imposed-by-the-support-order-and-to
7	defray-arrearages,-if-any,-due-whenthewithholdingorder
8 .	takesplace: After October 1, 1991, when a support order of
9	another state is registered in Montana under the provisions
.0	of 40-5-137 or other applicable law, the support obligation
.1	is subject to immediate income withholding under this
. 2	section.
. 3	(3) The-provisions-for-incomewithholdingunderthis
4	parttake-precedence-over-any-other-law-or-court-order: The
L 5	department may direct the payor of income to the obligor to
. 6	commence the withholding of the obligor's income on:
.7	(a) the effective date of the support order or the date
.8	of registration of the support order; or
.9	(b) the date, if any, that the department becomes
0	authorized by law to provide child support enforcement
1	services.
2	(4) An obligor's income is not subject to immediate
3	withholding if the court or administrative authority that
4	issued or modified the support order finds:
:5	(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:

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1	"40-5-412. Initiation-of Delinquency income withholding
2	procedures. (1) Ina-case-concerning-a-support-obligation
3	referred-to-in-40-5-4117-thedepartmentshallimmediately
4	issueanorderunder40-5-415-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-env-other-casez-the-department-shall-monitor-and

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- (2) In-any-other-case; the-department-shall-monitor-and track-all-support-payments-required-by-the-support-order--If at--any--time-these-records-indicate-that-the-obligor-owes-a combination-of-unpaid-support-equal-to-or--in--excess--of--1 month's--support; -- the-department-shall-commence-proceedings to-initiate-withholding-of-the-obligor-s-income-as--provided in-this-part: Notwithstanding the provisions of subsection (1), income withholding must be initiated, without regard to whether there is an arrearage, on the earliest of:
 - (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 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 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:
 - (a) concerning the obligor's identity;
- 23 (b) concerning the existence of the support obligation;
- 2 ; (3) concerning the amount of support to be paid;
 - (d) in the determination that the delinquent support

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L	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."
 - Section 9. Section 40-5-413, MCA, is amended to read:

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- *40-5-413. Notice of intent to withhold income. (1) Prior to service of an initial order or a modification of an existing order on the payor under 40-5-415, the department shall serve upon the obligor a notice of the intended action 12 if when:
 - (a) the--department--previously-has-not-issued-an-order to-withhold--and--it--has--determined--the--obligor--owes--a combination-of-unpaid-support-equal-to-or-in-excess-of-1 month's--support income withholding is initiated under 40-5-412 because of a delinquency;
 - (b) additional arrearages have accrued subsequent to the issuance of an order to withhold and the department 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 computation showing the period and total amount of the arrearages as of the date of the notice:
- (b) that withholding applies to all current subsequent payors:
- (c) of the obligor's right to a hearing under 40-5-414 to contest the implementation initiation of income withholding or modification of an existing order on the ground that the intended action is not proper because of 9 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
- (e) in those cases in which withholding is being 17 initiated at the request of an oblique 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."
- Section 10. Section 40-5-414, MCA, is amended to read: 24
- 25 "40-5-414. Rearing. (1) The To contest the withholding

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not stayed.

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

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- +21--In--a--case--initiated--because--an--arrearage--has accrued--or--because--additional-income-is-to-be-withheld-to satisfy-additional--arrearages--and--in--which--the--obligor requests -- a -- hearing -- within -- the -time - allowedy - the -intended action-may-not-take--effect--until--the--conclusion--of--the hearing--or--the-date-of-the-hearing-if-the-obliqor-fails-to appear-at-a-scheduled-hearing+
- +3+(2) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.
- +4+(3) The administrative hearing must be held by obligor teleconferencing methods unless the department expressly requests an in-person hearing before the hearing examiner.
- (4) If the obligor requests a hearing within the 10-day 23 24 period:
 - (a) the delinquency income withholding by the

- department must be stayed until conclusion of the hearing or the date of the hearing if the obligor fails to appear at the scheduled hearing. If the obligor is only contesting an arrearage amount and is not contesting withholding for current support, income withholding for current support is
- 7 (b) the department shall, within 45 days of the service 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:
- 1.3 (a) the obliqor 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

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

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the	terms	of	the	alternative	arrangement.
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of support must be computed on the basis of the amount owed and unpaid on the date the obligor was served with the notice of intent to withhold income, and the fact that the obligor may have later paid the arrearage does not remove from the hearing examiner the authority to direct the department to order income withholding. When the department is enforcing a current support obligation, payment of the arrearage after service of the notice is not a basis for not initiating income withholding.

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

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

Section 11. Section 40-5-415, MCA, is amended to read:
"40-5-415. Order to withhold income. (1) When the

requirements of this part have been met, the department
shall immediately serve an order or modification order to
withhold and deliver income upon any payor or combination of
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

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

16 (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.

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

24 (3) Whenever there is more than one payor, the 25 department may, in its discretion, apportion the total HB 0923/02 HB 0923/02

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 obliqor'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.

- (3) At any time, if the obligor can show that 1 substantial hardship will result if the maximum permissible 2 withholding is implemented or continued, the department for 3 cause shown may in its discretion determine a lesser amount to be withheld each month in satisfaction of support 5 arrearages."
- Section 13. Section 40-5-417, MCA, is amended to read: 7
- 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:
- (a) reflect payment in full of the arrearages by income 11
- 12 withholding or otherwise;
- (b) recognize an increase or decrease in the support 13
- order: or 14

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- (c) indicate any other reason the amount to be withheld 15
- 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
- department may adjust the amount of income required to be 20

withheld to also satisfy the arrearage, as provided in this

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22 part.

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- 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

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- under 40-5-203 have come to an end or when the obligation to
 pay support is terminated and all arrearages are paid in
 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:

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- *40-5-421. Duties of payor. (1) A payor who has been served with an order to withhold and deliver income shall deduct the amount designated in the order beginning not later than the first pay period that occurs after 14 days from the service of the order. The payor shall, within 10 working days of the date the obligor is paid, promptly deliver the amount withheld to the department as directed by the order or in accordance with any subsequent modification of the order received from the department. The payor shall include with the payment a statement indicating the date the amount was withheld from the obligor's income.
 - t2)--If-the-obligor-s-pay-periods-are-at--intervals--of less-than-i-monthy-the-payor-may-withhold-an-equal-amount-at each--pay--period-cumulatively-sufficient-to-pay-the-monthly withholding-as-directed-by-the-withholding-orders
- 24 (3)(2) Whenever the payor is obligated to withhold 25 income for more than one obligor, the payor may combine all

- amounts withheld into a single payment for that month with the portion thereof which is attributable to each obligor separately designated.
 - (4)(3) Whenever there is more than one order for withholding against a single obligor, the payor must comply with the orders in the sequence in which they were served upon the payor and must honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary does not exceed the limits set in 40-5-416.
 - t5;(4) The payor must promptly notify the department of the termination of the obligor's employment or other source of income and provide the obligor's last-known address and the name and address of the obligor's new employer or other source of income, if known to the payor."
 - Section 15. Section 40-5-433, MCA, is amended to read:

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

- t3)(2) The department shall promptly transmit payments received on an income withholding order to the agency or person designated in the interstate application."
- 12 NEW SECTION. Section 16. Immediate income deductions.
 - (1) Notwithstanding any provision in this part requiring a 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:

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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.

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- 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:
 - (i) a written determination and explanation by the district court as to why implementation of immediate 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.
- income deductions under this section. The clerk of court, at any time after docketing the support order or modification of a support order, at the request of the obligee, and

without need for amendment to the support order or for any

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(4) The clerk of court shall administer immediate

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- further action by the district court, shall issue the order
- 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 oblique.

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- 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.
 - (6) If a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages occur prior to beginning the deductions, the arrearages may be added to the deduction order only after compliance with the notice of 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 obliqor has wages or salaries derived from

- within this state and the support order was issued in 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 obliqor'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
 - (ii) the amount of money which, when deducted in equal amounts each payday, will pay off all outstanding child 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

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- 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 obliqor 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

- 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
- lets the coverage lapse, the department may, without further
- 12 notice to the obligor, serve an order of enrollment on the
- 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
 - payor shall respond to the department within 20 days and
- 18 confirm that the child:
 - (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.

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

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

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- (c) If more than one plan is offered by the payor and each plan may be extended to the child, the child must be enrolled in the same plan as the obligor. If the obligor's plan does not provide coverage that is accessible to the child, the child must be enrolled in the least expensive 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:
- (i) the department is no longer providing enforcement services;
- (ii) the obligation to provide health insurance coverage
 is terminated according to law; or
- (iii) the department finds under subsection (5) that the
 premium charged to the obligor is not reasonable under the
 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

- coverage is terminated for any reason, the payor shall inform the department of the termination within 20 days of the termination date.
 - (5) (a) Whenever an obligor is being charged with a premium under subsection (3) and the obligor believes the amount of the premium to be unreasonable under the circumstances, the obligor may make a written request to the department for an administrative hearing to determine the 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

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determine the reasonableness of premiums considering the new circumstances.

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- (d) If the hearing officer finds that the premium is reasonable under the circumstances, the obligor may not request any further hearings under this subsection (5) unless there is a significant change in circumstances from that existing at the time the finding was made.
- (6) A notice under this section may be combined with a notice of intent to withhold income under 40-5-413 or with any other notice served on an obligor under part 2 of this chapter.
- (7) This section may not be construed to limit the right of an obligee or the department to bring any other action available under the law to enforce an obligation to provide health insurance coverage for a child.
 - (8) This section may not be construed to require a health maintenance organization, health care service provider, or insurer to extend coverage to a child who resides outside its service area or to deviate from 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.

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- penalties. (1) A payor is liable for a fine of up to \$1,000

 for each instance in which the payor fails or refuses,
- 4 within 20 days of receipt of an order of enrollment, to:

NEW SECTION. Section 19. Liability of

- 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
- (ii) cannot be covered and explaining the reasons why
 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.
- NEW SECTION. Section 20. Health insurance coverage —
 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;

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payor

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

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- 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.
 - (3) If a hearing is requested, the department shall schedule the hearing within 20 days of the receipt of the request. The hearing must be held by telephone conferencing methods unless the hearing officer determines that an in-person hearing is appropriate.
 - (4) If the obligor fails to timely provide written proof of coverage or if the hearing officer finds that the proposed purchase of coverage will not cause an undue hardship on the obligor, the department shall purchase the health insurance coverage specified in the notice. The amount of the premium may be added to the obligor's child support debt and may be collected without further notice by

- 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

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- 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).
 - (7) An obligor whose child is enrolled in a health insurance plan under this section shall cooperate with the insurer, health care provider, department, and child's custodian to obtain and use the health insurance plan.
- NEW SECTION. Section 21. Payors to provide information

 -- exemption from liability. (1) For the purposes of this

 part, upon written request by the department, a payor or

 former payor and any labor union of which the obligor is or

 may have been a member shall provide the department with the

 following information, if known, regarding the obligor:
 - (a) last-known residential address;
- 17 (b) social security number;

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- (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;

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- 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 obliqor 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
- NEW SECTION. Section 24. Severability. If a part of [this act] is invalid, all valid parts that are severable
- from the invalid part remain in effect. If a part of [this 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.
- NEW SECTION. SECTION 25. EFFECTIVE DATE. [THIS ACT]
- 23 IS EFFECTIVE ON PASSAGE AND APPROVAL.

[sections 18 through 21].

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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.

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24	regard to marital misconduct.
25	(2) The court shall consider all relevant factors,

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- (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;
- (d) the physical and emotional condition of the child
 and his educational and medical needs;
- 8 (e) the financial resources and needs of the 9 noncustodial parent;
 - (f) the age of the child;
- 11 (q) the cost of day care for the child;
- 12 (h) any custody arrangement that is ordered or decided 13 upon; and
- (i) the needs of any person, other than the child, whomeither 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.
- 25 (b) If the court does not apply these standards and

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

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- (c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.
- (4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:
- (a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.
- (b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

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

- (d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.
- (e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child 11 12 support obligation.
 - +5}--fa}-Except-as-provided-in-subsection--+5}+b+r--each district--court--iudgmenty--decreey--or-order-establishing-a child-support-obligation-under-this-titley-whether-temporary or-finely-and-each-modification-of-an-existing-child-support order-must:
 - +i}--provide-that-the-amount-of-child--support--must--be withheld---from---the--obliqor-s--income--and--paid--to--the department--pursuant--to--procedures--established---by---the department-under-Title-407-chapter-57-part-47-and
 - fitt-include--the--obliqor-s--social-security-number-and the-name-and-address-of-the-obligor's-employer--and--of--any other-payor-of-income-to-the-obliqor
 - fb}-~Income-is-not-subject-to-automatic-withholding-if:

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1	tittheobligeeor-obligor-demonstrates-and-the-court
2	finds-that-there-is-goodcausenottorequireautomatic
3	income-withholding;-or
4	(ii)-theobligeeandobligoragreein-writing-to-an
5	alternativearrangementregardingthepaymentofchild
6	supportthatprovidessufficientsecuritytoensure
7	compliance-with-their-agreementThe-security-is-in-addition
8	to-the-child-support-obligation:
9	tc}When-a-judgmenty-decreey-or-order-for-child-support
10	isenteredor-modified-and-automatic-income-withholding-is
11	ordered;-anobligeewhoisnotarecipientofpublic
12	assistanceshall-apply-for-the-support-enforcement-services
13	of-the-department-pursuanttoTitlefV-BoftheSocial
14	Security-Act-for-the-collection-of-support-through-automatic
15	incomewithholdingunderTitle-407-chapter-57-part-47-The
16	departmentshallaccepttheapplication:Pendingan
17	application;thedepartmentshallimmediatelyimplement
18	automaticincome-withholding-and-hold-any-amounts-collected
19	intrustfortheobligeeuntiltheobligeemakes
20	application
21	(d)Whenautomatic-income-withholding-is-ordered-under
22	subsection-(5)(a),-theclerkofcourtshallimmediately
23	forward-a-copy-of-the-order-to-the-department:
24	(e)Ifan-obligor-is-not-subject-to-income-withholding
25	or-is-exempted-from-income-withholding;-thedistrictcourt

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judgment--or--order-must-include-a-warning-statement-that-if
the-obligor-is-delinquent-in-the--payment--of--supporty--the
obligor-s--income--may--be--subject--to--income--withholding
procedures--under--Title-40;-chapter-5;-part-3-or-4;-Pailure
to-include-a-warning-statement-in-a-judgment-or--order--does
not-preclude-the-use-of-withholding-procedures;

(5) (a) Unless the court makes a written exception
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- 8 under (section 16) or 40-5-411 and the exception is included in the support order, a support obligation established by 9 10 judgment, decree, or order under this section, whether temporary or final, and each modification of an existing 11 12 support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under 13 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 payment of support without need for an amendment to the 18 19 support order or for any further action by the court.
 - (b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning

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2	of withhol	ding	pr	ocedures.							

- (6) For the purposes of income withholding under subsection (5), every district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:
- (a) the name and address of the parent's current 12 13 employer;
 - (b) whether the parent has access to health insurance through an employer or other group; and
 - (c) if insurance coverage is available, the health insurance policy information.
 - (6)(7) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the

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

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

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

- (2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.
- (3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.
- (b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.
- (c) The judgment or order may direct the father to pay 23 the reasonable expenses of the mother's pregnancy and 24 confinement. 25

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- 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.
 - (5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of 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;
- (c) the relative financial means of the parents;
- 18 (d) the earning ability of the parents;
- (e) the need and capacity of the child for education,including higher education;
- 21 (f) the age of the child;

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- 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;

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- 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 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 quidelines 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 quidelines 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.
- (7) The judgment or order concerning child support and
 each modification of a judgment or order for child support

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

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- (a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.
- (b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.
- (c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.
- (d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.
- f8}--(a)~Except-as-provided-in-subsection--(B)(b);--each
 district--court--judgment--or--order--establishing--a--child
 support--obligation--under--this--part;-whether-temporary-or
 final;-and-each-modification-of-an--existing--child--support

1	order-must:
2	(i)providethattheamount-of-child-support-must-be
3	withheldfromtheobligor-sincomeandpaidtothe
4	departmentpursuanttoproceduresestablishedbythe
5	department-under-Title-407-chapter-57-part-47-and
6	<pre>fit;-include-the-obligor's-socialsecuritynumberand</pre>
7	thenameandaddress-of-the-obligor's-employer-and-of-any
8	other-payor-of-income-to-the-obligor:
9	<pre>tb}Income-is-not-subject-to-automatic-withholding-if:</pre>
10	(i)the-obligee-or-obligor-demonstrates-andthecourt
11	findsthatthereisgoodcause-not-to-require-automatic
12	income-withholding;-or
13	(ii)-the-obligee-and-obligoragreeinwritingtoan
14	alternativearrangementregardingthepaymentofchild
15	supportthatprovidessufficientsecuritytoensure
16	compliance-with-their-agreementThe-security-is-in-addition
17	to-the-child-support-obligation-
18	<pre>fe}When-a-judgmentororderforchildsupportis</pre>
19	enteredormodifiedandautomaticincome-withholding-is
20	ordered;-anobligeswhoisnotarecipientofpublic
21	assistanceshall-apply-for-the-support-enforcement-services
22	of-the-department-pursuanttoTitleIV-DoftheSocial

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Security-Act-for-the-collection-of-support-through-automatic

income--withholding--under--Title-407-chapter-57-part-47-The

department--shall--accept--the---application---Pending---an

applicationythedepartmentshallimmediatelyimplement
automaticincome-withholding-and-hold-any-amounts-collected
intrustfortheobligeeuntiltheobligeemakes
application:

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- (d)--When--automatic-income-withholding-is-ordered-under subsection-(0)(a);-the--clerk--of--court--shall--immediately forward-a-copy-of-the-order-to-the-department;
- [8] Unless an exception is found under [section 16] or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforceable by immediate or delinquency withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the support order or for any further action by the court.
- (9) For the purposes of income withholding as provided in subsection (8), whenever the district court establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is

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- providing services under Title IV-D of the Social Security

 Act for the enforcement of the judgment, decree, or order,
- 3 the department of:

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- 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.
 - t9+(10) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.**
- 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

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administrative hearing may be held:

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- (a) in the county of residence or other county convenient to the obligor or obligee; or
- (b) in the county in which the department or any of its offices are located.
 - (3) If a hearing is requested, it must be scheduled within 20 days.
 - (4) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with such determination.
 - (5) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.
 - (6) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the notice.
 - (7) Within 20 days of the hearing, the hearing officer shall enter a final decision decision and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253

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- and the provisions of the Montana Administrative Procedure

 Act.
- (8) If a support order is established under this part, 3 any party may file a verified petition with the department alleging facts constituting a material change 5 Upon the filing of such petition, the 6 circumstances. department shall issue an order to the nonpetitioning party to appear and show cause why the decision previously entered 8 should not be prospectively modified. The order to appear and show cause, together with a copy of the verified 10 petition, must be served by the petitioner upon all other 11 parties in the manner provided by this part. Upon receipt of 12 proof of service, the department shall schedule a hearing 13 not less than 15 or more than 30 days from the date of 14 service, unless extended for good cause shown. Prospective 15 modification may be ordered but only upon a showing of good 16 cause and material change of circumstances. 17
 - (9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.
 - (10) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time

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

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(11) Unless the hearing officer makes a written exception under [section 16] or 40-5-411 and the exception is included in the support order, every order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section, is 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 in subsection (11), whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information."

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

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

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

- (2) Child support payments may be considered delinquent under this part only in reference to a court order setting child support payments.
- (3) In the case of support orders not subject to immediate income withholding under (section 16), including cases in which the court or administrative authority has made a finding of good cause or alternative arrangement, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to be delinquent in the payment of support due under a support order in an amount equal to at least 3 months' support payments. Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part. For the purposes of this section, "alternative arrangement" has the meaning provided 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 to guarantee the support of dependent children by the person

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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

defray any arrearages that are due or may become due.

(4) Unless an exception under 40-5-411(4) is contained

(6) The provisions for income withholding under this

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in a support order, withholding of income is required under

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- this part without need for any amendment to the support order involved or any action by the court or entity that issued the support order even though the support order did not address withholding or the support order provided for other payment arrangements. (5) Withholding, once commenced, applies to all current and subsequent payors of income to a person obliqated to pay support until the withholding is terminated as provided by this part.
- part take precedence over any other law or court order." 1 Section 6. Section 40-5-403, MCA, is amended to read: 2 "40-5-403. Definitions. As used in this part, the 3 following definitions apply: (1) "Alternative arrangement" means a written agreement 5 signed by the obligor and obligee, and signed by the department in the case of an assignment of rights under 7 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or 9 10 modifying the support order. (1)(2) "Department" means the department of social and 11 rehabilitation services provided for in 2-15-2201. 12 +2+(3) "Income" means any form of periodic payment to a 13 person, including earnings and wages. However, income does 14 15 not include: (a) any amount required by law to be withheld, other 16 than creditor claims, including federal, state, and local 17
- taxes and social security; and 18 (b) any amounts exempted from judgment, execution, or 19 attachment by federal or state law. 20
- (3)(4) "Obligee" means either a person to whom a duty 21 of support is owed or a public agency of this or another 22 state to which a person has assigned the right to receive 23 current and accrued support payments. 24
- (4)(5) "Obligor" means a person who owes a duty to make 25

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1 payments under a support order.

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

- t6)(7) "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:
- (a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor 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."

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

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

(a)--except--as--provided--in--40-4-284--and-40-6-1167-a support-obligation--is--initially--decreed--and--ordered--or modified--after--danuary--17--19987--by--a-district-court-or administrative-process7-regardless-of-whether-child--support payments-are-in-arrears7-or

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

(2) When-the-requirements-of-this-part-have--been--mety

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1	thedepartment;withoutnecessityforamendmentof-the
2	support-order-or-further-order-by-a-court-orotherentity;
3	shallissueanorderdirecting-the-obligor's-employer-or
4	other-payor-to-withhold-and-deliver-to-thedepartmentsuch
5	amount-of-the-obligor-s-income-as-will-be-sufficient-to-meet
6	thesupportobligation-imposed-by-the-support-order-and-to
7	defray-arrearages;-if-any;-due-whenthewithholdingorder
8	takesplace: 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-incomewithholdingunderthis
14	parttake-precedence-over-any-other-law-or-court-order: The
15	department may direct the payor of income to the obligor to

- commence the withholding of the obligor's income on:
- (a) the effective date of the support order or the date of registration of the support order; or

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- 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

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1 withholding; or	
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- (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 5 arrangement.
- (5) For the purposes of subsection (4), any finding of good cause not to require immediate income withholding must 7 be based on at least:
- (a) a written determination and explanation by the 9 court or administrative authority as to why implementation 10 of immediate income withholding would not be in the best 11 interests of the child; and 12
- (b) proof of timely payment of previously ordered 13 support in cases involving the modification of support 14 15 orders.
- (6) Immediate withholding under this section terminates 16 17 only:
- (a) upon the conditions provided in 40-5-417; or 18
- 19 (b) at the request of the obligor if:
- 20 (i) withholding has not been previously terminated and
- subsequently initiated under 40-5-412 because of a 21
- 22 delinquency; and
- (ii) and the obligor meets one of the exemptions under 23
- 24 subsection (4)."
- 25 Section 8. Section 40-5-412, MCA, is amended to read:

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1	"40-5-412. Initiation-of Delinquency income withholding
2	procedures. (1) Ina-case-concerning-a-support-obligation
3	referred-to-in-40-5-4117-thedepartmentshallimmediately
4	issueanorderunder40-5-415-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.

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

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(a) the date the obligor requests that withholding

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1	begin	; or

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

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

- 3 (e) in computation of delinquent support amounts owed; 4 or
 - (f) in the allegation that the obligor is in default of an alternative agreement."
- Section 9. Section 40-5-413, MCA, is amended to read: 7

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- "40-5-413. Notice of intent to withhold income. (1) Prior to service of an initial order or a modification of an existing order on the payor under 40-5-415, the department shall serve upon the obligor a notice of the intended action if when:
- (a) the--department--previously-has-not-issued-an-order to-withhold--and--it--has--determined--the--obliqor--owes--a combination--of--unpaid--support--equal-to-or-in-excess-of-1 month's--support income withholding is initiated under 40-5-412 because of a delinquency;
- (b) additional arrearages have accrued subsequent to the issuance of an order to withhold and the department proposes to add those arrears to the withholding order; or
- (c) immediate withholding has commenced for current support and there are arrearages due for a period prior to entry of the order to withhold that the department proposes to add to the withholding order.
 - (2) The notice must contain a statement:

- 1 withheld, including (a) of the amount to be computation showing the period and total amount of the 3 arrearages as of the date of the notice;
- (b) that withholding applies to all current and subsequent payors;
- (c) of the obliqor's right to a hearing under 40-5-414 to contest the implementation initiation of income withholding or modification of an existing order on the ground that the intended action is not proper because of mistake of fact, as provided in 40-5-412(4); and
- (d) of the period of time within which the obligor must request a hearing and that failure to request the hearing within the time limit will result in income withholding orders being served upon the payor for the amount stated in 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 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."
- Section 10. Section 40-5-414, MCA, is amended to read: 24
- 25 *40-5-414. Rearing. (1) The To contest the withholding

1	of income initiated under 40-5-412 because of a delinquency,
2	$\underline{\mathtt{an}}$ 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-allowedy-the-intended
 11 action-may-not-take--effect--until--the--conclusion--af--the
 12 hearing--or--the-date-of-the-hearing-if-the-obligor-fails-to
 13 appear-at-a-scheduled-hearing-
 - (3)(2) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

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- 19 <u>f4}(3)</u> 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

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

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- (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

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f5†(6) For purposes of the hearing process, arrearages of support must be computed on the basis of the amount owed and unpaid on the date the obligor was served with the notice of intent to withhold incomer-and-the-fact-that-the obligor-may-have-later-paid-the-arrearage-does-not-remove from-the-hearing-examiner-the-authority-to-direct-the department-to-order-income-withholding. When the department is enforcing a current support obligation, payment of the arrearage after service of the notice is not a basis for not initiating income withholding.

f67(7) In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.

†77(8) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the hearing examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support obligation, the department shall proceed with the intended action in accordance with 40-5-415."

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

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

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

- (a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;
- (b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;
- 11 (c) state that the order is binding on the payor until 12 further notice by the department; and
- (d) state the rights and duties of the payor under thispart; and
 - (e) include a statement that the obligor is required under a support order to provide health insurance coverage for the obligor's child, if appropriate.
 - (2) An order or modification order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order or modification order to withhold may be made either personally or by certified mail.
- 24 (3) Whenever there is more than one payor, the 25 department may, in its discretion, apportion the total

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1 amount to be withheld each month among payors."

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

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

- (b) If income is being withheld to satisfy an arrearage, the amount of funds to be withheld must include 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.
 - (c) If income is being withheld to-satisfy-an-arrearage under this part, the department may allow a fee not to exceed \$5 each month, which may be withheld by the payor as compensation for the administrative costs of each withholding.
 - (2) The maximum amounts withheld from the obligor's wages or salaries, including fees, may not exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

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

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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:

- (a) reflect payment in full of the arrearages by incomewithholding 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

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unde	r 40-5-20	3 ha	ve come	to ar	end	or	when	the o	bliga	ation	to
pay	support	is	termina	ated	and a	all	arrea	arages	are	paid	in
full, whichever occurs first.											

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

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

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

t2)--if-the-obligor's-pay-periods-are--at--intervals--of
less-than-1-month;-the-payor-may-withhold-an-equal-amount-at
each--pay--period-cumulatively-sufficient-to-pay-the-monthly
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

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

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

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

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

"40-5-433. Additional duties of department in interstate income withholding. (†)-Unless-the-public--agency of---the--foreign--jurisdiction--makes--application--to--the department-for-additional-services; the--department--is--not required-to-locate-the-obligor-or-to-locate-payors-of-income to--the--obligor---if-the-application-for-interstate-service provided-for-in-40-5-431-and-40-5-432-fails-to-provide--this information---or--the---information--is--determined--to--be incorrect; the-department-may-return-the-application-without further-proceeding-under-this-part;

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

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- 12 NEW SECTION. Section 16. Immediate income deductions.
 - (1) Notwithstanding any provision in this part requiring a delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2), the salaries and wages of a person obligated to pay child support by an order of a district court issued after October 1, 1991, are subject to an immediate deduction order under 40-5-308 on the effective date of the order, regardless of 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:
- (a) that there is good cause not to require immediatededuction; or

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- 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.
 - (b) As used in subsection (2)(b), "alternative arrangement" means a written agreement that is signed by the obligor and obligee and, in cases in which there is an assignment of support rights under 53-2-613, signed by the department of social and rehabilitation services, and that has been approved and entered into the record by the district court that issued or modified the support order.
 - (4) The clerk of court shall administer immediate income deductions under this section. The clerk of court, at any time after docketing the support order or modification of a support order, at the request of the obligee, and without need for amendment to the support order or for any

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- further action by the district court, shall issue the order 1 for income deductions provided for by 40-5-308 for service 2 upon the obligor's employer. The deduction order must direct 3 the employer to promptly deliver the amount deducted to the 5 clerk of court for distribution to the oblique.
 - (5) Wage deductions under this section may terminated only when:

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- (a) the obligation to pay support has terminated and all arrearages are paid in full;
- (b) the obligor requests termination and the obligee and obligor have entered into an alternative arrangement as set forth in subsection (2)(b); or
- (c) the department has superseded the deduction order 13 under authority of Title 40, chapter 5, part 4. 14
 - (6) If a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages occur prior to beginning the deductions, the arrearages may be added to the deduction order only after compliance with the notice of hearing requirements of 40-5-305.
 - (7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-137 or other law, the support order is subject to immediate orders to deduct income under this section.
- (b) Withholding income under this section must be 24 imposed when an obligor has wages or salaries derived from 25

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

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

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

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

- (a) (i) the amount of money necessary to pay current installments of child support as they become due and payable; plus
- (ii) the amount of money which, when deducted in equal amounts each payday, will pay off all outstanding child 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.
 - (2) The district court may allow a fee of not to exceed \$5 per deduction, which the employer may deduct from the obligor's wages or salary for the expense of administering

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- 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 o
- 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

- 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
 - 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
- 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:
- (i) has been enrolled in the health insurance plan;
 - (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

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

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- (c) If more than one plan is offered by the payor and each plan may be extended to the child, the child must be enrolled in the same plan as the obligor. If the obligor's plan does not provide coverage that is accessible to the child, the child must be enrolled in the least expensive plan available to the obligor.
- (d) Once an initial order of enrollment is authorized under this section, the authority to issue orders to subsequent payors and to bind payors to the orders 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
 - (iii) the department finds under subsection (5) that the premium charged to the obligor is not reasonable under the circumstances of the obligor's case.
 - (e) A payor served with an order of enrollment shall inform the department of the name of the health insurance coverage provider or insurer and the extent of the coverage. The payor shall make available to the department or obligee any necessary claim forms or enrollment membership cards. If

- coverage is terminated for any reason, the payor shall inform the department of the termination within 20 days of 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.
 - (b) The department shall schedule the hearing within 20 days after receipt of the obligor's request. The hearing must be conducted by telephone conferencing methods unless the hearing officer determines an in-person hearing is appropriate.
 - (c) If the hearing officer finds that the premium charged the obligor is causing an undue hardship on the obligor or the child, the department shall withdraw any order of enrollment served on a payor. A withdrawal is temporary and remains in effect only until a significant change in circumstances occurs, such as an improvement in the obligor's ability to pay the premium or an increase in the child's need for health insurance coverage. Upon a change of circumstances, the department may again serve the order of enrollment on the payor. After service of the order, the obligor may request an administrative hearing to

- 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 request any further hearings under this subsection (5) 5 6 unless there is a significant change in circumstances from 7 that existing at the time the finding was made.
 - (6) A notice under this section may be combined with a notice of intent to withhold income under 40-5-413 or with any other notice served on an obligor under part 2 of this chapter.

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- (7) This section may not be construed to limit the 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.
 - (8) This section may not be construed to require a health maintenance organization, health care service provider, or insurer to extend coverage to a child who resides outside its service area or to deviate from contractual provisions and restrictions.
- 21 (9) An obligor whose child is enrolled in a health insurance plan under this section shall cooperate with the 22 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 DAVOE 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, within 20 days of receipt of an order of enrollment, to:
- (a) enroll the obligor's child in the health insurance plan; or
- 7 (b) make a written response to the department, stating 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 notice of intent to purchase health insurance coverage on an 19 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:

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

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- (d) the child is currently eligible for medical assistance benefits under Title 53.
- 5 (2) The notice must specify the type and cost of the proposed health insurance coverage. Within 20 days of the date of service of the notice, the obligor shall:
 - (a) provide written proof to the department that the obligor has either applied for or obtained coverage 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.
 - (3) If a hearing is requested, the department shall schedule the hearing within 20 days of the receipt of the request. The hearing must be held by telephone conferencing methods unless the hearing officer determines that an in-person hearing is appropriate.
 - (4) If the obligor fails to timely provide written proof of coverage or if the hearing officer finds that the proposed purchase of coverage will not cause an undue hardship on the obligor, the department shall purchase the health insurance coverage specified in the notice. The amount of the premium may be added to the obligor's child 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:
 - (a) the child is no longer eligible for medical assistance benefits:
 - (b) the obligor is no longer responsible under the law 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).
 - (6) (a) If a change of circumstances occurs after health insurance coverage is purchased and the obligor believes the change makes the provision of health insurance coverage an undue hardship, the obligor may make a written request for an administrative hearing to reconsider the matter of continuing to purchase coverage.
 - (b) If a hearing is requested, the department shall schedule the hearing within 20 days of the receipt of the request. The hearing must be conducted by telephone conferencing methods unless the hearing officer determines that an in-person hearing is appropriate.
 - (c) If the hearing officer finds that the continued purchase of coverage will cause undue hardship on the

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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).
 - (7) An obligor whose child is enrolled in a health insurance plan under this section shall cooperate with the insurer, health care provider, department, and child's custodian to obtain and use the health insurance plan.
- NEW SECTION. Section 21. Payors to provide information

 -- exemption from liability. (1) For the purposes of this

 part, upon written request by the department, a payor or

 former payor and any labor union of which the obligor is or

 may have been a member shall provide the department with the

 following information, if known, regarding the obligor:
 - (a) last-known residential address;
- 17 (b) social security number;

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- 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.

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- (2) A payor who discloses information to the department
 in compliance with this section is exempt from any liability
 to the obligor that may result from such disclosure.
- 6 <u>NEW SECTION.</u> **Section 22.** Repealer. Section 40-5-425,
 7 MCA, is repealed.
 - NEW SECTION. Section 23. Codification instruction. (1) [Section 16] is intended to be codified as an integral part of Title 40, chapter 5, part 3, and the provisions of Title 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].
 - NEW SECTION. Section 24. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.
- NEW SECTION. SECTION 25. EFFECTIVE DATE. [THIS ACT]

 13 IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-