

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION**

#### **SUBCOMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN BRAD MOLNAR**, on February 8, 1995, at  
12 NOON.

#### **ROLL CALL**

**Members Present:**

Rep. Deb Kottel (D)  
Rep. Brad Molnar (R)  
Rep. Loren L. Soft (R)

**Members Excused:**

None

**Members Absent:**

None

**Staff Present:** John MacMaster, Legislative Council  
Joanne Gunderson, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Subcommittee Business Summary:**

Hearing: HB 55

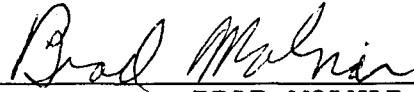
**Discussion:** There was an informal discussion with members of the Department of Social and Rehabilitation Services (SRS) present. Those participants were: **Mary Ann Wellbank, Program Administrator, Child Support Enforcement Division (CSED), Teresa Mc Daniel, ParaLegal (CSED), and Amy Pfeifer, Staff Attorney, CSED).**

The subcommittee discussed the various proposed amendments and agreed upon those shown in **EXHIBIT 1.**

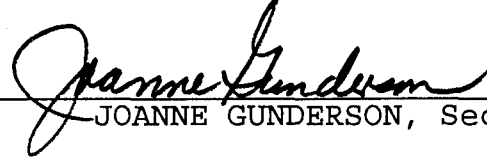
Additional supporting documents used in the discussion are included as **EXHIBITS 2, 3 and 4.**

ADJOURNMENT

**Adjournment:** The meeting was adjourned at 1:00 PM.



BRAD MOLNAR, Chairman



JOANNE GUNDERSON, Secretary

BM/jg

EXHIBIT 1  
DATE 2/8/95  
HB 55

Amendments to House Bill No. 55  
First Reading Copy

Requested by the Subcommittee  
For the Committee on the Judiciary

Prepared by John MacMaster  
February 8, 1995

1. Page 2, lines 6 through 8.  
Strike: "\$500" on line 6 through "pay" on line 8  
Insert: "\$100"

2. Page 2, line 11.  
Following: "who"  
Insert: "knowingly"

EXHIBIT 2  
 DATE 2/8/95  
 HB 55

## HOUSE BILL NO. 55

INTRODUCED BY BOHLINGER

BY REQUEST OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE STATE CHILD SUPPORT INCOME DEDUCTION LAWS TO CONFORM TO THE REQUIREMENTS OF 42 U.S.C. 666(A)(8)(B); AMENDING SECTION 40-5-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Duties of employers. (1) An employer who has been served with an

order for deduction under this part 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 employer shall, within 10 working days of the date the obligor is paid, promptly pay the deducted amount as directed by the order.

The employer shall include with the payment a statement indicating the date the amount was deducted from the obligor's wages or salary. *42 USC 666(b)(1) + (6)(A)(i) + (B) generally*

(2) Whenever an employer receives more than one wage deduction order from the same district court, the employer may combine all amounts deducted into a single payment for that month, with the portion that is attributable to each obligor separately designated. *14 days 45 CFR 303.100(f)(ix) 10 days - 45 CFR 303.100(f)(i)*

(3) Whenever there is more than one deduction order against a single obligor the employer shall:

(a) honor all wage deduction orders to the extent that the total amount deducted from the obligor's wages or salary does not exceed the limits set in 40-5-309; and *42 USC 666(b)(1) 45 CFR 303.100(a)(5)*

(b) comply with the orders in the sequence in which they were served upon the employer except for income withholding orders issued by the department of social and rehabilitation services. Under 40-5-423, orders issued by the department have priority over all other orders without regard to the sequence in which they were served. *42 USC 666(b)(7) + 45 CFR 303.100(f)(vii)*

(4) The employer shall promptly notify the clerk of the district court that issued the deduction order of the termination of the obligor's employment and provide the obligor's last-known address and the name and address of the obligor's new employer, if known. *45 CFR 303.100(f)(x)*

1 **NEW SECTION. Section 2. Obligor rights protected -- penalties.** (1) An employer may not  
2 discharge, discipline, or refuse to hire a person because:

- 3 (a) the person has a child support obligation;  
4 (b) a withholding order has been issued for the person's wages or salary; or  
5 (c) proceedings have been initiated under this part.

6 (2) An employer who violates the provisions of this section may be fined not more than \$500 and  
7 not less than \$150 and may be required to make full restitution to the aggrieved person, including  
8 reinstatement and back pay.

42 USC 666(b)(6)(D)  
45 CFR 303.100(f)(v)

10 **NEW SECTION. Section 3. Civil liability for failure to comply with wage deduction order.** (1) An  
11 employer who fails to deduct support money from the obligor's wages or salary and remit the money to  
12 the district court when ordered to do so under this part is liable to the obligee of the support order for any  
13 amount up to the accumulated amount the employer should have deducted and remitted.

14 (2) An employer who complies with a deduction order under this part is not liable to the obligor  
15 or to any other person claiming rights derived from the obligor for wrongful deductions.

42 USC 666(b)(6)(C)  
45 CFR 303.100(f)(vi)

17 **Section 4.** Section 40-5-308, MCA, is amended to read:

18 **"40-5-308. Order for deduction from income for child support payments.** (1) If the obligor fails  
19 to respond to notice within 15 days or if the district court determines that the obligor is delinquent in  
20 payment of child support as provided in 40-5-304, the district court shall issue an order to the obligor's  
21 employer ordering a deduction from the obligor's wages or salary for the payment of child support.

22 (2) The order ~~shall~~ must state:

23 (a) the action involved;  
24 (b) the total amount of back child support due and the amount of each court-ordered installment  
25 of child support;

26 (c) the amount to be deducted from the wages or salary of the obligor each pay period and the  
27 amount, if any, allowed to the employer under ~~subsection (2) of 40-5-309~~ (2) as a fee for handling the  
28 deduction;

29 (d) the length of time the order is to remain in effect, if ascertainable; and

30 (e) the name and address of the clerk of court to whom the deduction is to be made payable and

42 USC 666(b)(6)(A)(ii)

1 ~~where it is to be forwarded~~ paid by the employer."

2  
3 NEW SECTION. Section 5. Codification instruction. [Sections 1 through 3] are intended to be  
4 codified as an integral part of Title 40, chapter 5, part 3, and the provisions of Title 40, chapter 5, part 3,  
5 apply to [sections 1 through 3].  
6

7 NEW SECTION. Section 6. Saving clause. [This act] does not affect rights and duties that  
8 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
9 act].  
10

11 NEW SECTION. Section 7. Severability. If a part of [this act] is invalid, all valid parts that are  
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
13 applications, the part remains in effect in all valid applications that are severable from the invalid  
14 applications.  
15

16 NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.  
17

-END-

EXHIBIT 3  
DATE 2/8/95  
HB 55

UNITED STATES CODE SERVICE

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\*\*\* THIS SECTION IS CURRENT THROUGH P.L. 103-325, APPROVED  
9/23/94 \*\*\*

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 7. SOCIAL SECURITY ACT

TITLE IV. GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES  
WITH CHILDREN

AND FOR CHILD-WELFARE SERVICES

PART D. CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

42 USCS @ 666 (1995)

STATUS: CONSULT PUBLIC LAWS CITED BELOW FOR RECENT CHANGES TO THIS  
DOCUMENT <=1> LEXSEE 103 P.L. 432 -- See section 212(a),  
effective 10/01/95.

@ 666. Requirement of statutorily prescribed procedures to improve  
effectiveness of child support enforcement

(a) In order to satisfy section 454(20)(A) [42 USCS @  
654(20)(A), each State must have in effect laws requiring the use  
of the following procedures, consistent with this section and with  
regulations of the Secretary, to increase the effectiveness of the  
program which the State administers under this part [42 USCS @@ 651  
et seq.]:

(1) Procedures described in subsection (b) for the withholding  
from income of amounts payable as support.

(2) Procedures under which expedited processes (determined in  
accordance with regulations of the Secretary) are in effect under  
the State judicial system or under State administrative processes  
(A) for obtaining and enforcing support orders, and (B) for  
establishing paternity. The Secretary may waive the provisions of  
this paragraph with respect to one or more political subdivisions  
within the State on the basis of the effectiveness and timeliness  
of support order issuance and enforcement or paternity  
establishment within the political subdivision (in accordance with  
the general rule for exemptions under subsection (d)).

(3) Procedures under which the State child support enforcement  
agency shall request, and the State shall provide, that for the  
purpose of enforcing a support order under any State plan approved

under this part [42 USCS @@ 651 et seq.]--

(A) any refund of State income tax which would otherwise be payable to an absent parent will be reduced, after notice has been sent to that absent parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such absent parent;

(B) the amount by which such refund is reduced shall be distributed in accordance with section 457(b)(4) or (d)(3) [42 USCS @ 657(b)(4) or (d)(3)] in the case of overdue support assigned to a State pursuant to section 402(a)(26) or 471(a)(17) [42 USCS @@ 602(a)(26) or 671(a)(17)], or, in the case of overdue support which a State has agreed to collect under section 454(6) [42 USCS @ 654(6)], shall be distributed, after deduction of any fees imposed by the

State to cover the costs of collection, to the child or parent to whom such support is owed; and

(C) notice of the absent parent's social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

(4) Procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State.

(5) (A) (i) Procedures which permit the establishment of the paternity of any child at any time prior to such child's eighteenth birthday.

(ii) As of August 16, 1984, the requirement of clause (i) shall also apply to any child for whom paternity has not yet been established and any child for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

(B) Procedures under which the State is required (except in cases where the individual involved has been found under section 402(a)(26)(B) [42 USCS @ 602(a)(26)(B)] to have good cause for refusing to cooperate) to require the child and all other parties, in a contested paternity case, to submit to genetic tests upon the request of any such party.

(C) Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that the rights and responsibilities of acknowledging paternity are explained and ensure that due process safeguards are afforded. Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity during the period immediately before or after the birth of a child.



(D) Procedures under which the voluntary acknowledgment of paternity creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity.

(E) Procedures under which the voluntary acknowledgment of paternity must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity.

(F) Procedures which provide that (i) any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence, and (ii) if no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

(G) Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

(H) Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law.

(6) Procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such absent parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

(7) Procedures by which information regarding the amount of overdue support owed by an absent parent residing in the State will be made available to any consumer reporting agency (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) upon the request of such agency; except that (A) if the amount of the overdue support involved in any case is less than \$ 1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after notice has been sent to such absent parent of the proposed action, and such absent parent has been given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State), and (C) a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting agency by the State.

(8) (A) Procedures under which all child support orders not described in subparagraph (B) will include provision for

withholding from wages, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part [42 USCS §§ 651 et seq.].

(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part [42 USCS §§ 651 et seq.] will include the following requirements:

(i) The wages of an absent parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such wages shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

(ii) The requirements of subsection (b)(1) (which shall apply in the case of each absent parent against whom a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b), where applicable.

(iv) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)--

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

(B) entitled as a judgment to full faith and credit in such State and in any other State, and

(C) not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

(10) (A) Procedures to ensure that, beginning 2 years after the date of the enactment of this paragraph, if the State determines (pursuant to a plan indicating how and when child support orders in effect in the State are to be periodically reviewed and adjusted) that a child support order being enforced under this part [42 USCS @@ 651 et seq.] should be reviewed, the State must, at the request of either parent subject to the order, or of a State child support enforcement agency, initiate a review of such order, and adjust such order, as appropriate, in accordance with the guidelines established pursuant to section 467(a) [this section].

(B) Procedures to ensure that, beginning 5 years after the date of the enactment of this paragraph or such earlier date as the State may select, the State must implement a process for the periodic review and adjustment of child support orders being enforced under this part [42 USCS @@ 651 et seq.] under which the order is to be reviewed not later than 36 months after the establishment of the order or the most recent review, and adjusted, as appropriate, in accordance with the guidelines established pursuant to section 467(a) [42 USCS @ 667(a)], unless--

(i) in the case of an order with respect to an individual with respect to whom an assignment under section 402(a)(26) [42 USCS @ 602(a)(26)] is in effect, the State has determined, in accordance with regulations of the Secretary, that such a review would not be in the best interests of the child and neither parent has requested review; and

(ii) in the case of any other order being enforced under this part [42 USCS @@ 651 et seq.], neither parent has requested review.

(C) Procedures to ensure that the State notifies each parent subject to a child support order in effect in the State that is being enforced under this part [42 USCS @@ 651 et seq.]--

(i) of any review of such order, at least 30 days before the commencement of such review; and

(ii) of the right of such parent under subparagraph (B) to request the State to review such order; and

(iii) of a proposed adjustment (or determination that there should be no change) in the child support award amount, and such parent is afforded not less than 30 days after such notification to initiate proceedings to challenge such adjustment (or determination).

(11) Procedures under which a State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

Notwithstanding section 454(20)(B) [42 USCS @ 654(20)(B)], the

procedures which are required under paragraphs (3), (4), (6), and (7) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part [42 USCS @@ 651 et seq.] or would be otherwise inappropriate in the circumstances.

(b) The procedures referred to in subsection (a)(1) (relating to the withholding from income of amounts payable as support) must provide for the following:

(1) In the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's wages (as defined by the State for purposes of this section) must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)) [15 USCS @ 1673(b)]. If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 303(b) [15 USCS @ 1673(b)], but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for aid under part A [42 USCS @@ 601 et seq.]) with respect to whom services are already being provided under the State plan under this part [42 USCS @@ 651 et seq.], and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part [42 USCS @@ 651 et seq.]) by the court or other entity which issued such order.

(3) (A) The wages of an absent parent shall be subject to such withholding, regardless of whether support payments by such parent are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after the date of the enactment of this paragraph [enacted Oct. 13, 1988], on the effective date of the order; except that such wages shall not be subject to such withholding under this subparagraph in any case where (i) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income

withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement.

(B) The wages of an absent parent shall become subject to such withholding, in the case of wages not subject to withholding under subparagraph (A), on the date on which the payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of--

(i) the date as of which the absent parent requests that such withholding begin,

(ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or

(iii) such earlier date as the State may select.

(4) (A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and (subject to subparagraph (B)) the State must send advance notice to each absent parent to whom paragraph (1) applies regarding the proposed withholding and the procedures such absent parent should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of fact. If the absent parent contests such withholding on those grounds, the State shall determine whether such withholding will actually occur, shall (within no more than 45 days after the provision of such advance notice) inform such parent of whether or not withholding will occur and (if so) of the date on which it is to begin, and shall furnish such parent with the information contained in any notice given to the employer under paragraph (6)(A) with respect to such withholding.

(B) The requirement of advance notice set forth in the first sentence of subparagraph (A) shall not apply in the case of any State which has a system of income withholding for child support purposes in effect on the date of the enactment of this section [enacted Aug. 16, 1984] if such system provides on that date, and continues to provide, such procedures as may be necessary to meet the procedural due process requirements of State law.

(5) Such withholding must be administered by a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 457 [42 USCS @ 657] under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the supervision

of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.

(6) (A) (i) The employer of any absent parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such absent parent's wages the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the appropriate agency (or other entity authorized to collect the amounts withheld under the alternative procedures described in paragraph (5)) for distribution in accordance with section 457 [42 USCS @ 657].

(ii) The notice given to the employer shall contain only such information as may be necessary for the employer to comply with the withholding order.

(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

(C) The employer must be held liable to the State for any amount which such employer fails to withhold from wages due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(D) Provision must be made for the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer.

(7) Support collection under this subsection must be given priority over any other legal process under State law against the same wages.

(8) The State may take such actions as may be necessary to extend its system of withholding under this subsection so that such system will include withholding from forms of income other than wages, in order to assure that child support owed by absent parents in the State will be collected without regard to the types of such

absent parents' income or the nature of their income-producing activities.

(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by absent parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

(10) Provision must be made for terminating withholding.

(c) Any State may at its option, under its plan approved under section 454 [42 USCS @ 654], establish procedures under which support payments under this part [42 USCS @@ 651 et seq.] will be made through the State agency or other entity which administers the State's income withholding system in any case where either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in connection therewith or \$ 25, whichever is less, shall be imposed on the requesting parent by the State.

(d) If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures requires by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

(e) For purposes of this section, the term "overdue support" means the amount of a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the absent parent's spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of paragraph (4) or (6) of section 454 [42 USCS @ 654(4) or (6)]. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply

independently to each procedure specified under this section.

HISTORY: (Aug. 14, 1935, ch 531, Title IV, Part D, @ 466, as added Aug. 16, 1984, P.L. 98-378, @ 3(b), 98 Stat. 1306.) (As amended Oct. 21, 1986, P.L. 99-509, Title IX, Subtitle B, @ 9103(a), 100 Stat. 1973; Oct. 13, 1988, P.L. 100-485, Title I, Subtitle A, @@ 101(a), (b), 103(c), Subtitle B, @ 111(b), (e), 102 Stat. 2246, 2345, 2349, 2350; Nov. 10, 1988, P.L. 100-647, Title VIII, Subtitle B, @ 8105(4), 102 Stat. 2344, 3797; Aug. 10, 1993, P.L. 103-66, Title XIII, Ch 2, Subch C, Part II, @ 13721(b), 107 Stat. 659.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

EXPLANATORY NOTES: The legislative instructions of @ 111(e) of Act Oct. 13, 1988, P.L. 100-485, directed the amendment of subsec. (a)(5)(A) by designating the existing provisions as cl. (i), and adding cl. (ii). However, @ 111(b) of such Act amended subsec. (a)(5) by designating the existing provisions as subpara. (A), effective on the first day of the first month one or more years after enactment. Therefore, the amendment provided by @ 111(b) was executed to subsec. (a)(5) as the probable intention of Congress.

EFFECTIVE DATE OF SECTION: Subsections (a)-(d) of this section are effective on Oct. 1, 1985, as provided by @ 3(g)(1) of Act Aug. 16, 1984, P.L. 98-378, 98 Stat. 1311, which appears as 42 USCS @ 654 note. Subsection (e) is effective on enactment of Act Aug. 16, 1984 on Aug. 16, 1984, as provided by @ 3(g)(2) of such Act, which appears as 42 USCS @ 654 note.

AMENDMENTS: 1986. Act Oct. 21, 1986, (effective as provided by @ 9103(b) of such Act, which appears as a note to this section), added subsec. (a)(9). 1988. Act Oct. 13, 1988, @ 111(e)(1), as amended by @ 8105 of Act Nov. 10, 1988 (effective on enactment of Act Oct. 13, 1988, as provided by @ 8105 of such Act, which appears as 42 USCS @ 607 note), in subsec. (a)(5), designated the existing provisions as cl. (i) and added cl. (ii) (see Explanatory note).

Section 111(b) of such Act (effective on the first day of the first month beginning one year or more after the date of enactment of this Act, as provided by @ 111(f)(2) of such Act, which appears as 42 USCS @ 654 note), in subsec. (a)(5), designated the existing provisions as subpara. (A), and added subpara. (B). Section 101(b) of such Act (effective 1/1/94, as provided by @ 101(d)(2) of such Act, which appears as a note to this section), in subsec. (a)(8), designated the existing provisions as subpara. (A) and in such subparagraph substituted "not described in subparagraph (B)" for "which are issued or modified in the State", and added subpara. (B).

Section 103(c) of such Act (effective one year after enactment, as provided by @ 103(f) of such Act, which appears as a note to this section), in subsec. (a), added para. (10). Section 101(a) (effective on the first day of the 25th month beginning after the date of enactment of this Act, as provided by



@ 101(d)(1) of such Act, which appears as a note to this section), in subsec. (b), substituted para. (3) for one which read: "An absent parent shall become subject to such withholding, and the advance notice required under paragraph (4) shall be given, on the earliest of-- "(A) the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month, "(B) the date as of which the absent parent requests that such withholding begin, or "(C) such earlier date as the State may select." 1993. Act Aug. 10, 1993 (applicable as provided by @ 13721(c) of such Act, which appears as 42 USCS @ 652 note), in subsec. (a), in para. (2), deleted "at the option of the State," following "(B)" and inserted "or paternity establishment", in para. (5), added subparas. (C)--(H), and added para. (11).

OTHER PROVISIONS: Effective date and application of subsec. (a)(9). Act Oct. 21, 1986, P.L. 99-509, Title IX, Subtitle B, @ 9103(b), 100 Stat. 1973, provides: "(b)(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall become effective on the date of the enactment of this Act [enacted Oct. 21, 1986]. "(2) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act to the requirements imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after the date of the enactment of this Act [enacted Oct. 21, 1986]. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature." Study on making immediate income withholding mandatory in all cases. Act

Oct. 13, 1988, P.L. 100-485, Title I, Subtitle A, @ 101(c), 102 Stat. 2345, effective on enactment as provided by @ 101(d)(3) of such Act, which appears as a note to this section, provides: "The Secretary of Health and Human Services shall conduct a study of the administrative feasibility, cost implications, and other effects of requiring immediate income withholding with respect to all child support awards in a State and shall report on the results of such study not later than 3 years after the date of the enactment of this Act." Effective date of @ 101 of Act Oct. 13, 1988. Act Oct. 13, 1988, P.L. 100-485, Title I, Subtitle A, @ 101(d), 102 Stat. 2346, provides: "(1) The amendment made by subsection (a) [amending subsec. (b)(3) of this section] shall become effective on the first day of the 25th month beginning after the date of the enactment of this Act. "(2) The amendments made by subsection (b) [amending subsec. (a) of this section] shall become effective on January 1, 1994. "(3) Subsection (c) [note to this section] shall become effective on the date of the enactment of this Act."

Study of impact of extending periodic review requirement and evaluation of model procedures for reviewing child support awards.

Act Oct. 13, 1988, P.L. 100-485, Title I, Subtitle A, @ 103(d), (e), 102 Stat. 2347, provides: "(d) Study of impact of extending periodic review requirement to all other cases. Within 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct and complete a study to determine the impact on child support awards and the courts of requiring each State to periodically review all child support orders in effect in the State. "(e) Demonstration projects for evaluating model procedures for reviewing child support awards. (1) Not later than April 1, 1989, the Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall enter into an agreement with each of 4 States submitting applications under this subsection for the purpose of conducting a demonstration project under part D of title IV of the Social Security Act [42 USCS @@ 651 et seq.] in the State to test and evaluate model procedures for reviewing child support award amounts. "(2) Notwithstanding section 454(1) of the Social Security Act [42 USCS @ 654(1)], a demonstration project conducted under this subsection may be conducted in one or more political subdivisions of the State. "(3) An agreement under this subsection shall be entered into between the Secretary and the State agency designated by the Governor of the State involved. Under such agreement, the Secretary shall pay to the State, as an additional payment under part D of title IV of the Social Security Act [42 USCS @@ 651 et seq.], an amount equal to 90 percent of the reasonable costs incurred by the State in conducting a demonstration project under this subsection. Such costs shall not be taken into account for purposes of computing the incentive payment under section 458 of such Act [42 USCS @ 658]. "(4) A demonstration project under this subsection shall be commenced not later than September 30, 1989, and shall be conducted for a 2-year period unless the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the agreement entered into with the State under paragraph (1). "(5)(A) Any State with an agreement under this subsection shall furnish the Secretary with such information as the Secretary determines to be necessary to evaluate the results of the project conducted by the State. "(B) The Secretary shall report the results of the demonstration projects conducted under this subsection to Congress not later than 6 months after all such projects are completed." Effective date of @ 103(a)-(c) of Act Oct. 13, 1988. Act Oct. 13, 1988, P.L. 100-485, Title I, Subtitle A, @ 103(f), 102 Stat. 2348, provides: "The amendments made by subsections (a), (b), and (c) [amending this section and 42 USCS @ 667(a), (b)(1)] shall become effective one year after the date of the enactment of this Act." Commission on interstate child support. Act Oct. 13, 1988, P.L. 100-485, Title I, Subtitle C, @ 126, 102 Stat. 2354; Nov. 5, 1990, P.L. 101-508, Title V, Subtitle A, Ch 1, @ 5012(a), 104 Stat. 1388-221 (effective on enactment as provided by @ 5012(b) of such Act); July 3, 1992, P.L. 102-318, Title V, Subtitle C, @ 534(a), 106 Stat. 317 (effective June 30, 1992, as provided by @ 534(b) of such Act), provides: "(a) Establishment of Commission. There is hereby established a Commission to be known as the Commission on Interstate Child

Support (in this section referred to as the 'Commission') to be composed of 15 members appointed in accordance with subsection (b)(1).

"(b) Appointment and term of members; vacancies; transaction of business. (1) Members of the Commission shall be appointed as follows from among individuals knowledgeable in matters involving interstate child support:

"(A) Four members shall be appointed jointly by the Majority and Minority Leaders of the Senate, in consultation with the chairman and ranking minority member of the Committee on Finance of the Senate.

"(B) Four members shall be appointed jointly by the Speaker of the House and the Minority Leader of the House, in consultation with the chairman and ranking minority member of the Committee on Ways and Means of the House of Representatives.

"(C) Seven members shall be appointed by the Secretary of Health and Human Services (in this section referred to as the 'Secretary').

"(2) Members of the Commission shall serve for the life of the Commission. A vacancy on the Commission shall be filled in the manner in which the original appointment was made and shall not affect the powers or duties of the Commission.

"(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business. Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

"(4) The members of the Commission shall be appointed by July 1, 1989. The first meeting of the Commission shall be called by the Secretary as promptly as possible after all such members are appointed. At such meeting, the members of the Commission shall select a chairman from among such members and shall meet thereafter at the call of the chairman or of a majority of the members.

"(c) Basic pay. (1) Members of the Commission shall serve as such without pay. (2) Members of the Commission shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the government service are allowed travel expenses under section 5703 of title 5 of the United States Code.

"(d) Duties of the Commission. (1) During the fiscal year 1991, the Commission shall hold one or more national conferences on interstate child support reform for the purpose of assisting the Commission in preparing the report required under paragraph (2).

"(2) Not later than August 1, 1992, the Commission shall submit a report to the Congress that contains recommendations for--

"(A) improving the interstate establishment and enforcement of child support awards, and (B) revising the Uniform Reciprocal Enforcement of Support Act.

"(e) Powers of the Commission. (1) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States Government.

"(2) The Commission may accept, use, and dispose of donations of money and property and may accept such volunteer services of individuals as it deems appropriate.

"(3) The Commission may procure supplies, services, and property, and make contracts (but only to the extent or in such amounts as are provided in appropriation Acts).

"(4) For purposes of carrying out its duties under subsection (d), the Commission may adopt such rules for its organization and procedures as it deems appropriate. (5) (A) Individuals may be appointed to serve the

Commission without regard to the provisions of title 5 that govern appointments in the competitive service [5 USCS @@ 5331 et seq.], without regard to the competitive service, and without regard to the classification system in chapter 53 of title 5, United States Code [5 USCS @@ 5301 et seq.]. The chairman of the Commission may fix the compensation of the Executive Director at a rate that shall not exceed the maximum rate of the basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code [5 USCS @ 5332].

"(B) The Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service [5 USCS @@ 5331 et seq.], and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title [5 USCS @@ 5101 et seq., 5331 et seq.] relating to classification and General Schedule pay rates.

"(C) On the request of the chairman, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section without regard to section 3341 of title 5, United States Code.

"(f) Termination of the Commission. (1) The Commission shall terminate on September 30, 1992.

"(2) Any funds held by the Commission on the date of termination of the Commission shall be deposited in the general fund of the Treasury of the United States and credited as miscellaneous receipts. Any property (other than funds) held by the Commission on such date shall be disposed of as excess or surplus property.

"(g) Authorization of appropriations. For the purpose of carrying out this section, there is authorized to be appropriated \$ 2,000,000."

#### INTERPRETIVE NOTES AND DECISIONS

Welfare recipients properly state claim against Commissioner of State Department of Human Resources and Director of Family Division of state Judicial Department, where plaintiffs allege defendants' nonenforcement of state's child support/wage withholding provisions has in part caused undue delay in their receipt of child support pass-through payments in violation of 42 USCS @@ 654(11), 666(a)(1) and 666(b)(5), because regulations mandate employer payments to state within 10 days of payment of absent parent's wages, while plaintiffs claim delays of 3 months or longer in receiving their share of such payments. *Beasley v Harris* (1987, DC Conn) 671 F Supp 911.



## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

ADMINISTRATION FOR  
CHILDREN AND FAMILIES

FEB 08 1995

Region VIII  
Federal Office Building  
1961 Stout Street  
Denver, CO 80294-3538EXHIBIT 4  
DATE 2/8/95  
HB 55

Ms. Mary Ann Wellbank  
Program Administrator  
Child Support Enforcement Division  
Department of Social and Rehabilitation Services  
3075 N. Montana Avenue, Suite 112  
P.O. Box 202943  
Helena, Montana 59620

Dear Ms. Wellbank:

This is in response to your request for clarification of the consequences if a State fails to enact laws or otherwise conform to the requirements of Section 101(b) of the Family Support Act of 1988 (P.L. 100-485) and Sections 454(20) and 466(a)(8)(B) of the Social Security Act (the Act) concerning wage or income withholding in all child support orders initially issued in the State which are not being enforced under title IV-D of the Act.

Section 101 (b) of the Family Support Act required that effective January 1, 1994, States must have laws enacted and implementing procedures developed in accordance with the Act, under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under title IV-D of the Act, are subject to immediate wage or income withholding (see Section 466(a)(8)(B) and (b) of the Act). Two exceptions to imposing immediate withholding are permitted: 1. if one of the parties demonstrates, and the court or administrative process finds good cause not to require withholding; or 2. a written agreement is reached between both parties for an alternative arrangement.

The statutory requirements for immediate wage withholding in all child support orders initially issued in the State are described in the enclosed "Action Transmittal" number AT-93-06, dated April 5, 1993. It contains a detailed description of the specific requirements applicable to immediate withholding for all non-IV-D child support orders initially issued in the State on or after January 1, 1994.

In order for a State to receive Federal funding for the operation of its child support enforcement program, it must have an approved State IV-D plan which meets the requirements of section 454 of the Act. One of those requirements, specified at section 454(20)(A), is that the State must have in effect all of the laws required by section 466. The immediate wage withholding provisions described in the enclosure are included in section 466.

When a State fails to comply with all statutory requisites, its plan is subject to disapproval by the Office of Child Support Enforcement (OCSE). In accordance with sections 452(a)(3) and 455(a)(1)(A) of the Act, there would then be no authority to expend Federal funds under title IV-D of the Act for the operation of the State's child support enforcement program.

Therefore, a determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. In addition, the State may also be subject to reduction in funding of its Aid to Families with Dependent Children program pursuant to section 404(d) of the Act since having an approved State IV-D plan is a requirement for approval of a State plan under title IV-A.

Due to the gravity of the consequences that may result, we urge you to take whatever steps are necessary to have the required legislation enacted and implemented and to submit an approvable State plan amendment immediately.

If you have any further questions regarding this matter, please contact Rosanne Robinson at (303) 844-3100, extension 394.

Sincerely,

*Jo B. Shannon*

Jo B. Shannon  
Program Manager  
Child Support Enforcement

Enclosures