

1 *Senate* BILL NO. *365*  
 2 INTRODUCED BY *Edwards*

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT SUBROGATING THE  
 5 DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE  
 6 RIGHTS OF RECIPIENTS OF MEDICAL ASSISTANCE; AMENDING  
 7 SECTIONS 71-235, 71-308, 71-511, 71-1524, AND 93-2601-51,  
 8 R.C.M. 1947."  
 9

10 WHEREAS, it is necessary that the department of social  
 11 and rehabilitation services pursue third parties who may be  
 12 liable for medical expenses incurred by recipients of  
 13 medical assistance and relatives responsible for the support  
 14 of recipients of public assistance.  
 15

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

17 Section 1. There is a new R.C.M. section numbered  
 18 71-241.1 that reads as follows:

19 71-241.1. Subrogation and third party liability. (1)  
 20 The state department is subrogated to the right of each  
 21 needy person who is a recipient of medical benefits under  
 22 Titles XIX or XX of the Social Security Act to recover  
 23 damages or compensation from a third party to the extent  
 24 necessary to reimburse the state department for medical  
 25 benefits paid to or on behalf of the needy person.

1 (2) The state department may, in the name of the needy  
 2 person to whom or on whose behalf medical benefits have been  
 3 paid and to whose rights the department has been subrogated,  
 4 commence and prosecute to final conclusion any action which  
 5 may be necessary to recover from a third party compensation  
 6 or damages for medical costs incurred by the needy person.  
 7 From the amount collected from legal proceedings or as a  
 8 result of settlement, the department shall retain the full  
 9 amount previously paid as medical benefits, allocating to  
 10 the county and federal government a share proportionate to  
 11 their contribution and, after deducting the costs of the  
 12 proceeding, deliver the remainder to the needy person. The  
 13 total amounts awarded as compensation for pain and suffering  
 14 or which are punitive in nature shall be delivered to the  
 15 needy person. This section does not affect the needy  
 16 person's right to initiate and prosecute to final conclusion  
 17 an action for damages or compensation in his own name.

18 (3) As used in this section, "third party" means an  
 19 individual, institution, corporation, or public or private  
 20 agency which is or may be liable to pay all or part of the  
 21 medical cost of injury, disease, or disability of a needy  
 22 person to which Titles XIX or XX benefits have been applied,  
 23 and includes but is not limited to insurers, health service  
 24 organizations, and those liable in tort.

25 Section 2. Section 71-235, R.C.M. 1947, is amended to

1 read as follows:

2 "71-235. Living relatives -- jointly and severally  
 3 liable -- scale of contribution. (1) The living relatives of  
 4 each needy person named in this act ~~shall be and they~~  
 5 hereby are made jointly and severally liable in the order  
 6 named in section 71-233 to such ~~the~~ needy person for the  
 7 monthly amounts of money determined in accordance with the  
 8 following scales to wit:

9 RELATIVES' CONTRIBUTION SCALE

10 A. Net monthly 11 income of 12 responsible 13 relatives in 14 one family 15 in dollars	16 B. Number of persons dependent upon 17 income exclusive of applicant										
	1 2 3 4 5 6 7 8 9 10										
18 Under 304 .....	0	0	0	0	0	0	0	0	0	0	
19 305 to 399 .....	22	0	0	0	0	0	0	0	0	0	
20 400 to 489 .....	43	14	0	0	0	0	0	0	0	0	
21 490 to 619 .....	72	43	29	22	7	0	0	0	0	0	
22 620 to 739 .....	101	72	58	50	36	29	14	0	0	0	
23 740 to 869 .....	130	101	86	79	65	58	43	29	14	0	
24 870 to 1024 .....	144	130	115	108	94	86	72	58	43	29	
25 1025 to 1179 .....	144	144	144	144	130	123	108	94	79	65	
	1180 to 1339 .....	144	144	144	144	144	144	144	130	115	101

1 1340 and up .....144 144 144 144 144 144 144 144 144 130

2 (2) For the purposes of this act:  
 3 (1)(a) A needy person is one who is eligible for  
 4 public assistance under the laws of this state; and  
 5 (2)(b) "Net net monthly income" shall be deemed to  
 6 mean means one-twelfth (1/12) of the difference between the  
 7 net income for the taxable year as the term net income is  
 8 defined in section 84-4901 ~~subsection ten~~ (10) and the  
 9 state income tax paid as determined by the state income tax  
 10 return filed during the current year.

11 (3) In those cases where both spouses classify as  
 12 responsible relatives of needy persons during the same  
 13 period of time, the liability for contribution of each of  
 14 said ~~spouses spouse~~ during that time shall be considered to  
 15 be is one-half (1/2) of the amount shown in the scale  
 16 established by this act.

17 (4) Whenever the responsible relative owes a duty of  
 18 support to a minor dependent child and public assistance  
 19 moneys have been paid to or on behalf of that child, the  
 20 liability for contribution is measured by the lesser of the  
 21 amount of public assistance paid or the amount of support  
 22 ordered by court decree.

23 (5) A person who is receiving public assistance on  
 24 behalf of a minor dependent child may not be held liable for  
 25 contribution for the period during which public assistance

1 was received."

2 Section 3. Section 71-308, R.C.M. 1947, is amended to  
3 read as follows:

4 "71-308. Medical aid and hospitalization. (1) Medical  
5 aid and hospitalization for nonresidents within the county  
6 and county residents unable to provide such ~~these~~  
7 necessities for themselves are the legal and financial duty  
8 and responsibility of the board of county commissioners,  
9 except as otherwise provided in other parts of this act, ~~and~~  
10 ~~are~~ payable from the county poor fund. The board of county  
11 commissioners shall make provisions for competent and  
12 skilled medical or surgical services as ~~are~~ approved by the  
13 department of health and environmental sciences or the state  
14 medical association, or, in the case of osteopathic  
15 practitioners, by the state osteopathic association or  
16 chiropractors by the state chiropractic association, or  
17 optometrical services as approved by the Montana optometric  
18 association ~~and~~ or dental services as approved by the dental  
19 association. "Medical" or "medicine" as used in this act  
20 refers to the healing art as practiced by licensed  
21 practitioners.

22 (2) The board, in arranging for medical care for those  
23 unable to provide it for themselves, may have the care  
24 provided by the physicians appointed by the board who shall  
25 be known as county physicians or deputy county physicians,

1 and may fix a rate of compensation for the furnishing of the  
2 medical attendance.

3 (3) The board of county commissioners shall make  
4 suitable arrangements to provide respectable burial for  
5 nonresidents within the county and county residents for whom  
6 such ~~the~~ expenses are not otherwise available.

7 (4) The department of social and rehabilitation  
8 services may promulgate rules to determine under what  
9 circumstances persons in the county are unable to provide  
10 medical aid and hospitalization for themselves, including  
11 the power to define the term "medically needy". ~~Provided,~~  
12 ~~however--such~~ ~~However,~~ ~~the~~ definition may not allow payment  
13 by a county for general assistance-medical for persons whose  
14 income exceeds ~~three-hundred-percent--~~{300%} of the  
15 limitation for obtaining regular county general assistance.

16 (5) In any case where the county or state pays medical  
17 expenses or hospitalization for an individual, the county or  
18 state is subrogated to the claims of the physician or  
19 hospital to the extent of payment. In the extent necessary  
20 for reimbursement of medical benefits paid to or on behalf  
21 of an individual, the county or state is subrogated to the  
22 rights of the individual to recover from a third party who  
23 may be liable to pay the medical expenses. The provisions of  
24 71-241.1 which relate to medical benefits provided under  
25 Titles XIX and XX of the Social Security Act apply to

1 ~~medical benefits provided for in this section.~~"

2 Section 4. Section 71-511, R.C.M. 1947, is amended to  
3 read as follows:

4 "71-511. Payment of public assistance money --  
5 subrogation of the department of social and rehabilitation  
6 services -- schedule of payments. (1) Any A payment of  
7 public assistance money made to or for the benefit of any a  
8 dependent child ~~or-children~~ creates a debt due and owing to  
9 the department of social and rehabilitation services by the  
10 natural or adoptive ~~parent--or~~ parents who are legally  
11 responsible for the support of ~~such-children~~ the child by  
12 statute or court decree in an amount equal to the amount of  
13 public assistance so paid. ~~Provided, that HOWEVER,~~ where the  
14 support obligation is based upon a court decree, the debt  
15 ~~shall-be is~~ limited to the amount of ~~said the~~ court decree.

16 (2) The department of ~~--social--and--rehabilitation~~  
17 ~~services--shall-be is~~ subrogated to the right of ~~said the~~  
18 child ~~or--children~~ or person having the care, custody, and  
19 control of ~~said the~~ child ~~or--children~~ to prosecute or  
20 ~~maintain--and-recover-upon~~ any support action or execute any  
21 administrative remedy existing under the laws of the state  
22 of ~~--Montana~~ to obtain reimbursement of monies thus expended.  
23 If a court decree enters judgment for an amount of support  
24 to be paid by an obligor parent, the department ~~shall-be is~~  
25 subrogated to the debt created by ~~such the~~ order and ~~said~~

1 ~~the~~ money judgment ~~shall-be-deemed-to-be is~~ in favor of the  
2 department of ~~social-and-rehabilitation-services~~. ~~No obligee~~  
3 ~~may commence an action to recover support due and owing to~~  
4 ~~him without first filing an affidavit with the court stating~~  
5 ~~whether he has received public assistance from any source~~  
6 ~~and, if he has received public assistance, that he has~~  
7 ~~notified the state department in writing of the pending~~  
8 ~~action.~~

9 (3) In no case ~~shall may~~ a debt arising under this  
10 section be incurred by or collected from a parent or other  
11 person ~~who while he~~ is the recipient of public assistance  
12 monies for the benefit of minor dependent children ~~for-the~~  
13 ~~period--such-person-or-persons-are-in-such-status.~~

14 (4) The remedies herein provided are in addition to  
15 and not in lieu of existing common law and statutory law.

16 (5) The department of ~~--social--and--rehabilitation~~  
17 ~~services~~ or its legal representatives may at any time  
18 consistent with the income, earning capacity, and resources  
19 of the debtor, petition the court having jurisdiction over  
20 the particular case to set or reset a level and schedule or  
21 ~~of~~ payments to be paid upon the debt."

22 Section 5. Section 71-1524, R.C.M. 1947, is amended to  
23 read as follows:

24 "71-1524. Exclusion of lien. No applicant hereunder  
25 ~~shall may~~ be required to execute an agreement for lien on

1 his real property. No lien may be imposed against the  
 2 property of ~~any an~~ individual prior to his death on account  
 3 of medical assistance paid or to be paid on his behalf  
 4 (except pursuant to the judgment of a court on account of  
 5 benefits incorrectly paid on behalf of ~~such the~~ individual).  
 6 There ~~shall~~ may be no adjustment or recovery (except, in the  
 7 case of an individual who was ~~sixty-five~~ (65) years of age  
 8 or older when he received ~~such the~~ assistance, from his  
 9 estate, and then only after the death of his surviving  
 10 spouse, if any, and only at a time when he has no surviving  
 11 child who is under age ~~eighteen~~ (18) or is blind or  
 12 permanently and totally disabled) of any medical assistance  
 13 correctly paid on behalf of ~~such an~~ individual. In the  
 14 extent necessary for reimbursement of medical assistance  
 15 paid to an individual, the state department is subrogated to  
 16 the rights of the individual to recover from a third party  
 17 who may be liable to pay the medical expenses, as provided  
 18 in 71-241.1. Recoveries shall be prorated to the federal  
 19 government and the state in the proportion to which each  
 20 contributed to the medical assistance. Recovery for medical  
 21 assistance paid prior to July 1, 1974, shall be prorated to  
 22 reimburse the county share of participation. The provisions  
 23 of this act are hereby extended to provide for the recovery  
 24 of all medical assistance paid under ~~sections~~ 71-1511  
 25 through 71-1524 and likewise to all medical aid to the aged

1 assistance paid by the state department during the period of  
 2 time July 1, 1965, through June 30, 1967."

3 Section 6. Section 93-2601-51, R.C.M. 1947, is amended  
 4 to read as follows:

5 "93-2601-51. Contents and filing of petition for  
 6 support -- venue. ~~(a)(1)~~ The petition shall be verified and  
 7 shall state the name and, so far as known to the obligee,  
 8 the address and circumstances of the obligor and the persons  
 9 for whom support is sought, and all other pertinent  
 10 information. The obligee may include in or attach to the  
 11 petition any information which may help in locating or  
 12 identifying the obligor including a photograph of the  
 13 obligor, a description of any distinguishing marks on his  
 14 person, other names and aliases by which he has been or is  
 15 known, the name of his employer, his fingerprints, and his  
 16 social security number.

17 (2) At the time of filing the petition the obligee  
 18 shall also file with the court an affidavit as required by  
 19 71-511 stating whether he has received public assistance  
 20 from any source and, if he has received public assistance,  
 21 that he has notified the department of social and  
 22 rehabilitation services in writing of the pending action.

23 ~~(b)(3)~~ The petition may be filed in the appropriate  
 24 court of any state in which the obligee resides. The court  
 25 ~~shall~~ may not decline or refuse to accept and forward the

1 petition on the ground that it should be filed with some  
2 other court of this or any other state where there is  
3 pending another action for divorce, separation, annulment,  
4 dissolution, habeas corpus, adoption, or custody between the  
5 same parties or where another court has already issued a  
6 support order in some other proceeding and has retained  
7 jurisdiction for its enforcement."

8 Section 7. Saving clause. This act does not affect  
9 rights and duties that matured, penalties that were  
10 incurred, or proceedings that were begun before July 1,  
11 1977.

12 Section 8. Severability. If a part of this act is  
13 invalid, all valid parts that are severable from the invalid  
14 part remain in effect. If a part of this act is invalid in  
15 one or more of its applications, the part remains in effect  
16 in all valid applications that are severable from the  
17 invalid applications.

-End-

## STATE OF MONTANA

REQUEST NO. 343-77

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 2, 19 77, there is hereby submitted a Fiscal Note for SB 365 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

## DESCRIPTION OF PROPOSED LEGISLATION:

SB 365 is an act subrogating SRS to the rights of recipients of medical assistance.

## FISCAL IMPACT:

No dollar estimate can be made for SB 365. The department at present does not have the capability of implementing a program to recover third party liability recoveries as provided for in Section 71-308, R.C.M. 1947. A budget modification has been requested for the 1979 Biennium to pursue third party liability recoveries as provided for in Section 71-308.

The budget modification request for this third party recovery unit is outlined below:

## SUMMARY OF 3RD PARTY LIABILITY RECOVERY PROJECTIONS

An acceptable means of estimating third party liability recoveries is on the basis of the percentage of total Medicaid expenditures recovered annually in other states (Washington 2.5%; Michigan 3.9%; Colorado 7.3% projected). Using the most conservative of these comparisons, Montana general fund recoveries could be expected to exceed general fund expenditures by roughly \$400,000 during the start-up period this biennium, and at least \$400,000 per year thereafter as shown below:

	Total (New) Recoveries	State Share Of Recoveries	State Share Of Program Costs	Net Recovery
Fiscal 1978	\$ 525,000.00*	\$ 204,225.00	\$ 71,635.00	\$ 132,590.00
Fiscal 1979	900,000.00**	350,100.00	68,630.00	281,470.00
Fiscal 1980	1,250,000.00***	486,250.00	71,250.00	415,000.00

\* First year start-up anticipates 50% of projected 2% recoveries rate and a total budget of \$42 million.

\*\* Second year anticipates 75% of projected 2% recoveries rate and a total budget of \$48 million.

\*\*\* Third year anticipates full 2% recoveries rate and a total budget of \$50 million.

It is not possible to estimate the portion of the projected recoveries jeopardized if this bill is not passed.

*Richard L. Franz, Jr.*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: February 8, 1977

Approved by Committee  
on Public Health, Welfare  
& Safety

SENATE BILL NO. 365  
INTRODUCED BY ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT SUBROGATING THE  
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE  
RIGHTS OF RECIPIENTS OF MEDICAL ASSISTANCE; AMENDING  
SECTIONS 71-235, 71-308, 71-511, 71-1524, AND 93-2601-51,  
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WHEREAS, it is necessary that the department of social  
and rehabilitation services pursue third parties who may be  
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of recipients of public assistance.

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

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The state department is subrogated to the right of each  
needy person who is a recipient of medical benefits under  
Titles XIX or XX of the Social Security Act to recover  
damages or compensation from a third party to the extent  
necessary to reimburse the state department for medical  
benefits paid to or on behalf of the needy person.

(2) The state department may, in the name of the needy  
person to whom or on whose behalf medical benefits have been  
paid and to whose rights the department has been subrogated,  
commence and prosecute to final conclusion any action which  
may be necessary to recover from a third party compensation  
or damages for medical costs incurred by the needy person.  
From the amount collected from legal proceedings or as a  
result of settlement, the department shall retain the full  
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the county and federal government a share proportionate to  
their contribution and, after deducting the costs of the  
proceeding, deliver the remainder to the needy person. The  
total amounts awarded as compensation for pain and suffering  
or which are punitive in nature shall be delivered to the  
needy person. This section does not affect the needy  
person's right to initiate and prosecute to final conclusion  
an action for damages or compensation in his own name.

(3) A NEEDY PERSON WHO IS A RECIPIENT OF MEDICAL  
BENEFITS, OR HIS LEGAL REPRESENTATIVE, SHALL NOTIFY THE  
STATE DEPARTMENT OF ANY ACTION INITIATED, OR OF ANY  
COMPROMISE OR SETTLEMENT AGREED TO BY THE NEEDY PERSON, OR  
HIS LEGAL REPRESENTATIVE, FOR THE RECOVERY OF COMPENSATION  
OR DAMAGES FOR MEDICAL EXPENSES TO WHICH MEDICAL BENEFITS  
HAVE BEEN APPLIED.

NOTICE SHALL BE GIVEN BY SERVICE UPON THE STATE



1 DEPARTMENT OF THE LEGAL INSTRUMENT INITIATING THE ACTION OR  
 2 EMBODYING THE COMPROMISE OR SETTLEMENT.  
 3 (4) NO PORTION OF ATTORNEY'S FEES MAY BE WITHHELD FROM  
 4 THE AMOUNT COLLECTED FROM LEGAL PROCEEDINGS OR AS A RESULT  
 5 OF SETTLEMENT WHICH IS DUE THE STATE DEPARTMENT UNDER  
 6 SUBSECTION (1) WITHOUT PRIOR APPROVAL OF THE STATE  
 7 DEPARTMENT.

8 ~~(3)(5)~~ As used in this section, "third party" means an  
 9 individual, institution, corporation, or public or private  
 10 agency which is or may be liable to pay all or part of the  
 11 medical cost of injury, disease, or disability of a needy  
 12 person to which Titles XIX or XX benefits have been applied,  
 13 and includes but is not limited to insurers, health service  
 14 organizations, and those liable in tort.

15 Section 2. Section 71-235, R.C.M. 1947, is amended to  
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 18 liable -- scale of contribution. (1) The living relatives of  
 19 each needy person named in this act ~~shall be and they~~  
 20 hereby are made jointly and severally liable in the order  
 21 named in section 71-233 to such the needy person for the  
 22 monthly amounts of money determined in accordance with the  
 23 following scale, to wit:

24 RELATIVES' CONTRIBUTION SCALE

25 A. B. Number of persons dependent upon

1	Net monthly	income exclusive of applicant									
2	income of										
3	responsible	1	2	3	4	5	6	7	8	9	10
4	relatives in	and									
5	one family	over									
6	in dollars	C. Maximum required monthly contribution									
7	Under 304 .....	0	0	0	0	0	0	0	0	0	0
8	305 to 399 .....	22	0	0	0	0	0	0	0	0	0
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15	1180 to 1339 .....	144	144	144	144	144	144	144	130	115	101
16	1340 and up .....	144	144	144	144	144	144	144	144	144	130

17 (2) For the purposes of this act:  
 18 ~~(1)(a)~~ A needy person is one who is eligible for  
 19 public assistance under the laws of this state; and  
 20 ~~(1)(b)~~ "Net net monthly income" shall be deemed to  
 21 mean means one-twelfth ~~(1)(2)~~ of the difference between the  
 22 net income for the taxable year as the term net income is  
 23 defined in section 84-4901 ~~subsection ten~~ (10), and the  
 24 state income tax paid as determined by the state income tax  
 25 return filed during the current year.

1       (3) In those cases where both spouses classify as  
2 responsible relatives of needy persons during the same  
3 period of time, the liability for contribution of each of  
4 ~~said--spouses spouse~~ during that time ~~shall be considered to~~  
5 ~~be is~~ one-half ~~(1/2)~~ of the amount shown in the scale  
6 established by this act.

7       ~~(4) Whenever the responsible relative owes a duty of~~  
8 ~~support to a minor dependent child and public assistance~~  
9 ~~moneys have been paid to or on behalf of that child, the~~  
10 ~~liability for contribution is measured by the lesser of the~~  
11 ~~amount of public assistance paid or the amount of support~~  
12 ~~ordered by court decree.~~

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14 ~~behalf of a minor dependent child may not be held liable for~~  
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21 and county residents unable to provide such ~~these~~  
22 necessities for themselves are the legal and financial duty  
23 and responsibility of the board of county commissioners,  
24 except as otherwise provided in other parts of this act, ~~and~~  
25 ~~are~~ payable from the county poor fund. The board of county

1 commissioners shall make provisions for competent and  
2 skilled medical or surgical services as ~~are~~ approved by the  
3 department of health and environmental sciences or the state  
4 medical association~~v~~ or~~s~~ in the case of osteopathic  
5 practitioners~~s~~ by the state osteopathic association or  
6 chiropractors by the state chiropractic association~~v~~ or  
7 optometrical services as approved by the Montana optometric  
8 association ~~and or~~ dental services as approved by the dental  
9 association. "Medical" or "medicine" as used in this act  
10 refers to the healing art as practiced by licensed  
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13 unable to provide it for themselves, may have the care  
14 provided by the physicians appointed by the board who shall  
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16 and may fix a rate of compensation for the furnishing of the  
17 medical attendance.

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19 suitable arrangements to provide respectable burial for  
20 nonresidents within the county and county residents for whom  
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23 services may promulgate rules to determine under what  
24 circumstances persons in the county are unable to provide  
25 medical aid and hospitalization for themselves, including

1 the power to define the term "medically needy". ~~Provided,~~  
 2 ~~however--such~~ However, the definition may not allow payment  
 3 by a county for general assistance--medical for persons whose  
 4 income exceeds ~~three--hundred--percent---~~{300%} of the  
 5 limitation for obtaining regular county general assistance.

6 (5) In any case where the county or state pays medical  
 7 expenses or hospitalization for an individual, the county or  
 8 state is subrogated to the claims of the physician or  
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 11 of an individual, the county or state is subrogated to the  
 12 rights of the individual to recover from a third party who  
 13 may be liable to pay the medical expenses. The provisions of  
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 24 the department of social and rehabilitation services by the  
 25 natural or adoptive parent--or parents who are legally

1 responsible for the support of ~~such--children~~ the child by  
 2 statute or court decree in an amount equal to the amount of  
 3 public assistance so paid. ~~Provided--that~~ However, where the  
 4 support obligation is based upon a court decree, the debt  
 5 ~~shall--be~~ is limited to the amount of ~~said~~ the court decree.

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 14 to be paid by an obligor parent, the department ~~shall--be~~ is  
 15 subrogated to the debt created by such ~~the~~ order and ~~said~~  
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 17 department of ~~social--and--rehabilitation--services~~. No obligee  
 18 may commence an action to recover support due and owing to  
 19 him without first filing an affidavit with the court stating  
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 23 action.

24 (3) In no case ~~shall~~ may a debt arising under this  
 25 section be incurred by or collected from a parent or other

1 person who ~~while he~~ is the recipient of public assistance  
 2 monies for the benefit of minor dependent children ~~for the~~  
 3 ~~period such person or persons are in such status.~~

4 (4) The remedies herein provided are in addition to  
 5 and not in lieu of existing common law and statutory law.

6 (5) The department ~~of social and rehabilitation~~  
 7 ~~services~~ or its legal representatives may at any time  
 8 consistent with the income, earning capacity, and resources  
 9 of the debtor, petition the court having jurisdiction over  
 10 the particular case to set or reset a level and schedule ~~or~~  
 11 ~~of~~ payments to be paid upon the debt."

12 Section 5. Section 71-1524, R.C.M. 1947, is amended to  
 13 read as follows:

14 "71-1524. Exclusion of lien. No applicant hereunder  
 15 ~~shall~~ ~~may~~ be required to execute an agreement for lien on  
 16 his real property. No lien may be imposed against the  
 17 property of any ~~an~~ individual prior to his death on account  
 18 of medical assistance paid or to be paid on his behalf  
 19 (except pursuant to the judgment of a court on account of  
 20 benefits incorrectly paid on behalf of ~~such the~~ individual).  
 21 There ~~shall~~ ~~may~~ be no adjustment or recovery (except, in the  
 22 case of an individual who was ~~sixty-five~~ (65) years of age  
 23 or older when he received ~~such the~~ assistance, from his  
 24 estate, and then only after the death of his surviving  
 25 spouse, if any, and only at a time when he has no surviving

1 child who is under age ~~eighteen~~ (18) or is blind or  
 2 permanently and totally disabled) of any medical assistance  
 3 correctly paid on behalf of ~~such an~~ individual. To the  
 4 extent necessary for reimbursement of medical assistance  
 5 paid to an individual, the state department is subrogated to  
 6 the rights of the individual to recover from a third party  
 7 who may be liable to pay the medical expenses, as provided  
 8 in 71-241.1. Recoveries shall be prorated to the federal  
 9 government and the state in the proportion to which each  
 10 contributed to the medical assistance. Recovery for medical  
 11 assistance paid prior to July 1, 1974, shall be prorated to  
 12 reimburse the county share of participation. The provisions  
 13 of this act are hereby extended to provide for the recovery  
 14 of all medical assistance paid under ~~sections~~ 71-1511  
 15 through 71-1524 and likewise to all medical aid to the aged  
 16 assistance paid by the state department during the period of  
 17 time July 1, 1965, through June 30, 1967."

18 Section 6. Section 93-2601-51, R.C.M. 1947, is amended  
 19 to read as follows:

20 "93-2601-51. Contents and filing of petition for  
 21 support -- venue. ~~(1)~~ (1) The petition shall be verified and  
 22 shall state the name and, so far as known to the obligee,  
 23 the address and circumstances of the obligor and the persons  
 24 for whom support is sought, and all other pertinent  
 25 information. The obligee may include in or attach to the

1 petition any information which may help in locating or  
 2 identifying the obligor including a photograph of the  
 3 obligor, a description of any distinguishing marks on his  
 4 person, other names and aliases by which he has been or is  
 5 known, the name of his employer, his fingerprints, and his  
 6 social security number.

7 ~~(2) At the time of filing the petition the obligee~~  
 8 ~~shall also file with the court an affidavit as required by~~  
 9 ~~71-511 stating whether he has received public assistance~~  
 10 ~~from any source and, if he has received public assistance,~~  
 11 ~~that he has notified the department of social and~~  
 12 ~~rehabilitation services in writing of the pending action.~~

13 ~~(b)(3)~~ The petition may be filed in the appropriate  
 14 court of any state in which the obligee resides. The court  
 15 ~~shall~~ may not decline or refuse to accept and forward the  
 16 petition on the ground that it should be filed with some  
 17 other court of this or any other state where there is  
 18 pending another action for divorce, separation, annulment,  
 19 dissolution, habeas corpus, adoption, or custody between the  
 20 same parties or where another court has already issued a  
 21 support order in some other proceeding and has retained  
 22 jurisdiction for its enforcement."

23 Section 7. Saving clause. This act does not affect  
 24 rights and duties that matured, penalties that were  
 25 incurred, or proceedings that were begun before July 1,

1 1977.

2 Section 8. Severability. If a part of this act is  
 3 invalid, all valid parts that are severable from the invalid  
 4 part remain in effect. If a part of this act is invalid in  
 5 one or more of its applications, the part remains in effect  
 6 in all valid applications that are severable from the  
 7 invalid applications.

-End-

## 1 SENATE BILL NO. 365

2 INTRODUCED BY ROBERTS

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT SUBROGATING THE  
5 DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE  
6 RIGHTS OF RECIPIENTS OF MEDICAL ASSISTANCE; AMENDING  
7 SECTIONS 71-235, 71-308, 71-511, 71-1524, AND 93-2601-51,  
8 R.C.M. 1947."

9

10 WHEREAS, it is necessary that the department of social  
11 and rehabilitation services pursue third parties who may be  
12 liable for medical expenses incurred by recipients of  
13 medical assistance and relatives responsible for the support  
14 of recipients of public assistance.

15

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

17 Section 1. There is a new R.C.M. section numbered  
18 71-241.1 that reads as follows:

19 71-241.1. Subrogation and third party liability. (1)  
20 The state department is subrogated to the right of each  
21 needy person who is a recipient of medical benefits under  
22 Titles XIX or XX of the Social Security Act to recover  
23 damages or compensation from a third party to the extent  
24 necessary to reimburse the state department for medical  
25 benefits paid to or on behalf of the needy person.

1 (2) The state department may, in the name of the needy  
2 person to whom or on whose behalf medical benefits have been  
3 paid and to whose rights the department has been subrogated,  
4 commence and prosecute to final conclusion any action which  
5 may be necessary to recover from a third party compensation  
6 or damages for medical costs incurred by the needy person.  
7 From the amount collected from legal proceedings or as a  
8 result of settlement, the department shall retain the full  
9 amount previously paid as medical benefits, allocating to  
10 the county and federal government a share proportionate to  
11 their contribution and, after deducting the costs of the  
12 proceeding, deliver the remainder to the needy person. The  
13 total amounts awarded as compensation for pain and suffering  
14 or which are punitive in nature shall be delivered to the  
15 needy person. This section does not affect the needy  
16 person's right to initiate and prosecute to final conclusion  
17 an action for damages or compensation in his own name.

18 ~~(3) A NEEDY PERSON WHO IS A RECIPIENT OF MEDICAL~~  
19 ~~BENEFITS, OR HIS LEGAL REPRESENTATIVE, SHALL NOTIFY THE~~  
20 ~~STATE DEPARTMENT OF ANY ACTION INITIATED, OR OF ANY~~  
21 ~~COMPROMISE OR SETTLEMENT AGREED TO BY THE NEEDY PERSON, OR~~  
22 ~~HIS LEGAL REPRESENTATIVE, FOR THE RECOVERY OF COMPENSATION~~  
23 ~~OR DAMAGES FOR MEDICAL EXPENSES TO WHICH MEDICAL BENEFITS~~  
24 ~~HAVE BEEN APPLIED.~~

25 ~~NOTICE SHALL BE GIVEN BY SERVICE UPON THE STATE~~

1 DEPARTMENT OF THE LEGAL INSTRUMENT INITIATING THE ACTION OR  
2 EMBODYING THE COMPROMISE OR SETTLEMENT.

3 (4) NO PORTION OF ATTORNEY'S FEES MAY BE WITHHELD FROM  
4 THE AMOUNT COLLECTED FROM LEGAL PROCEEDINGS OR AS A RESULT  
5 OF SETTLEMENT WHICH IS DUE THE STATE DEPARTMENT UNDER  
6 SUBSECTION (1) WITHOUT PRIOR APPROVAL OF THE STATE  
7 DEPARTMENT.

8 ~~(3)~~(5) As used in this section, "third party" means an  
9 individual, institution, corporation, or public or private  
10 agency which is or may be liable to pay all or part of the  
11 medical cost of injury, disease, or disability of a needy  
12 person to which Titles XIX or XX benefits have been applied,  
13 and includes but is not limited to insurers, health service  
14 organizations, and those liable in tort.

15 Section 2. Section 71-235, R.C.M. 1947, is amended to  
16 read as follows:

17 "71-235. Living relatives -- jointly and severally  
18 liable -- scale of contribution. (1) The living relatives of  
19 each needy person named in this act, ~~shall be and they~~  
20 hereby are made jointly and severally liable in the order  
21 named in section 71-233 to such ~~the~~ needy person for the  
22 monthly amounts of money determined in accordance with the  
23 following scale, to wit:

24 RELATIVES' CONTRIBUTION SCALE

25 A. B. Number of persons dependent upon

1	Net monthly	income exclusive of applicant									
2	income of										
3	responsible	1	2	3	4	5	6	7	8	9	10
4	relatives in	and									
5	one family	over									
6	in dollars	C. Maximum required monthly contribution									
7	Under 304 .....	0	0	0	0	0	0	0	0	0	0
8	305 to 399 .....	22	0	0	0	0	0	0	0	0	0
9	400 to 489 .....	43	14	0	0	0	0	0	0	0	0
10	490 to 619 .....	72	43	29	22	7	0	0	0	0	0
11	620 to 739 .....	101	72	58	50	36	29	14	0	0	0
12	740 to 869 .....	130	101	86	79	65	58	43	29	14	0
13	870 to 1024 .....	144	130	115	108	94	86	72	58	43	29
14	1025 to 1179 .....	144	144	144	144	130	123	108	94	79	65
15	1180 to 1339 .....	144	144	144	144	144	144	144	130	115	101
16	1340 and up .....	144	144	144	144	144	144	144	144	144	130

17 (2) For the purposes of this act:  
18 (1)(a) \* a needy person is one who is eligible for  
19 public assistance under the laws of this state; and  
20 (2)(b) "Net net monthly income" shall be deemed to  
21 mean means one-twelfth (1)(2) of the difference between the  
22 net income for the taxable year as the term net income is  
23 defined in section 84-4901, subsection ten (10), and the  
24 state income tax paid as determined by the state income tax  
25 return filed during the current year.

1       (3) In those cases where both spouses classify as  
2 responsible relatives of needy persons during the same  
3 period of time, the liability for contribution of each of  
4 ~~said--spouses spouse~~ during that time ~~shall be considered to~~  
5 ~~be is~~ one-half ~~(1/2)~~ of the amount shown in the scale  
6 established by this act.

7       (4) Whenever the responsible relative owes a duty of  
8 support to a minor dependent child and public assistance  
9 moneys have been paid to or on behalf of that child, the  
10 liability for contribution is measured by the lesser of the  
11 amount of public assistance paid or the amount of support  
12 ordered by court decree.

13       (5) A person who is receiving public assistance on  
14 behalf of a minor dependent child may not be held liable for  
15 contribution for the period during which public assistance  
16 was received."

17       Section 3. Section 71-308, R.C.M. 1947, is amended to  
18 read as follows:

19       "71-308. Medical aid and hospitalization. (1) Medical  
20 aid and hospitalization for nonresidents within the county  
21 and county residents unable to provide ~~such these~~  
22 necessities for themselves are the legal and financial duty  
23 and responsibility of the board of county commissioners,  
24 except as otherwise provided in other parts of this act, ~~and~~  
25 ~~are~~ payable from the county poor fund. The board of county

1 commissioners shall make provisions for competent and  
2 skilled medical or surgical services as ~~are~~ approved by the  
3 department of health and environmental sciences or the state  
4 medical association, ~~or~~ in the case of osteopathic  
5 practitioners, by the state osteopathic association or  
6 chiropractors by the state chiropractic association, ~~or~~  
7 optometrical services as approved by the Montana optometric  
8 association ~~and or~~ dental services as approved by the dental  
9 association. "Medical" or "medicine" as used in this act  
10 refers to the healing art as practiced by licensed  
11 practitioners.

12       (2) The board, in arranging for medical care for those  
13 unable to provide it for themselves, may have the care  
14 provided by the physicians appointed by the board who shall  
15 be known as county physicians or deputy county physicians,  
16 and may fix a rate of compensation for the furnishing of the  
17 medical attendance.

18       (3) The board of county commissioners shall make  
19 suitable arrangements to provide respectable burial for  
20 nonresidents within the county and county residents for whom  
21 ~~such the~~ expenses are not otherwise available.

22       (4) The department of social and rehabilitation  
23 services may promulgate rules to determine under what  
24 circumstances persons in the county are unable to provide  
25 medical aid and hospitalization for themselves, including



1 the power to define the term "medically needy". ~~Provided,~~  
 2 ~~however--such~~ However, the definition may not allow payment  
 3 by a county for general assistance-medical for persons whose  
 4 income exceeds ~~three--hundred--percent--~~{300%} of the  
 5 limitation for obtaining regular county general assistance.

6 (5) In any case where the county or state pays medical  
 7 expenses or hospitalization for an individual, the county or  
 8 state is subrogated to the claims of the physician or  
 9 hospital to the extent of payment. To the extent necessary  
 10 for reimbursement of medical benefits paid to or on behalf  
 11 of an individual, the county or state is subrogated to the  
 12 rights of the individual to recover from a third party who  
 13 may be liable to pay the medical expenses. The provisions of  
 14 71-241.1 which relate to medical benefits provided under  
 15 Titles XIX and XX of the Social Security Act apply to  
 16 medical benefits provided for in this section."

17 Section 4. Section 71-511, R.C.M. 1947, is amended to  
 18 read as follows:

19 "71-511. Payment of public assistance money --  
 20 subrogation of the department of social and rehabilitation  
 21 services -- schedule of payments. (1) Any A payment of  
 22 public assistance money made to or for the benefit of any a  
 23 dependent child ~~or--children~~ creates a debt due and owing to  
 24 the department of social and rehabilitation services by the  
 25 natural or adoptive ~~parent--or~~ parents who are legally

1 responsible for the support of ~~such--children~~ the child by  
 2 statute or court decree in an amount equal to the amount of  
 3 public assistance so paid. ~~Provided, that~~ However, where the  
 4 support obligation is based upon a court decree, the debt  
 5 ~~shall--be~~ is limited to the amount of ~~said~~ the court decree.

6 (2) The department of ~~social--and--rehabilitation~~  
 7 ~~services--shall--be~~ is subrogated to the right of ~~said~~ the  
 8 child ~~or--children~~ or person having the care, custody, and  
 9 control of ~~said~~ the child ~~or--children~~ to prosecute or  
 10 maintain ~~and--recover--upon~~ any support action or execute any  
 11 administrative remedy existing under the laws of the state  
 12 of ~~Montana~~ to obtain reimbursement of monies thus expended.  
 13 If a court decree enters judgment for an amount of support  
 14 to be paid by an obligor parent, the department ~~shall--be~~ is  
 15 subrogated to the debt created by ~~such~~ the order and ~~said~~  
 16 the money judgment ~~shall--be--deemed--to--be~~ is in favor of the  
 17 department of ~~social--and--rehabilitation--services~~. No obligee  
 18 may commence an action to recover support due and owing to  
 19 him without first filing an affidavit with the court stating  
 20 whether he has received public assistance from any source  
 21 and, if he has received public assistance, that he has  
 22 notified the state department in writing of the pending  
 23 action.

24 (3) In no case ~~shall~~ may a debt arising under this  
 25 section be incurred by or collected from a parent or other

1 person who while he is the recipient of public assistance  
 2 monies for the benefit of minor dependent children ~~for the~~  
 3 ~~period such person or persons are in such status.~~

4 (4) The remedies herein provided are in addition to  
 5 and not in lieu of existing common law and statutory law.

6 (5) The department ~~of social and rehabilitation~~  
 7 ~~services~~ or its legal representatives may at any time  
 8 consistent with the income, earning capacity, and resources  
 9 of the debtor, petition the court having jurisdiction over  
 10 the particular case to set or reset a level and schedule or  
 11 of payments to be paid upon the debt."

12 Section 5. Section 71-1524, R.C.M. 1947, is amended to  
 13 read as follows:

14 "71-1524. Exclusion of lien. No applicant hereunder  
 15 ~~shall~~ may be required to execute an agreement for lien on  
 16 his real property. No lien may be imposed against the  
 17 property of any an individual prior to his death on account  
 18 of medical assistance paid or to be paid on his behalf  
 19 (except pursuant to the judgment of a court on account of  
 20 benefits incorrectly paid on behalf of such the individual).  
 21 There ~~shall~~ may be no adjustment or recovery (except, in the  
 22 case of an individual who was ~~sixty-five~~ (65) years of age  
 23 or older when he received such the assistance, from his  
 24 estate, and then only after the death of his surviving  
 25 spouse, if any, and only at a time when he has no surviving

1 child who is under age ~~eighteen~~ (18) or is blind or  
 2 permanently and totally disabled) of any medical assistance  
 3 correctly paid on behalf of such an individual. In the  
 4 extent necessary for reimbursement of medical assistance  
 5 paid to an individual, the state department is subrogated to  
 6 the rights of the individual to recover from a third party  
 7 who may be liable to pay the medical expenses, as provided  
 8 in 71-241.1. Recoveries shall be prorated to the federal  
 9 government and the state in the proportion to which each  
 10 contributed to the medical assistance. Recovery for medical  
 11 assistance paid prior to July 1, 1974, shall be prorated to  
 12 reimburse the county share of participation. The provisions  
 13 of this act are hereby extended to provide for the recovery  
 14 of all medical assistance paid under ~~sections~~ 71-1511  
 15 through 71-1524 and likewise to all medical aid to the aged  
 16 assistance paid by the state department during the period of  
 17 time July 1, 1965, through June 30, 1967."

18 Section 6. Section 93-2601-51, R.C.M. 1947, is amended  
 19 to read as follows:

20 "93-2601-51. Contents and filing of petition for  
 21 support -- venue. (a)(1) The petition shall be verified and  
 22 shall state the name and, so far as known to the obligee,  
 23 the address and circumstances of the obligor and the persons  
 24 for whom support is sought, and all other pertinent  
 25 information. The obligee may include in or attach to the

1 petition any information which may help in locating or  
 2 identifying the obligor including a photograph of the  
 3 obligor, a description of any distinguishing marks on his  
 4 person, other names and aliases by which he has been or is  
 5 known, the name of his employer, his fingerprints, and his  
 6 social security number.

7 (2) At the time of filing the petition the obligee  
 8 shall also file with the court an affidavit as required by  
 9 71-511 stating whether he has received public assistance  
 10 from any source and, if he has received public assistance,  
 11 that he has notified the department of social and  
 12 rehabilitation services in writing of the pending action.

13 ~~(b)(3)~~ The petition may be filed in the appropriate  
 14 court of any state in which the obligee resides. The court  
 15 ~~shall~~ may not decline or refuse to accept and forward the  
 16 petition on the ground that it should be filed with some  
 17 other court of this or any other state where there is  
 18 pending another action for divorce, separation, annulment,  
 19 dissolution, habeas corpus, adoption, or custody between the  
 20 same parties or where another court has already issued a  
 21 support order in some other proceeding and has retained  
 22 jurisdiction for its enforcement."

23 Section 7. Saving clause. This act does not affect  
 24 rights and duties that matured, penalties that were  
 25 incurred, or proceedings that were begun before July 1,

1 1977.

2 Section 8. Severability. If a part of this act is  
 3 invalid, all valid parts that are severable from the invalid  
 4 part remain in effect. If a part of this act is invalid in  
 5 one or more of its applications, the part remains in effect  
 6 in all valid applications that are severable from the  
 7 invalid applications.

-End-

HOUSE OF REPRESENTATIVES

March 22, 1977

COMMITTEE OF THE WHOLE AMENDMENT TO SENATE BILL NO. 365, AS FOLLOWS:

1. Amend page 1, section 1, line 25.

Following: "person."

Insert: "Upon determination that a third party is liable for the medical expenses of a needy person under this section, the department shall immediately notify the third party of the subrogation."

AS AMENDED BE CONCURRED IN

SENATE BILL NO. 365  
INTRODUCED BY ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT SUBROGATING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE RIGHTS OF RECIPIENTS OF MEDICAL ASSISTANCE; AMENDING SECTIONS 71-235, 71-308, 71-511, 71-1524, AND 93-2601-51, R.C.M. 1947."

WHEREAS, it is necessary that the department of social and rehabilitation services pursue third parties who may be liable for medical expenses incurred by recipients of medical assistance and relatives responsible for the support of recipients of public assistance.

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

Section 1. There is a new R.C.M. section numbered 71-241.1 that reads as follows:

71-241.1. Subrogation and third party liability. (1) The state department is subrogated to the right of each needy person who is a recipient of medical benefits under Titles XIX or XX of the Social Security Act to recover damages or compensation from a third party to the extent necessary to reimburse the state department for medical benefits paid to or on behalf of the needy person. UPON

~~DETERMINATION THAT A THIRD PARTY IS LIABLE FOR THE MEDICAL EXPENSES OF A NEEDY PERSON UNDER THIS SECTION, THE DEPARTMENT SHALL IMMEDIATELY NOTIFY THE THIRD PARTY OF THE SUBROGATION.~~

(2) The state department may, in the name of the needy person to whom or on whose behalf medical benefits have been paid and to whose rights the department has been subrogated, commence and prosecute to final conclusion any action which may be necessary to recover from a third party compensation or damages for medical costs incurred by the needy person. From the amount collected from legal proceedings or as a result of settlement, the department shall retain the full amount previously paid as medical benefits, allocating to the county and federal government a share proportionate to their contribution and, after deducting the costs of the proceeding, deliver the remainder to the needy person. The total amounts awarded as compensation for pain and suffering or which are punitive in nature shall be delivered to the needy person. This section does not affect the needy person's right to initiate and prosecute to final conclusion an action for damages or compensation in his own name.

~~(3) A NEEDY PERSON WHO IS A RECIPIENT OF MEDICAL BENEFITS, OR HIS LEGAL REPRESENTATIVE, SHALL NOTIFY THE STATE DEPARTMENT OF ANY ACTION INITIATED, OR OF ANY COMPROMISE OR SETTLEMENT AGREED TO BY THE NEEDY PERSON, OR~~

1 HIS LEGAL REPRESENTATIVE, FOR THE RECOVERY OF COMPENSATION  
2 OR DAMAGES FOR MEDICAL EXPENSES TO WHICH MEDICAL BENEFITS  
3 HAVE BEEN APPLIED.

4 NOTICE SHALL BE GIVEN BY SERVICE UPON THE STATE  
5 DEPARTMENT OF THE LEGAL INSTRUMENT INITIATING THE ACTION OR  
6 EMBODYING THE COMPROMISE OR SETTLEMENT.

7 (4) NO PORTION OF ATTORNEY'S FEES MAY BE WITHHELD FROM  
8 THE AMOUNT COLLECTED FROM LEGAL PROCEEDINGS OR AS A RESULT  
9 OF SETTLEMENT WHICH IS DUE THE STATE DEPARTMENT UNDER  
10 SUBSECTION (1) WITHOUT PRIOR APPROVAL OF THE STATE  
11 DEPARTMENT.

12 (3)(5) As used in this section, "third party" means an  
13 individual, institution, corporation, or public or private  
14 agency which is or may be liable to pay all or part of the  
15 medical cost of injury, disease, or disability of a needy  
16 person to which Titles XIX or XX benefits have been applied,  
17 and includes but is not limited to insurers, health service  
18 organizations, and those liable in tort.

19 Section 2. Section 71-235, R.C.M. 1947, is amended to  
20 read as follows:

21 "71-235. Living relatives -- jointly and severally  
22 liable -- scale of contribution. (1) The living relatives of  
23 each needy person named in this act--shall--be--and--they  
24 hereby are made jointly and severally liable in the order  
25 named in section 71-233 to such the needy person for the

1 monthly amounts of money determined in accordance with the  
2 following scale, to wit:

3 RELATIVES' CONTRIBUTION SCALE

4 A. B. Number of persons dependent upon  
5 Net monthly income exclusive of applicant.  
6 income of  
7 responsible 1 2 3 4 5 6 7 8 9 10  
8 relatives in and  
9 one family over  
10 in dollars C. Maximum required monthly contribution

11 Under 304 .....	0	0	0	0	0	0	0	0	0	0
12 305 to 399 .....	22	0	0	0	0	0	0	0	0	0
13 400 to 489 .....	43	14	0	0	0	0	0	0	0	0
14 490 to 619 .....	72	43	29	22	7	0	0	0	0	0
15 620 to 739 .....	101	72	58	50	36	29	14	0	0	0
16 740 to 869 .....	130	101	86	79	65	58	43	29	14	0
17 870 to 1024 .....	144	130	115	108	94	86	72	58	43	29
18 1025 to 1179 .....	144	144	144	144	130	123	108	94	79	65
19 1180 to 1339 .....	144	144	144	144	144	144	144	130	115	101
20 1340 and up .....	144	144	144	144	144	144	144	144	144	130

21 (2) For the purposes of this act:  
22 (1)(a) A needy person is one who is eligible for  
23 public assistance under the laws of this state; and  
24 (2)(b) "Net net monthly income" shall be deemed to  
25 mean means one-twelfth (1/12) of the difference between the

1 net income for the taxable year as the term net income is  
 2 defined in section 84-4901~~y~~~~-subsection--ten~~ (10), and the  
 3 state income tax paid as determined by the state income tax  
 4 return filed during the current year.

5 (3) In those cases where both spouses classify as  
 6 responsible relatives of needy persons during the same  
 7 period of time, the liability for contribution of each of  
 8 ~~said--spouses spouse~~ during that time ~~shall be considered to~~  
 9 ~~be is~~ one-half ~~(1/2)~~ of the amount shown in the scale  
 10 established by this act.

11 ~~(4) whenever the responsible relative owes a duty of~~  
 12 ~~support to a minor dependent child and public assistance~~  
 13 ~~moneys have been paid to or on behalf of that child, the~~  
 14 ~~liability for contribution is measured by the lesser of the~~  
 15 ~~amount of public assistance paid or the amount of support~~  
 16 ~~ordered by court decree.~~

17 ~~(5) A person who is receiving public assistance on~~  
 18 ~~behalf of a minor dependent child may not be held liable for~~  
 19 ~~contribution for the period during which public assistance~~  
 20 ~~was received."~~

21 Section 3. Section 71-308, R.C.M. 1947, is amended to  
 22 read as follows:

23 "71-308. Medical aid and hospitalization. (1) Medical  
 24 aid and hospitalization for nonresidents within the county  
 25 and county residents unable to provide ~~such these~~

1 necessities for themselves are the legal and financial duty  
 2 and responsibility of the board of county commissioners,  
 3 except as otherwise provided in other parts of this act, ~~and~~  
 4 ~~are~~ payable from the county poor fund. The board of county  
 5 commissioners shall make provisions for competent and  
 6 skilled medical or surgical services as ~~are~~ approved by the  
 7 department of health and environmental sciences or the state  
 8 medical association, ~~or~~ in the case of osteopathic  
 9 practitioners, by the state osteopathic association or  
 10 chiropractors by the state chiropractic association, or  
 11 optometrical services as approved by the Montana optometric  
 12 association ~~and or~~ dental services as approved by the dental  
 13 association. "Medical" or "medicine" as used in this act  
 14 refers to the healing art as practiced by licensed  
 15 practitioners.

16 (2) The board, in arranging for medical care for those  
 17 unable to provide it for themselves, may have the care  
 18 provided by the physicians appointed by the board who shall  
 19 be known as county physicians or deputy county physicians,  
 20 and may fix a rate of compensation for the furnishing of the  
 21 medical attendance.

22 (3) The board of county commissioners shall make  
 23 suitable arrangements to provide respectable burial for  
 24 nonresidents within the county and county residents for whom  
 25 ~~such the~~ expenses are not otherwise available.

1 (4) The department of social and rehabilitation  
 2 services may promulgate rules to determine under what  
 3 circumstances persons in the county are unable to provide  
 4 medical aid and hospitalization for themselves, including  
 5 the power to define the term "medically needy". ~~Provided,~~  
 6 ~~however--such~~ However, the definition may not allow payment  
 7 by a county for general assistance--medical for persons whose  
 8 income exceeds ~~three--hundred--percent--(300%)~~ of the  
 9 limitation for obtaining regular county general assistance.

10 (5) In any case where the county or state pays medical  
 11 expenses or hospitalization for an individual, the county or  
 12 state is subrogated to the claims of the physician or  
 13 hospital to the extent of payment. To the extent necessary  
 14 for reimbursement of medical benefits paid to or on behalf  
 15 of an individual, the county or state is subrogated to the  
 16 rights of the individual to recover from a third party who  
 17 may be liable to pay the medical expenses. The provisions of  
 18 71-241.1 which relate to medical benefits provided under  
 19 Titles XIX and XX of the Social Security Act apply to  
 20 medical benefits provided for in this section."

21 Section 4. Section 71-511, R.C.M. 1947, is amended to  
 22 read as follows:

23 "71-511. Payment of public assistance money --  
 24 subrogation of the department of social and rehabilitation  
 25 services -- schedule of payments. (1) Any A payment of

1 public assistance money made to or for the benefit of any 2  
 2 dependent child ~~or children~~ creates a debt due and owing to  
 3 the department of social and rehabilitation services by the  
 4 natural or adoptive parent--or parents who are legally  
 5 responsible for the support of ~~such children the child~~ by  
 6 statute or court decree in an amount equal to the amount of  
 7 public assistance so paid. ~~Provided, that~~ However, where the  
 8 support obligation is based upon a court decree, the debt  
 9 ~~shall be~~ is limited to the amount of ~~said the~~ court decree.

10 (2) The department of--social--and--rehabilitation  
 11 services--~~shall be~~ is subrogated to the right of ~~said the~~  
 12 child or--children or person having the care, custody, and  
 13 control of ~~said the~~ child or--children to prosecute or  
 14 maintain--and--recover--upon any support action or execute any  
 15 administrative remedy existing under the laws of the state  
 16 of--Montana to obtain reimbursement of monies thus expended.  
 17 If a court decree enters judgment for an amount of support  
 18 to be paid by an obligor parent, the department ~~shall be~~ is  
 19 subrogated to the debt created by such the order and ~~said~~  
 20 the money judgment ~~shall be deemed to be~~ is in favor of the  
 21 department of--social--and--rehabilitation--services. No obligee  
 22 may commence an action to recover support due and owing to  
 23 him without first filing an affidavit with the court stating  
 24 whether he has received public assistance from any source  
 25 and, if he has received public assistance, that he has



1 notified the state department in writing of the pending  
2 action.

3 (3) In no case shall ~~may~~ a debt arising under this  
4 section be incurred by or collected from a parent or other  
5 person ~~who while he~~ is the recipient of public assistance  
6 monies for the benefit of minor dependent children ~~for the~~  
7 ~~period such person or persons are in such status.~~

8 (4) The remedies herein provided are in addition to  
9 and not in lieu of existing common law and statutory law.

10 (2) The department ~~of social and rehabilitation~~  
11 ~~services~~ or its legal representatives may at any time  
12 consistent with the income, earning capacity, and resources  
13 of the debtor, petition the court having jurisdiction over  
14 the particular case to set or reset a level and schedule or  
15 of payments to be paid upon the debt."

16 Section 5. Section 71-1524, R.C.M. 1947, is amended to  
17 read as follows:

18 "71-1524. Exclusion of lien. No applicant hereunder  
19 shall ~~may~~ be required to execute an agreement for lien on  
20 his real property. No lien may be imposed against the  
21 property of any ~~an~~ individual prior to his death on account  
22 of medical assistance paid or to be paid on his behalf  
23 (except pursuant to the judgment of a court on account of  
24 benefits incorrectly paid on behalf of ~~such the~~ individual).  
25 There shall ~~may~~ be no adjustment or recovery (except, in the

1 case of an individual who was ~~sixty-five-(65)~~ years of age  
2 or older when he received ~~such the~~ assistance, from his  
3 estate, and then only after the death of his surviving  
4 spouse, if any, and only at a time when he has no surviving  
5 child who is under age ~~eighteen--(18)~~ or is blind or  
6 permanently and totally disabled) of any medical assistance  
7 correctly paid on behalf of ~~such an~~ individual. In the  
8 extent necessary for reimbursement of medical assistance  
9 paid to an individual, the state department is subrogated to  
10 the rights of the individual to recover from a third party  
11 who may be liable to pay the medical expenses, as provided  
12 in 71-241.1. Recoveries shall be prorated to the federal  
13 government and the state in the proportion to which each  
14 contributed to the medical assistance. Recovery for medical  
15 assistance paid prior to July 1, 1974, shall be prorated to  
16 reimburse the county share of participation. The provisions  
17 of this act are hereby extended to provide for the recovery  
18 of all medical assistance paid under ~~sections~~ 71-1511  
19 through 71-1524 and likewise to all medical aid to the aged  
20 assistance paid by the state department during the period of  
21 time July 1, 1965, through June 30, 1967."

22 Section 6. Section 93-2601-51, R.C.M. 1947, is amended  
23 to read as follows:

24 "93-2601-51. Contents and filing of petition for  
25 support -- venue. ~~(a)(1)~~ The petition shall be verified and

1 shall state the name and, so far as known to the obligee,  
 2 the address and circumstances of the obligor and the persons  
 3 for whom support is sought, and all other pertinent  
 4 information. The obligee may include in or attach to the  
 5 petition any information which may help in locating or  
 6 identifying the obligor including a photograph of the  
 7 obligor, a description of any distinguishing marks on his  
 8 person, other names and aliases by which he has been or is  
 9 known, the name of his employer, his fingerprints, and his  
 10 social security number.

11 ~~(2) At the time of filing the petition the obligee~~  
 12 ~~shall also file with the court an affidavit as required by~~  
 13 ~~71-511 stating whether he has received public assistance~~  
 14 ~~from any source and, if he has received public assistance,~~  
 15 ~~that he has notified the department of social and~~  
 16 ~~rehabilitation services in writing of the pending action.~~

17 ~~(b)(3)~~ The petition may be filed in the appropriate  
 18 court of any state in which the obligee resides. The court  
 19 ~~shall~~ may not decline or refuse to accept and forward the  
 20 petition on the ground that it should be filed with some  
 21 other court of this or any other state where there is  
 22 pending another action for divorce, separation, annulment,  
 23 dissolution, habeas corpus, adoption, or custody between the  
 24 same parties or where another court has already issued a  
 25 support order in some other proceeding and has retained

1 jurisdiction for its enforcement."

2 Section 7. Saving clause. This act does not affect  
 3 rights and duties that matured, penalties that were  
 4 incurred, or proceedings that were begun before July 1,  
 5 1977.

6 Section 8. Severability. If a part of this act is  
 7 invalid, all valid parts that are severable from the invalid  
 8 part remain in effect. If a part of this act is invalid in  
 9 one or more of its applications, the part remains in effect  
 10 in all valid applications that are severable from the  
 11 invalid applications.

-End-