

HOUSE BILL NO. 534

INTRODUCED BY HUENNEKENS

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE HOUSE

January 28, 1981	Introduced and referred to Committee on Judiciary.
February 12, 1981	Committee recommend bill do pass. Report adopted.
February 13, 1981	Bill printed and placed on members' desks.
February 14, 1981	Second reading, do pass.
February 16, 1981	Considered correctly engrossed.
February 17, 1981	Third reading, passed. Ayes, 98; Noes, 0. Transmitted to Senate.

IN THE SENATE

February 18, 1981	Introduced and referred to Committee on Judiciary.
March 16, 1981	Committee recommend bill be concurred in. Report adopted.
March 17, 1981	Motion pass consideration.
March 18, 1981	Second reading, concurred in.
March 20, 1981	Third reading, concurred in. Ayes, 48; Noes, 0.

IN THE HOUSE

March 21, 1981	Returned from Senate. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 either relieving an obligor of any duty of support or
 2 purporting to settle past, present, or future support
 3 obligations either as settlement or prepayment may act to
 4 reduce or terminate any rights of the department to recover
 5 from that obligor for support debt provided unless the
 6 department has consented to the agreement in writing.

7 (6) The department may petition a court for
 8 modification of any court order on the same basis as a party
 9 to that action would have been entitled to do.

10 (7) The department shall be subrogated to the right of
 11 the child or children or person having the care, custody,
 12 and control of the child or children to maintain any civil
 13 action or execute any administrative remedy existing under
 14 the laws of the state to obtain reimbursement of money thus
 15 spent.

16 (8) If a district court orders an amount of support to
 17 be paid by a responsible parent, the department shall be
 18 subrogated to the debt created by the order and the money
 19 judgment shall be determined to be in favor of the
 20 department. This subrogation shall apply to temporary spouse
 21 support orders and family maintenance orders up to the
 22 amount paid by the department in public assistance money to
 23 or for the benefit of a dependent child or children but
 24 allocated to the benefit of the children on the basis of
 25 providing necessities for the caretaker of the children.

1 (9) The department may adopt and enforce such rules as
 2 may be necessary to carry out the provisions of this part.

3 (10) The department, for the purposes mentioned in this
 4 part, through its director or his the director's authorized
 5 representatives, may administer oaths to certify official
 6 acts, issue subpoenas, and compel witnesses and the
 7 production of books, accounts, documents, and evidence."

8 Section 2. Section 40-5-222, MCA, is amended to read:

9 "40-5-222. Support debt based upon subrogation to or
 10 assignment of judgment -- notice -- content -- action to
 11 collect. (1) The department may issue a notice of a support
 12 debt accrued or accruing based upon subrogation to or
 13 assignment of the judgment created by a district court
 14 order. The notice may be served upon the debtor in the
 15 manner prescribed for the service of a summons in a civil
 16 action in accordance with the provisions of the Montana
 17 Rules of Civil Procedure, demanding payment within 20 days
 18 of the date of receipt.

19 (2) The notice of debt shall include:

20 (a) a statement of the support debt accrued or
 21 accruing, computable on the amount required to be paid under
 22 any district court order to which the department is
 23 subrogated or has an assigned interest;

24 (b) a statement that the property of the debtor is
 25 subject to collection action;

1 (c) a statement that the property is subject to
2 distraint and seizure and sale;

3 (d) a statement that the net proceeds will be applied
4 to the satisfaction of the support debt;

5 ~~(e) a statement that the debtor is entitled to a fair~~
6 ~~hearing.~~

7 (3) Action to collect the subrogated or assigned
8 support debt by distraint and seizure and sale shall be
9 lawful after 20 days from the date of service upon the
10 debtor or 20 days from the receipt or refusal by the debtor
11 of the notice of debt.

12 ~~(4) Within 20 days of the date of service of notice of~~
13 ~~support debt, the debtor may request a fair hearing as~~
14 ~~provided in 40-5-226."~~

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 534

INTRODUCED BY Henrikson

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE LAWS
RELATING TO ADMINISTRATIVE ENFORCEMENT OF SUPPORT FOR
DEPENDENT CHILDREN; CORRECTING AN ERROR IN SECTION 40-5-202,
MCA; AND PROVIDING FOR A HEARING IN CASES INVOLVING A
SUPPORT DEBT BASED UPON A COURT JUDGMENT; AMENDING SECTIONS
40-5-202 AND 40-5-222, MCA."

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

Section 1. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of revenue -- powers and duties
regarding collection of support debt. (1) Whenever the
department of social and rehabilitation services receives an
application for public assistance on behalf of a child and
it appears to the satisfaction of that department that the
child has been abandoned by his parents; the child and one
parent have been abandoned by the other parent; or the
parent or other person who has a responsibility for the
care, support, or maintenance of such child has failed or
neglected to give proper care or support to the child, the
department of social and rehabilitation services shall
promptly refer the matter to the department of revenue for

action under the provisions of this part, the abandonment or
nonsupport statutes, or other appropriate statutes of this
state to insure that the parent or other person responsible
pays for the care, support, or maintenance of the dependent
child.

(2) In the event that public assistance is furnished
by a state or county agency or in instances where the
department has contracted to collect support, the department
shall become trustee of any cause of action of the dependent
child or the person having legal custody of the dependent
child to recover support due to that obligee from any person
and may bring and maintain the action either in the
department's own name or in the name of the obligee.

(3) The department has the power of attorney to act in
the name of any recipient of public assistance in endorsing
and cashing any and all drafts, checks, money orders, or
other negotiable instruments received by the department and
representing support payments for children in whose behalf
public assistance has been previously paid.

(4) For purposes of prosecuting any civil action
pursuant to this part, the department is a real party in
interest upon the payment of public assistance. No obligee
shall act to prejudice the rights of the department after
the receipt of public assistance.

(5) No agreement between any obligee and any obligor

1 either relieving an obligor of any duty of support or
 2 purporting to settle past, present, or future support
 3 obligations either as settlement or prepayment may act to
 4 reduce or terminate any rights of the department to recover
 5 from that obligor for support debt provided unless the
 6 department has consented to the agreement in writing.

7 (6) The department may petition a court for
 8 modification of any court order on the same basis as a party
 9 to that action would have been entitled to do.

10 (7) The department shall be subrogated to the right of
 11 the child or children or person having the care, custody,
 12 and control of the child or children to maintain any civil
 13 action or execute any administrative remedy existing under
 14 the laws of the state to obtain reimbursement of money thus
 15 spent.

16 (8) If a district court orders an amount of support to
 17 be paid by a responsible parent, the department shall be
 18 subrogated to the debt created by the order and the money
 19 judgment shall be determined to be in favor of the
 20 department. This subrogation shall apply to temporary spouse
 21 support orders and family maintenance orders up to the
 22 amount paid by the department in public assistance money to
 23 or for the benefit of a dependent child or children but
 24 allocated to the benefit of the children on the basis of
 25 providing necessities for the caretaker of the children.

1 (9) The department may adopt and enforce such rules as
 2 may be necessary to carry out the provisions of this part.

3 (10) The department, for the purposes mentioned in this
 4 part, through its director or ~~his~~ the director's authorized
 5 representatives, may administer oaths to certify official
 6 acts, issue subpoenas, and compel witnesses and the
 7 production of books, accounts, documents, and evidence."

8 Section 2. Section 40-5-222, MCA, is amended to read:

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 14 order. The notice may be served upon the debtor in the
 15 manner prescribed for the service of a summons in a civil
 16 action in accordance with the provisions of the Montana
 17 Rules of Civil Procedure, demanding payment within 20 days
 18 of the date of receipt.

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 25 subject to collection action;

1 (c) a statement that the property is subject to
2 distraint and seizure and sale;

3 (d) a statement that the net proceeds will be applied
4 to the satisfaction of the support debt;

5 ~~(e) a statement that the debtor is entitled to a fair~~
6 ~~hearing.~~

7 (3) Action to collect the subrogated or assigned
8 support debt by distraint and seizure and sale shall be
9 lawful after 20 days from the date of service upon the
10 debtor or 20 days from the receipt or refusal by the debtor
11 of the notice of debt.

12 ~~(4) Within 20 days of the date of service of notice of~~
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20 parent have been abandoned by the other parent; or the
21 parent or other person who has a responsibility for the
22 care, support, or maintenance of such child has failed or
23 neglected to give proper care or support to the child, the
24 department of social and rehabilitation services shall
25 promptly refer the matter to the department of revenue for

1 action under the provisions of this part, the abandonment or
2 nonsupport statutes, or other appropriate statutes of this
3 state to insure that the parent or other person responsible
4 pays for the care, support, or maintenance of the dependent
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