

SENATE BILL NO. 272

INTRODUCED BY MAZUREK, TURNAGE,
S. BROWN, M. ANDERSON

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE SENATE

January 24, 1981	Introduced and referred to Committee on Judiciary. Fiscal note requested.
January 31, 1981	Fiscal note returned.
February 20, 1981	Committee recommend bill do pass as amended. Report adopted.
February 21, 1981	Bill printed and placed on members' desks.
February 23, 1981	Second reading, do pass.
February 24, 1981	Correctly engrossed.
February 25, 1981	Third reading, passed. Ayes, 46; Noes, 2. Transmitted to House.

IN THE HOUSE

March 2, 1981	Introduced and referred to Committee on Judiciary.
March 28, 1981	Committee recommend bill be concurrent in as amended. Report adopted.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on 71st legis- lative day. Motion adopted.

March 31, 1981

Second reading, concurred in
as amended.

On motion rules suspended
and bill placed on third
reading this day.

Third reading, concurred in
as amended. Ayes, 65; Noes, 29.

IN THE SENATE

April 1, 1981

Returned from House with
amendments.

April 4, 1981

On motion, consideration be
passed for the day.

April 10, 1981

Second reading, amendments
concurred in.

April 11, 1981

Third reading, amendments
concurred in. Ayes, 48;
Noes, 0. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *272*
 2 INTRODUCED BY *Marybeth Turvey* *Steve Brown*
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE
 4 *Mike Anderson*

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE,
 6 CLARIFY, AND UNIFY THE PROCEDURES FOR THE ISSUANCE OF A
 7 WARRANT FOR DISTRAINT BY THE DEPARTMENT OF REVENUE; AMENDING
 8 SECTIONS 15-30-208, 15-30-226, 15-30-311, 15-30-312,
 9 15-31-406, 15-31-525, 15-35-105, 15-36-107, 15-36-108,
 10 15-37-107, 15-37-206, 15-38-107, 15-38-108, 15-51-111,
 11 15-51-112, 15-53-112, 15-53-113, 15-54-112, 15-54-113,
 12 15-55-109, 15-56-112, 15-56-113, 15-58-106, 15-58-107,
 13 15-59-106, 15-59-107, 15-59-205, 15-59-206, 15-70-211,
 14 15-70-334, 16-1-409, 40-5-222 through 40-5-226, 40-5-241,
 15 40-5-245, 40-5-246, 40-5-255, 40-5-256, 69-1-226, AND
 16 69-1-227, MCA; AND REPEALING SECTIONS 15-30-315 AND
 17 15-31-527, MCA."

18
 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 NEW SECTION. Section 1. Warrant for distraint: (1) A
 21 warrant for distraint is an order, under the official seal
 22 of the department of revenue, directed to a sheriff of any
 23 county of Montana or to any agent authorized by law to
 24 collect a tax. The order commands the recipient to levy upon
 25 and sell the real and personal property of a delinquent

1 taxpayer.
 2 (2) Upon filing the warrant as provided in [section
 3 4], there is a lien against all real and personal property
 4 of the delinquent taxpayer located in the county where the
 5 warrant is filed. The resulting lien is treated in the same
 6 manner as a properly docketed judgment lien, and the
 7 department may collect delinquent taxes and enforce the tax
 8 lien in the same manner as a judgment is enforced.

9 (3) A warrant may be issued for the amount of unpaid
 10 tax plus penalty, if any, and accumulated interest. The lien
 11 is for the amount indicated on the warrant plus accrued
 12 interest from the date of the warrant.

13 NEW SECTION. Section 2. Issuance of warrant. (1) If
 14 a tax, other than inheritance or estate tax, administered
 15 and collected by the department is not paid within 30 days
 16 of the due date, the department may issue a notice to the
 17 taxpayer notifying him that unless payment is received
 18 within 30 days of the date of the notice, a warrant for
 19 distraint may be issued. Thirty days after the date of the
 20 notice, the department may issue a warrant if payment is not
 21 received.

22 (2) Use of the procedure to issue a warrant under this
 23 section does not preclude use of the procedure under
 24 [section 3] if the department determines that it is
 25 appropriate to utilize [section 3].

1 NEW SECTION. Section 3. Emergency issuance of
2 warrant. (1) The department may issue a warrant for
3 distraint without waiting for the expiration of either
4 30-day period provided for in [section 2] if:

5 (a) the department determines that the collection of
6 the tax is or may be jeopardized because of the delay
7 imposed by the waiting period; or

8 (b) the tax involved is a tax considered to be held in
9 trust by the taxpayer under state law.

10 (2) Whenever the provisions of this section are
11 utilized, the department must notify the taxpayer that
12 warrants have been issued.

13 NEW SECTION. Section 4. Filing with district court.

14 (1) After issuing a warrant, the department may file the
15 warrant with the clerk of a district court. The clerk shall
16 file the warrant in the judgment docket, with the name of
17 the taxpayer listed as the judgment debtor.

18 (2) A copy of the filed warrant may be sent by the
19 department to the sheriff or agent authorized to collect the
20 tax.

21 NEW SECTION. Section 5. Hearing. (1) Except as
22 provided in [section 7], a taxpayer has the right to request
23 a hearing on the matter of tax liability prior to execution
24 on a filed warrant for distraint.

25 (2) The department must provide notice of the right to

1 hearing to the taxpayer. A request for a hearing must be
2 made in writing within 30 days of the date of the notice.
3 This notice may be given prior to the notice referred to in
4 [section 2]. If a written request for a hearing is received,

5 the warrant may not be executed upon until after the date
6 the hearing is held or, if the taxpayer fails to attend a
7 scheduled hearing, the date the hearing is scheduled.

8 (3) The hearing is subject to the contested case
9 provisions of the Montana Administrative Procedure Act.
10 Before a decision may be appealed to the district court, an
11 appeal must first be taken to the state tax appeal board. A
12 request for a hearing must be in writing in order to
13 postpone execution on a warrant.

14 NEW SECTION. Section 6. Execution upon warrant. (1)

15 Upon receipt of a copy of the filed warrant and notice from
16 the department that the applicable hearing provisions have
17 been complied with, the sheriff or agent authorized to
18 collect tax shall proceed to execute upon the warrant in the
19 same manner as prescribed for execution upon a judgment.

20 (2) A notice of levy may be made by means of a
21 certified letter by an agent authorized to collect tax. An
22 agent is not entitled to any fee or compensation in excess
23 of actual expenses incurred in enforcing the warrant.

24 (3) A sheriff shall return a warrant, along with any
25 funds collected, within 90 days of the date of the warrant.

1 (4) If the warrant is returned not satisfied in full,
2 the department has the same remedies to collect the
3 deficiency as are available for any civil judgment.

4 NEW SECTION. Section 7. Emergency execution upon
5 warrant. (1) The department may execute upon a filed warrant
6 for distraint without providing an opportunity for a hearing
7 prior to execution if:

8 (a) the department determines that the collection of
9 the tax is jeopardized because of the delay imposed by the
10 hearing requirement; or

11 (b) the tax involved is a tax considered to be held in
12 trust by the taxpayer under state law.

13 (2) When the provisions of this section are utilized,
14 the department must notify the taxpayer and inform the
15 taxpayer that he has a right to request a hearing to be held
16 subsequent to execution. A hearing, if desired, must be
17 requested in writing within 30 days of the date of the
18 notice and, if requested, must be held as soon as possible.
19 The commencement of a proceeding under [section 5] does not
20 preclude the use of the provisions of this section if the
21 department determines that such action is appropriate.

22 NEW SECTION. Section 8. Release of lien. (1) Upon
23 payment in full of the unpaid tax plus penalty, if any, and
24 accumulated interest, the department shall release the lien
25 acquired by filing the warrant for distraint.

1 (2) Upon partial payment or whenever the department
2 determines that a release or partial release of the lien
3 will facilitate the collection of the unpaid tax, penalty,
4 and interest, the department may release or may partially
5 release the lien acquired by filing the warrant for
6 distraint. The department may release the lien if it
7 determines that the lien is unenforceable.

8 NEW SECTION. Section 9. Remedy not exclusive. The use
9 of the warrant for distraint provided for in [sections 1
10 through 8] is not exclusive, and the department may use any
11 other remedy provided by law for the collection of tax
12 debts.

13 Section 10. Section 15-30-208, MCA, is amended to
14 read:

15 *15-30-208. Withheld taxes held in trust for state --
16 warrants to collect. (1) Every employer who deducts and
17 withholds any amounts under the provisions of 15-30-201
18 through 15-30-209 shall hold the same in trust for the state
19 of Montana, end-if

20 (2) If any tax imposed by 15-30-201 through 15-30-209
21 or any portion of such tax is not paid within 60 days after
22 the same becomes when due, the department shall may issue a
23 warrant under its official seal which shall have the same
24 force and effect and shall be enforced and carried into
25 execution in the same manner as that specified in 15-30-311

1 with-respect-to-warrants-relating-to-unpaid-income-taxes for
2 distrain as provided in [sections 4 through 9]."

3 Section 11. Section 15-30-226, MCA, is amended to
4 read:

5 "15-30-226. Amounts withheld as lien against agent
6 priority considered in trust. In addition to the penalties
7 provided above if any withholding agent shall withhold any
8 sums required to be withheld and paid over to the department
9 under 15-30-221 through 15-30-228, the amount of the sums so
10 withheld shall constitute a first lien against all property
11 real and personal, tangible and intangible, of the
12 withholding agent, which lien shall take precedence over all
13 others, it being the intention of 15-30-221 through
14 15-30-228 that the funds the amounts withheld by the
15 withholding agent shall be under 15-30-221 through 15-30-228
16 are considered funds held in trust by the withholding
17 agent."

18 Section 12. Section 15-30-311, MCA, is amended to
19 read:

20 "15-30-311. Levy upon and sale of property warrant for
21 distrain. (1) If any tax imposed by this chapter, except
22 15-30-221 through 15-30-228, or any portion of such tax is
23 not paid within 60 days after the same becomes when due, the
24 department shall may issue a warrant under its official seal
25 directed to the sheriff of any county of the state

1 commanding him to levy upon and sell the real and personal
2 property of the person owing the same found within his
3 county for the payment of the amount thereof with the added
4 penalties, interest, and the cost of executing the warrant
5 and to return such warrant to the department and pay to it
6 the money collected by virtue thereof by a time to be
7 therein specified, not more than 60 days from the date of
8 the warrant for distrain as provided in [sections 1 through
9 9].

10 (2) The sheriff shall, within 5 days after the receipt
11 of the warrant, file with the clerk of the district court of
12 his county a copy thereof and thereupon the clerk shall
13 enter in the judgment docket in the column for judgment
14 debtors, the name of the taxpayer mentioned in the warrant
15 and in appropriate columns, the amount of the tax or
16 portion thereof and penalties for which the warrant is
17 issued and the date when such copy is filed. Thereupon the
18 amount of such warrant so docketed shall become a lien upon
19 the title to and interest in real property or chattels real
20 of the person against whom it is levied in the same manner
21 as a judgment docketed in the office of such clerk.

22 (3) The sheriff shall thereupon proceed upon the same
23 in all respects, with like effect, and in the same manner
24 prescribed by law in respect to executions issued against
25 property upon judgments of a court of record and shall be

1 entitled-to-the-same-fees-for-his-services-in-executing-the
 2 warrant-to-be-collected-in-the-same-manner-in-the
 3 discretion-of-the-department-a-warrant-of-like-term
 4 force-and-effect-may-be-issued-and-directed-to-any-agent
 5 authorized-to-collect-income-taxes-and-in-the-execution
 6 thereof-such-agent-shall-have-the-powers-conferred-by-law
 7 upon-sheriffs-but-shall-be-entitled-to-no-fee-or
 8 compensation-in-excess-of-actual-expenses-paid-in-the
 9 performance-of-such-duty-in-the-execution-of-such-warrants
 10 a-notice-of-levy-issued-by-the-department's-authorized-agent
 11 may-be-served-by-certified-mail

12 {4}-if-a-warrant-be-returned-not-satisfied-in-fully
 13 the-department-shall-have-the-same-remedies-to-enforce-the
 14 claim-for-taxes-against-the-taxpayer-as-if-the-people-of-the
 15 state-had-recovered-judgment-against-the-taxpayer-for-the
 16 amount-of-the-tax

17 Section 13. Section 15-30-312, MCA, is amended to
 18 read:

19 "15-30-312. Jeopardy assessments. (1) If the
 20 department finds that the assessment or collection of the
 21 tax or a deficiency for any taxable year will be jeopardized
 22 in whole or in part by delay, it may mail or issue notice of
 23 its findings to the taxpayer, together with a demand for
 24 immediate payment of the tax or deficiency declared to be in
 25 jeopardy, including penalty and accrued interest. In the

1 case of a tax for a current period, the department may
 2 declare the taxable period of the taxpayer immediately
 3 terminated and shall mail or issue notice of its findings to
 4 the taxpayer, together with a demand for immediate payment
 5 of the tax based on the period declared terminated.

6 (2) A jeopardy assessment is immediately due and
 7 payable, and proceedings for collection may be commenced at
 8 once, including the issuance of a warrant for distraint as
 9 provided in [sections 1 through 9]."

10 Section 14. Section 15-31-406, MCA, is amended to
 11 read:

12 "15-31-406. License tax sections incorporated by
 13 reference. The provisions of the following sections of this
 14 chapter are incorporated into this part by reference and
 15 made a part hereof:

16 (1) that part of 15-31-101 which defines the term
 17 "corporation" and 15-31-102, which specifies the classes of
 18 organizations whose income shall not be taxed;

19 (2) sections 15-31-111 through 15-31-114; 15-31-141
 20 and 15-31-142; 15-31-301 through 15-31-313; 15-31-501
 21 through 15-31-509; 15-31-525 through ~~15-31-527~~ and
 22 ~~15-31-526~~; 15-31-531 and 15-31-532; and 15-31-541 through
 23 15-31-543, except that the term "gross income" shall be
 24 construed as excluding the net amount of interest income
 25 from valid obligations of the United States and except that

1 wherever the words "tax", "license tax", "license fee",
 2 "corporation excise tax", or like words appear, referring to
 3 the tax imposed under part 1 of this chapter, there shall be
 4 substituted the words "income tax"."

5 Section 15. Section 15-31-525, MCA, is amended to
 6 read:

7 "15-31-525. Levy upon and sale of property. If any tax
 8 imposed by this chapter or any portion of such tax is not
 9 paid within 60 days after the same becomes when due, the
 10 department of revenue shall may issue a warrant directed to
 11 the sheriff of any county of the state commanding him to
 12 levy upon and sell the real and personal property of the
 13 corporation owning the same found within his county for
 14 the payment of the amount thereof with the added penalties
 15 interest and the cost of executing the warrant and to
 16 return such warrant to the department and pay to it the
 17 money collected by virtue thereof by a time to be therein
 18 specified, not more than 60 days from the date of the
 19 warrant. The sheriff shall within 5 days after the receipt
 20 of the warrant file with the clerk of the district court of
 21 his county a copy thereof and thereupon the clerk shall
 22 enter in the judgment docket in the column for judgment
 23 debtors the name of the taxpayer mentioned in the warrant
 24 and in appropriate columns the amount of the tax or
 25 portion thereof and penalties for which the warrant is

1 issued and the date when such copy is filed, and thereupon
 2 the amount of such warrant so docketed shall become a lien
 3 upon the title to and interest in real property or chattels
 4 real of the corporation against whom it is levied in the
 5 same manner as a judgment docketed in the office of such
 6 clerk. The sheriff shall thereupon proceed upon the same in
 7 all respects with like effects and in the same manner
 8 prescribed by law in respect to executions issued against
 9 property upon judgments of a court of record and shall be
 10 entitled to the same fees for his services in executing the
 11 warrant to be collected in the same manner in the
 12 discretion of the department, a warrant of like terms
 13 force and effect may be issued and directed to any agent
 14 authorized to collect income taxes and in the execution
 15 thereof such agent shall have the powers conferred by law
 16 upon sheriffs but shall be entitled to no fee or
 17 compensation in excess of actual expenses paid in the
 18 performance of such duty. If a warrant be returned not
 19 satisfied in full the department shall have the same
 20 remedies to enforce the claim for taxes against the taxpayer
 21 as if the people of the state had recovered judgment against
 22 the taxpayer for the amount of the tax for distraint as
 23 provided in [sections 1 through 9]."

24 Section 16. Section 15-35-105, MCA, is amended to
 25 read:

1 "15-35-105. Penalty for delinquent tax. The department
2 shall add to the amount of all delinquent severance taxes a
3 penalty of 10% of the delinquent amount plus interest at the
4 rate of 1% per month or fraction thereof computed on the
5 total amount of severance tax and penalty. Interest shall be
6 computed from the date the severance tax was due to the date
7 of payment. The department shall mail to the person required
8 to file a quarterly report and pay any severance tax, a
9 letter setting forth the amount of tax, penalty, and
10 interest due, and the letter shall further contain a
11 statement that if payment is not made ~~within-15-days~~, a ~~lien~~
12 ~~warrant for distraint~~ may be filed ~~as-set-forth-in~~
13 ~~15-23-704~~. The penalty amount may be waived by the
14 department if reasonable cause for the failure or neglect to
15 file the quarterly statement is provided to the department."

16 Section 17. Section 15-36-107, MCA, is amended to
17 read:

18 "15-36-107. Procedure to compute tax in absence of
19 statement -- penalty and interest. If any such person shall
20 fail, neglect, or refuse to file any statement required by
21 15-36-105 within the time therein required, the department
22 of revenue shall, immediately after such time has expired,
23 proceed to inform itself as best it may regarding the number
24 of barrels of petroleum and other mineral or crude oil or
25 cubic feet of gas extracted and produced by such person in

1 this state during such quarter and during each month thereof
2 and the average value thereof during each such month and
3 shall determine and fix the amount of the severance taxes
4 due to the state from such person for such quarter and shall
5 add to the amount of such severance taxes a penalty of 10%
6 thereof plus interest at the rate of 1% per month or
7 fraction thereof computed on the total amount of severance
8 taxes and penalty. Interest shall be computed from the date
9 the severance taxes were due to the date of payment. The
10 department shall mail to the person required to file a
11 quarterly statement and pay any severance tax, a letter
12 setting forth the amount of severance tax, penalty, and
13 interest due, and the letter shall further contain a
14 statement that if payment is not made ~~within-such-time~~, a
15 ~~lien warrant for distraint~~ may be filed ~~as-set-forth-in~~
16 ~~15-36-100~~. ~~Upon receipt of said letter, the person shall~~
17 ~~within-15-days remit to the department the full amount of~~
18 ~~severance tax, penalty, and interest due.~~ The 10% penalty
19 herein provided may be waived by the department if
20 reasonable cause for the failure and neglect to file the
21 statement required by 15-36-105 is provided to the
22 department."

23 Section 18. Section 15-36-108, MCA, is amended to
24 read:

25 "15-36-108. Procedure for collection of tax warrant

1 ~~for distraint. All tax, penalty, and interest due from any~~
 2 ~~person under this part shall be a lien upon any and all real~~
 3 ~~property of such person when the department of revenue files~~
 4 ~~in the office of the county clerk in the county where such~~
 5 ~~real property is situated a certified copy of its statement~~
 6 ~~of estimated tax computed under 15-36-107. This~~ If all or
 7 part of the tax imposed by this part is not paid when due,
 8 the department may issue a warrant for distraint as provided
 9 in [sections 1 through 9]. The resulting lien shall have
 10 has precedence over any other claim, lien, or demand
 11 thereafter filed and recorded ~~and may be enforced in the~~
 12 ~~name of the state of Montana in the same manner as judgment~~
 13 ~~liens are enforced by law."~~

14 Section 19. Section 15-37-107, MCA, is amended to
 15 read:

16 "15-37-107. ~~lien for collection of tax~~ Warrant for
 17 distraint. All tax, penalty, and interest due from any
 18 person under this part shall be a lien upon any and all real
 19 property of such person when the department of revenue files
 20 in the office of the county clerk in the county where such
 21 real property is situated a certified copy of its statement
 22 of estimated tax computed under 15-37-106. This If all or
 23 part of the tax imposed by this part is not paid when due,
 24 the department may issue a warrant for distraint as provided
 25 in [sections 1 through 9]. The resulting lien shall have has

1 precedence over any other claim, lien, or demand thereafter
 2 filed and recorded ~~and may be enforced in the name of the~~
 3 ~~state of Montana in the same manner as judgment liens are~~
 4 ~~enforced by law."~~

5 Section 20. Section 15-37-206, MCA, is amended to
 6 read:

7 "15-37-206. ~~lien for collection~~ Collection -- warrant
 8 for distraint. (1) The department shall mail to the person
 9 required to file a quarterly statement and pay any license
 10 tax a letter and tax assessment statement setting forth the
 11 amount of delinquent license tax, penalty, and interest due.
 12 The letter shall advise that if payment is not made within
 13 15 days, a warrant for distraint may be filed. Upon
 14 ~~receipt of the letter, the person shall remit to the~~
 15 ~~department within 15 days, the full amount of license tax,~~
 16 ~~penalty, and interest due. All tax, penalty, and interest~~
 17 ~~due from any person under this part shall be a lien upon any~~
 18 ~~and all real property of such person upon the filing by the~~
 19 ~~department of the duplicate tax assessment statement in the~~
 20 ~~office of the county clerk in the county where such real~~
 21 ~~property is situated.~~

22 (2) If all or part of the tax imposed by this part is
 23 not paid when due, the department may issue a warrant for
 24 distraint as provided in [sections 1 through 9]. The
 25 resulting lien has precedence over any other claim, lien, or

1 demand thereafter filed and recorded ~~and may be enforced in~~
 2 ~~the name of the state of Montana in the same manner as~~
 3 ~~judgment liens are enforced at law."~~

4 Section 21. Section 15-38-107, MCA, is amended to
 5 read:

6 *15-38-107. Procedure in case of failure to file
 7 statement. (1) If any person fails, refuses, or neglects to
 8 make and file a statement and return it within the time
 9 prescribed, the department shall immediately after such time
 10 has expired determine, as nearly as may be possible from any
 11 returns or reports filed with the state or from any other
 12 information which the department may be able to obtain, the
 13 total gross value of product of such person from such
 14 business during the calendar year immediately preceding the
 15 year in which the tax is to be paid and shall fix the amount
 16 of the tax due to the state from such person for such
 17 calendar year and shall add to the amount of such tax a
 18 penalty of 10% thereof plus interest at the rate of 1% a
 19 month or fraction thereof computed on the total amount of
 20 tax and penalty. Interest shall be computed from the date
 21 the tax was due to the date of payment.

22 (2) The department shall mail to the person required
 23 to file an annual statement and pay any tax, a letter
 24 setting forth the amount of tax, penalty, and interest due.
 25 ~~Upon receipt of this letter, the person shall remit to the~~

1 department ~~the full amount of license tax, penalty, and~~
 2 ~~interest due within 15 days. The letter shall advise that if~~
 3 ~~payment is not received, a warrant for distraint may be~~
 4 ~~filed.~~

5 (3) The 10% penalty may be waived by the department if
 6 reasonable cause for the failure and neglect to file the
 7 statement required by 15-38-105 is provided to the
 8 department."

9 Section 22. Section 15-38-108, MCA, is amended to
 10 read:

11 *15-38-108. ~~Ten-for-collection~~ warrant for distraint.
 12 ~~The tax assessed against any person under this chapter,~~
 13 ~~together with penalties and interest thereon, shall be a~~
 14 ~~lien upon any and all property owned by such person within~~
 15 ~~this state, which lien shall attach on the date the~~
 16 ~~department files in the office of the county clerk in the~~
 17 ~~county where such property is situated a certified copy of~~
 18 ~~its letter sent under 15-38-107(2). This~~ If all or part of
 19 the tax imposed by this chapter is not paid when due, the
 20 department may issue a warrant for distraint as provided in
 21 [sections 1 through 9]. The resulting lien shall have
 22 precedence over any other claim, lien, or demand thereafter
 23 filed and recorded and may be enforced in the name of the
 24 state of Montana in the same manner as judgment liens are
 25 enforced by law."

1 Section 23. Section 15-51-111, MCA, is amended to
2 read:

3 "15-51-111. Procedure to compute tax in absence of
4 statement. If any person fails, neglects, or refuses to file
5 any statement required by 15-51-101 within the time therein
6 required, the department of revenue shall, after such time
7 has expired, proceed to inform itself as best it may
8 regarding the number of KWH produced by such person in this
9 state during such quarter and compute the amount of taxes
10 due to the state from such person for such quarter and add
11 the penalty and interest as required by 15-51-103. The
12 department shall mail to the person required to file a
13 quarterly report and pay such tax a letter setting forth the
14 amount of tax, penalty, and interest due, and the letter
15 must further contain a statement that if payment is not made
16 ~~within such time, a lien warrant for distraint~~ may be filed.
17 ~~Upon receipt of the letter, the person shall remit to the~~
18 ~~department the full amount of tax, penalty, and interest~~
19 ~~within 15 days.~~ The 10% penalty may be waived by the
20 department if reasonable cause for failure and neglect to
21 file the statement required by 15-51-101 is provided to the
22 department."

23 Section 24. Section 15-51-112, MCA, is amended to
24 read:

25 "15-51-112. ~~Procedure for collection of tax~~ Warrant

1 ~~for distraint. All tax, penalty, and interest due from any~~
2 ~~person under this chapter is a lien upon any and all real~~
3 ~~property of such person upon the filing by the department of~~
4 ~~revenue of the duplicate tax assessment statement in the~~
5 ~~office of the county clerk in the county where such real~~
6 ~~property is situated. If all or part of the tax imposed by~~
7 ~~this chapter is not paid when due, the department may issue~~
8 ~~a warrant for distraint as provided in [sections 1 through~~
9 ~~9].~~ The resulting lien has precedence over any other claim,
10 lien, or demand thereafter filed and recorded ~~and may be~~
11 ~~enforced in the name of the state of Montana in the same~~
12 ~~manner as judgment liens are enforced by law."~~

13 Section 25. Section 15-53-112, MCA, is amended to
14 read:

15 "15-53-112. Estimation of tax upon failure to file
16 statement or pay tax -- notice. (1) If a person fails,
17 neglects, or refuses to file the statement required by
18 15-53-102 within the time required or fails to pay the tax
19 required by this chapter on or before the date payment is
20 due, the department of revenue shall proceed to inform
21 itself as best it may regarding the total gross income of
22 the person from its telephone business within this state
23 during the quarter.

24 (2) The department shall compute the amount of license
25 taxes due from the person and shall mail to the person a

1 letter and tax assessment statement setting forth the amount
 2 of delinquent license tax, penalty, and interest due. The
 3 letter shall advise that if payment is not made, ~~within 15~~
 4 ~~days a lien warrant for distraint may be filed."~~

5 Section 26. Section 15-53-113, MCA, is amended to
 6 read:

7 "~~15-53-113. Lien-for-collection-of-tax Warrant for~~
 8 ~~distraint. All tax, penalty, and interest due from any~~
 9 ~~person under this chapter shall be a lien upon all real~~
 10 ~~property of the person within a county when the department~~
 11 ~~of revenue files in the office of the clerk of court of any~~
 12 ~~county where the real property is situated a certified copy~~
 13 ~~of its assessment letter. If all or part of the tax imposed~~
 14 ~~by this chapter is not paid when due, the department may~~
 15 ~~issue a warrant for distraint as provided in [sections 1~~
 16 ~~through 2]. The resulting lien has precedence over any~~
 17 ~~claim, lien, or demand thereafter filed and recorded and may~~
 18 ~~be enforced in the name of the state of Montana in the same~~
 19 ~~manner as judgment liens are enforced by law."~~

20 Section 27. Section 15-54-112, MCA, is amended to
 21 read:

22 "15-54-112. Estimation of tax upon failure to file
 23 statement -- notice. (1) If a person fails, neglects, or
 24 refuses to make and file the statement required by
 25 15-54-103, the department of revenue shall determine as

1 nearly as possible from any returns or reports filed with
 2 any state or county officer or board under any law of this
 3 state and from any other information that the department may
 4 be able to obtain the total gross receipts of the person
 5 from the business in this state during the year next
 6 preceding April 1.

7 (2) The department shall prepare a statement showing
 8 the amount of the gross receipts and shall compute and
 9 assess the amount of license taxes due from the person and
 10 shall give notice to the person in the same manner as though
 11 the statement had been filed on time and shall proceed to
 12 collect the license tax, if delinquent, together with
 13 penalty and interest as provided for other delinquencies.
 14 The notice shall advise that if payment is not made, the
 15 department may file a warrant for distraint."

16 Section 28. Section 15-54-113, MCA, is amended to
 17 read:

18 "~~15-54-113. Lien-for-collection-of-tax Warrant for~~
 19 ~~distraint. All tax, penalty, and interest due from any~~
 20 ~~person under this chapter shall be a lien upon all real~~
 21 ~~property of the person within a county when the department~~
 22 ~~of revenue files in the office of the clerk of court of any~~
 23 ~~county where the real property is situated a certified copy~~
 24 ~~of its assessment letter. If all or part of the tax imposed~~
 25 ~~by this chapter is not paid when due, the department may~~

1 issue a warrant for distraint as provided in [sections 1
 2 through 9]. The resulting lien has precedence over any
 3 claim, lien, or demand thereafter filed and recorded and may
 4 ~~be enforced in the name of the state of Montana in the same~~
 5 ~~manner as judgment liens are enforced by law."~~

6 Section 29. Section 15-55-109, MCA, is amended to
 7 read:

8 "15-55-109. ~~Lien for collection of tax~~ Warrant for
 9 distrain. ~~All tax, penalty, and interest due from any~~
 10 ~~person under this chapter shall be a lien upon all real~~
 11 ~~property of the person within a county when the department~~
 12 ~~files in the office of the clerk of court of any county~~
 13 ~~where the real property is situated a certified copy of its~~
 14 ~~letter assessing tax, penalty, or interest under this~~
 15 ~~chapter.~~ If all or part of the tax imposed by this chapter
 16 is not paid when due, the department may issue a warrant for
 17 distrain as provided in [sections 1 through 9]. The
 18 resulting lien has precedence over any claim, lien, or
 19 demand thereafter filed and recorded and may be enforced in
 20 ~~the name of the state of Montana in the same manner as~~
 21 ~~judgment liens are enforced by law."~~

22 Section 30. Section 15-56-112, MCA, is amended to
 23 read:

24 "15-56-112. Estimation of tax upon failure to file
 25 return. (1) If a person fails to make the report required by

1 15-56-103, the department shall determine the value of the
 2 property of that person in this state from any information
 3 that the department may be able to obtain.

4 (2) The department shall prepare a statement showing
 5 the amount of the valuation determined and shall compute and
 6 assess the amount of license taxes due and shall give notice
 7 to the person failing to make the report in the same manner
 8 as though a report had been filed as required by 15-56-103.
 9 The notice shall advise that if payment is not made, the
 10 department may file a warrant for distraint."

11 Section 31. Section 15-56-113, MCA, is amended to
 12 read:

13 "15-56-113. ~~Lien for collection of tax~~ Warrant for
 14 distrain. ~~All tax, penalty, and interest due from any~~
 15 ~~person under this chapter shall be a lien upon all real~~
 16 ~~property of the person within a county when the department~~
 17 ~~files in the office of the clerk of court of any county~~
 18 ~~where the real property is situated a certified copy of its~~
 19 ~~assessment letter.~~ If all or part of the tax imposed by this
 20 chapter is not paid when due, the department may issue a
 21 warrant for distrain as provided in [sections 1 through 9].
 22 The resulting lien has precedence over any claim, lien, or
 23 demand thereafter filed and recorded and may be enforced in
 24 ~~the name of the state of Montana in the same manner as~~
 25 ~~judgment liens are enforced by law."~~

1 Section 32. Section 15-58-106, MCA, is amended to
2 read:

3 "15-58-106. Procedure to determine tax on failure to
4 file statement -- penalty. (1) If any person shall fail,
5 neglect, or refuse to make or file the statement required by
6 15-58-105 or shall fail to make payment of such license tax
7 within the time therein required, the department of revenue
8 shall, immediately after such time has expired, proceed to
9 inform itself as best it may regarding the matters required
10 to be set forth in such statement and shall fix and
11 determine the amount of the license taxes due from such
12 person for such quarter.

13 (2) The department shall add to the amount of all such
14 delinquent license taxes a penalty of 10% of the amount of
15 such license taxes plus interest at the rate of 1% per month
16 or fraction thereof computed on the total amount of license
17 taxes and penalty. Interest shall be computed from the date
18 the license taxes were due to the date of payment.

19 (3) The department shall mail to the person required
20 to file a quarterly statement and pay any license tax a
21 letter setting forth the amount of license tax, penalty, and
22 interest due, and the letter shall further contain a
23 statement that if payment is not made ~~within such time~~, a
24 ~~lien~~ warrant for distraint may be filed ~~as set forth in~~
25 ~~15-58-107.~~ ~~Upon receipt of said letter, the person shall~~

1 ~~remit to the department within 15 days the full amount of~~
2 ~~license tax, penalty, and interest due.~~

3 (4) The 10% penalty herein provided may be waived by
4 the department if reasonable cause for the failure and
5 neglect to file the statement required by 15-58-105 is
6 provided to the department."

7 Section 33. Section 15-58-107, MCA, is amended to
8 read:

9 "15-58-107. ~~Lien for collection of tax~~ WARRANT FOR
10 distraint. All tax, penalty, and interest due from any
11 person under this chapter shall be a lien upon any and all
12 real property of such person upon the filing of the
13 department of revenue of the duplicate of the statement so
14 made by the department or a certified copy of any statement
15 filed by said department in the office of the county clerk
16 in the county where such real property is situated, which if
17 all or part of the tax imposed by this chapter is not paid
18 when due, the department may issue a warrant for distraint
19 as provided in [sections 1 through 9]. The resulting lien
20 shall have has precedence over any other claim, lien, or
21 demand thereafter filed and recorded and ~~which may be~~
22 ~~enforced in the name of the state of Montana in the same~~
23 ~~manner as judgment liens are enforced by law."~~

24 Section 34. Section 15-59-106, MCA, is amended to
25 read:

1 "15-59-106. Procedure to estimate tax on failure to
2 file statement -- penalty. (1) If any such person shall
3 fail, neglect, or refuse to file any statement required by
4 15-59-105 within the time required or shall fail to pay the
5 tax required by this part on or before the date such payment
6 is due, the department of revenue shall, immediately after
7 such time has expired, proceed to inform itself as best it
8 may regarding the amounts of the respective articles or
9 products enumerated in 15-59-101(1) and 15-59-102
10 manufactured or produced by such person within this state or
11 imported by such person into the state during such quarter
12 and during each month thereof and shall determine and fix
13 the amount of the license taxes due to the state from such
14 person for such quarter.

15 (2) The department shall add to the amount of all such
16 delinquent license taxes a penalty of 10% of the amount of
17 such license taxes plus interest at the rate of 1% a month
18 or fraction thereof computed on the total amount of license
19 taxes and penalty. Interest shall be computed from the date
20 the license taxes were due to the date of payment.

21 (3) The department shall mail to the person required
22 to file a quarterly statement and pay any license tax a
23 letter setting forth the amount of license tax, penalty, and
24 interest due, and the letter shall further contain a
25 statement that if payment is not made within 15 days, a lien

1 ~~warrant for distraint~~ may be filed as set forth in
2 ~~15-59-107. Upon receipt of the letter, the person shall~~
3 ~~remit to the department within 15 days the full amount of~~
4 ~~license tax, penalty, and interest due.~~

5 (4) The 10% penalty may be waived by the department if
6 reasonable cause for the failure and neglect to file the
7 statement required by 15-59-105 is provided to the
8 department."

9 Section 35. Section 15-59-107, MCA, is amended to
10 read:

11 "15-59-107. ~~Lien for collection of tax~~ warrant for
12 distraint. All tax, penalty, and interest due from any
13 person under this part is a lien upon any and all real
14 property of such person upon the filing by the department of
15 revenue of a duplicate of the tax assessment statement in
16 the office of the county clerk in the county where such real
17 property is situated. If all or part of the tax imposed by
18 this part is not paid when due, the department may issue a
19 warrant for distraint as provided in [sections 1 through 9].
20 The resulting lien has precedence over any other claim,
21 lien, or demand thereafter filed and recorded and may be
22 enforced in the name of the state of Montana in the same
23 manner as judgment liens are enforced by law."

24 Section 36. Section 15-59-205, MCA, is amended to
25 read:

1 "15-59-205. Procedure to estimate tax on failure to
2 file -- penalty. (1) If any person shall fail, neglect, or
3 refuse to make or file the statement required by 15-59-204
4 within the time required, the department of revenue shall,
5 immediately after such time has expired, proceed to inform
6 itself as best it may regarding the matters required to be
7 set forth in such statement and shall fix and determine the
8 amount of the license tax due from such person for such
9 quarter.

10 (2) The department shall add to the amount of all such
11 delinquent license tax a penalty of 10% of the amount of
12 such license tax plus interest at the rate of 1% per month
13 or fraction thereof computed on the total amount of license
14 taxes and penalty. Interest shall be computed from the date
15 the license tax was due to the date of payment.

16 (3) The department shall mail to the person required
17 to file a quarterly statement and pay any license tax a
18 letter setting forth the amount of license tax, penalty, and
19 interest due, and the letter shall further contain a
20 statement that if payment is not made ~~within--such--time,~~ a
21 ~~lien warrant for distraint~~ may be filed ~~as set forth in~~
22 ~~15-59-206. Upon receipt of said letter, the person shall~~
23 ~~remitt--to--the--department--the--full--amount--of--license--tax,~~
24 ~~penalty, and interest due within 15 days.~~

25 (4) The 10% penalty herein provided may be waived by

1 the department if reasonable cause for the failure and
2 neglect to file the statement required by 15-59-204 is
3 provided to the department."

4 Section 37. Section 15-59-206, MCA, is amended to
5 read:

6 "15-59-206. ~~Lien for collection of tax~~ Warrant for
7 distraint. ~~All tax, penalty, and interest due from any~~
8 ~~person under this part shall be a lien upon any and all real~~
9 ~~property of such person upon the filing by the department of~~
10 ~~revenue of the duplicate of the statement so made by the~~
11 ~~department or a certified copy of any statement filed by~~
12 ~~said department in the office of the county clerk in the~~
13 ~~county where such real property is situated, which if all or~~
14 ~~part of the tax imposed by this part is not paid when due,~~
15 ~~the department may issue a warrant for distraint as provided~~
16 ~~in [sections 1 through 9]. The resulting lien shall have~~ has
17 precedence over any other claim, lien, or demand thereafter
18 filed and recorded and which may be enforced in the name of
19 the state in the same manner as judgment liens are enforced
20 by law."

21 Section 38. Section 15-70-211, MCA, is amended to
22 read:

23 "15-70-211. ~~Lien for tax and penalties due~~ release
24 warrant for distraint. ~~(1) All license taxes, penalties, and~~
25 ~~interest due from any distributor under the provisions of~~

1 this part shall be a lien upon any and all property of such
 2 distributor or other person upon the filing by the
 3 department of revenue of a copy of its statement or a
 4 certified copy of any statement filed with the department in
 5 the office of the county clerk of the county where the
 6 distributor's property is situated. If all or part of the
 7 tax imposed by this part is not paid when due, the
 8 department may issue a warrant for distraint as provided in
 9 [sections 1 through 9]. The resulting lien shall have
 10 precedence over any other claim, lien, or demand filed or
 11 recorded thereafter. ~~The lien may be enforced in the name of~~
 12 ~~this state in the same manner as judgment liens are~~
 13 ~~enforced.~~ No action shall may be maintained to enjoin the
 14 collection of all or any part of the license tax.

15 (2) ~~When the amount due is paid in full before the~~
 16 ~~entry of foreclosure decree, the state treasurer shall~~
 17 ~~release the lien by filing a written release in the office~~
 18 ~~of the county clerk where the lien was filed.~~ ~~At any time~~
 19 ~~prior to the payment of said taxes, penalty, and interest~~
 20 ~~before the entry of foreclosure decree, the state treasurer~~
 21 ~~may release from the operation of the lien a part of the~~
 22 ~~distributor's property to enable the distributor to~~
 23 ~~mortgage, sell, or otherwise dispose of it in order to~~
 24 ~~procure funds to pay taxes, penalty, and interest, provided~~
 25 ~~there remains in the judgment of the state treasury~~

1 sufficient property subject to the lien to ensure the
 2 payment of all the unpaid taxes, penalty, and interest."

3 Section 39. Section 15-70-334, MCA, is amended to
 4 read:

5 "15-70-334. Lien for taxes on property of dealer or
 6 user Warrant for distraint. All special fuel taxes due from
 7 any dealer or user under the provisions of this part
 8 together with all penalties and interest thereon shall be
 9 a lien upon any and all property of such dealer, user, or
 10 other person upon the filing by the department of revenue of
 11 a duplicate copy of the statement so made by the department
 12 or a certified copy of any statement filed by said
 13 department in the office of the county clerk of the county
 14 where such property is situated, which If all or part of the
 15 tax imposed by this part is not paid when due, the
 16 department may issue a warrant for distraint as provided in
 17 [sections 1 through 9]. The resulting lien shall have has
 18 precedence over any other claim, lien, or demand thereafter
 19 filed or recorded and which may be enforced in the name of
 20 the state of Montana in the same manner as judgment liens
 21 are enforced by law."

22 Section 40. Section 16-1-409, MCA, is amended to read:

23 "16-1-409. Failure to make beer tax returns --
 24 penalties. (1) If any brewer or wholesaler subject to the
 25 payment of the tax provided for in 16-1-406 through 16-1-408

1 shall fail, neglect, or refuse to make any return required
 2 by this code or shall fail to make payment of such tax
 3 within the time herein provided, the department shall,
 4 forthwith after such time has expired, proceed to inform
 5 itself as best it may regarding the matters and things
 6 required to be set forth in such return and, from such
 7 information as it may be able to obtain, to make a statement
 8 showing such matters and things and determine and fix the
 9 amount of such tax due the state from such delinquent brewer
 10 or wholesaler.

11 (2) The department shall add to the amount of tax due
 12 a penalty of 5% thereof for the first failure, willful
 13 neglect, or refusal; 10% for the second; 15% for the third;
 14 and 25% for the fourth and each subsequent failure, neglect,
 15 or refusal; which shall be in addition to the 5% penalty
 16 provided for nonpayment of such tax within the time
 17 provided.

18 (3) Said tax and the penalties added thereto shall
 19 bear interest at the rate of 1% per month from the date such
 20 returns should have been made and said tax paid.

21 (4) The department shall then proceed to collect such
 22 tax with penalties and interest. Upon request of the
 23 department it shall be the duty of the attorney general to
 24 commence and prosecute to final determination in any court
 25 of competent jurisdiction an action to collect such tax.

1 (5) ~~All taxes due from any brewer or wholesaler under~~
 2 ~~the provisions of this code, together with all penalties and~~
 3 ~~interest thereon, shall be a lien upon any and all property~~
 4 ~~of such brewer or wholesaler upon the filing by the~~
 5 ~~department of a duplicate copy of the statement made by the~~
 6 ~~department or a certified copy of any return filed with the~~
 7 ~~department in the office of the county clerk of the county~~
 8 ~~where such property is situated, which if all or part of the~~
 9 ~~tax imposed upon a brewer or wholesaler by this part is not~~
 10 ~~paid when due, the department may issue a warrant for~~
 11 ~~distrain as provided in [sections 1 through 9]. The~~
 12 ~~resulting lien shall have precedence over any other~~
 13 ~~claim, lien, or demand thereafter filed or recorded and may~~
 14 ~~be enforced in the name of the state of Montana in the same~~
 15 ~~manner as other liens are enforced by law.~~

16 (6) No action shall be maintained to enjoin the
 17 collection of such tax or any part thereof. ~~When the amount~~
 18 ~~due the state is paid in full and before the entry of~~
 19 ~~foreclosure decree, the department shall release the lien by~~
 20 ~~filing in the office of the county clerk wherein is filed~~
 21 ~~the lien a written release thereof.~~

22 (7) ~~At any time prior to the payment of said taxes~~
 23 ~~penalty and interest, before the entry of foreclosure~~
 24 ~~decree, the department may release from the operation of~~
 25 ~~said lien a part of said property to enable the brewer or~~

~~1 wholesaler to mortgagee, sell, or otherwise dispose of the
2 same in order to procure funds with which to pay taxes,
3 penalty and interest provided there remains in the
4 judgment of the department, sufficient property subject to
5 said lien to ensure the payment of the whole of said unpaid
6 taxes, penalty, and interest.~~

7 (b)(7) Any tax owed by a brewer or wholesaler under
8 this code not paid within the time provided shall be
9 delinquent, and a penalty of 5% shall be added thereto, and
10 the whole thereof shall bear interest at the rate of 1% per
11 month from the date of delinquency until paid. Any brewer or
12 wholesaler who fails, neglects, or refuses to make the
13 return to the department provided for in 16-3-211 or
14 16-3-231 or refuses to allow such examination as provided
15 for in 16-3-211 or 16-3-231 or fails to make an accurate
16 return according to the manner prescribed shall be deemed
17 guilty of having committed a misdemeanor and upon conviction
18 shall be fined in an amount not exceeding \$1,000."

19 Section 41. Section 40-5-222, MCA, is amended to read:

20 "40-5-222. Support debt based upon subrogation to or
21 assignment of judgment -- notice -- content -- action to
22 collect. (1) The department may issue a notice of a support
23 debt accrued or accruing based upon subrogation to or
24 assignment of the judgment created by a district court
25 order. The notice may be served upon the debtor in the

1 manner prescribed for the service of a summons in a civil
2 action in accordance with the provisions of the Montana
3 Rules of Civil Procedure, demanding payment within 20 30
4 days of the date of receipt.

5 (2) The notice of debt shall include:

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

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

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

14 (d) a statement that the net proceeds will be applied
15 to the satisfaction of the support debt.

16 (3) Action to collect the subrogated or assigned
17 support debt by distraint and seizure and sale shall be
18 lawful after 29 30 days from the date of service upon the
19 debtor or 20 30 days from the receipt or refusal by the
20 debtor of the notice of debt."

21 Section 42. Section 40-5-223, MCA, is amended to read:

22 "40-5-223. Notice of support liability based upon
23 payment of public assistance -- notice -- contents --
24 collection warrant -- fair hearing. (1) In the absence of a
25 district court order the department may issue a notice of a

1 support liability accrued or accruing based upon payment of
 2 public assistance to or for the benefit of any dependent
 3 child or children. The notice of liability shall be served
 4 upon the responsible parent in the manner prescribed for the
 5 service of summons in a civil action, in accordance with the
 6 provisions of the Montana Rules of Civil Procedure.

7 (2) The notice of liability shall include:

8 (a) a statement of the support debt accrued or
 9 accruing, computable on the basis of the amount of public
 10 assistance previously paid and to be paid in the future;

11 (b) a statement of the amount of the monthly public
 12 assistance payment;

13 (c) a statement of the name of the recipient and the
 14 name of the child or children for whom assistance is being
 15 paid;

16 (d) a demand for immediate payment of the support debt
 17 or, in the alternative, a demand that the responsible parent
 18 make answer within 20 30 days of the date of service to the
 19 department stating defenses to liability under 40-5-221;

20 (e) a statement that if no answer is made on or before
 21 20 30 days from the date of the service the support debt
 22 shall be assessed and determined subject to computation and
 23 is subject to collection action;

24 (f) a statement that the property of the responsible
 25 parent will be subject to distraint and seizure and sale.

1 (3) If no answer is had by the department to the
 2 notice of liability on or before 20 30 days of the date of
 3 service, the support debt shall be assessed and determined
 4 subject to the computation and the department ~~shall~~ may
 5 issue a warrant of ~~for~~ distraint authorizing a collection
 6 action under this part.

7 (4) If the responsible parent, within 20 30 days of
 8 the date of service of notice of liability, makes answer to
 9 the department alleging defenses to liability under
 10 40-5-221, the responsible parent may receive a fair hearing
 11 pursuant to 40-5-226. The decision of the department in the
 12 hearing shall establish the obligation of the responsible
 13 parent, if any, for repayment of public assistance funds
 14 spent to date as an assessed and determined support debt."

15 Section 43. Section 40-5-224, MCA, is amended to read:
 16 *40-5-224. Finding of support liability based upon
 17 payment of public assistance -- warrant of distraint -- bond
 18 to release warrant -- action to collect. (1) If the
 19 department reasonably believes that the parent is not a
 20 resident of this state or is about to move from this state
 21 or has concealed himself, absconded, absented himself or has
 22 removed or is about to remove, secrete, waste, or otherwise
 23 dispose of property which could be made subject to
 24 collection action to satisfy the support debt, the
 25 department may issue a warrant of ~~for~~ distraint pursuant to

1 40-5-241 during the pendency of the fair hearing or
 2 thereafter, whether or not appealed. No further action may
 3 be taken on the warrant until final determination after fair
 4 hearing and/or appeal. The department shall in such cases
 5 make and file in the record of the fair hearing an affidavit
 6 stating the reasons upon which the belief is founded. The
 7 responsible parent may furnish a bond, not to exceed the
 8 amount of the support debt, during pendency of the hearing
 9 or thereafter, and in such case warrants issued shall be
 10 released. If the decision resulting from the hearing is in
 11 favor of the responsible parent, all warrants issued shall
 12 be released.

13 (2) The department may commence action under the
 14 provisions of this part to collect the support debt on the
 15 date of issuance of the decision resulting from the
 16 hearing."

17 Section 44. Section 40-5-225, MCA, is amended to read:

18 "40-5-225. Notice and finding of financial
 19 responsibility of responsible parent -- administrative
 20 procedure. (1) In lieu of the procedures provided in
 21 40-5-223 and 40-5-224, the department may, in the absence of
 22 a district court order, serve on the responsible parent a
 23 notice and finding of financial responsibility requiring a
 24 responsible parent to appear and show cause at a hearing
 25 held by the department why the finding of liability and the

1 amount of support liability should not be finally ordered.
 2 This notice and finding shall relate to the support debt
 3 accrued or accruing under this part and/or Title 53, chapter
 4 4, including periodic payments to be made in the future for
 5 the period of time any child of the responsible parent is in
 6 need. The hearing shall be held pursuant to this part and
 7 the rules of the department, which shall provide for a fair
 8 hearing.

9 (2) The notice and finding of financial responsibility
 10 shall be served in the same manner prescribed for the
 11 service of a summons in a civil action, in accordance with
 12 the provisions of the Montana Rules of Civil Procedure. Any
 13 responsible parent who objects to all or any part of the
 14 notice and finding shall have the right for not more than 20
 15 days from the date of service to request in writing a
 16 hearing, notice of which shall be served upon the department
 17 personally or by registered or certified mail. If no request
 18 is made, the notice and finding of financial responsibility
 19 becomes final. If a request is made, the execution of notice
 20 and finding of financial responsibility shall be stayed
 21 pending the decision on such hearing or any direct appeal to
 22 the courts from the decision.

23 (3) The notice and finding of financial responsibility
 24 shall include:

25 (a) the amount the department has determined the

1 responsible parent owes, the support debt accrued or
2 accruing, and, as appropriate, the amount to be paid thereon
3 each month, all computable on the basis of the amount of the
4 monthly public assistance payment previously paid or need
5 alleged and the ability of the responsible parent to pay all
6 or any portion of the debt;

7 (b) a statement of the name of the recipient or
8 custodian and the name of any child for whom assistance is
9 being paid or need is alleged; or a statement of the amount
10 of periodic future support payments for which financial
11 responsibility is found;

12 (c) a statement that the responsible parent may object
13 to all or any part of the notice and finding and request a
14 hearing to show cause why he should not be determined to be
15 liable for any or all of the past and future debt determined
16 and the amount to be paid thereon;

17 (d) a statement that if the responsible parent fails
18 to request a hearing, the support debt and payments stated
19 in the notice and finding, including periodic support
20 payments in the future, shall be assessed, determined, and
21 ordered by the department and that this debt is subject to
22 collection action;

23 (e) a statement that the property of the debtor,
24 without further advance notice or hearing, will be subject
25 to distraint and seizure and sale to satisfy the debt."

1 Section 45. Section 40-5-226, MCA, is amended to read:

2 "40-5-226. Administrative hearing -- nature -- place
3 -- time -- determinations -- failure to appear -- entry of
4 findings. (1) The administrative hearing is defined as a
5 "contested case".

6 (2) The administrative hearing may be held in the
7 county of residence or other county convenient to the
8 responsible parent.

9 (3) If a hearing is requested, it shall be scheduled
10 within 30 days.

11 (4) The hearing officer shall determine the liability
12 and responsibility, if any, of the alleged responsible
13 parent under 40-5-221 and shall also determine the amount of
14 periodic payments to be made to satisfy past, present, or
15 future liability under 40-5-221. In making these
16 determinations, the hearing officer shall include in his
17 consideration the scale of suggested minimum contributions
18 adopted under 40-5-214.

19 (5) If the responsible parent fails to appear at the
20 hearing, upon a showing of valid service, the hearing
21 officer shall enter a decision and order declaring the
22 support debt and payment provisions stated in the notice and
23 finding of financial responsibility to be assessed,
24 determined, and subject to collection action. Within 20 20
25 days of entry of the order, the responsible parent may

1 petition the department to vacate the order upon a showing
2 of any of the grounds enumerated in the Montana Rules of
3 Civil Procedure.

4 (6) The hearing officer shall, within 20 days of the
5 hearing, enter findings, conclusions, and a final decision
6 determining liability and responsibility and/or future
7 periodic support payments. The determination of the hearing
8 officer entered pursuant to this section shall be entered as
9 an order unless such findings are set aside pursuant to
10 40-5-253 and shall limit the support debt under 40-5-221 to
11 the amounts stated in the decision.

12 (7) The decision establishing liability and future
13 periodic support payments is superseded upon entry of a
14 district court order for support to the extent the district
15 court order is inconsistent with the hearing order or
16 decision. In the absence of a district court order the
17 responsible parent may petition the department for issuance
18 of an order to appear and show cause based on a showing of
19 good cause and material change of circumstances to require
20 the other party to appear and show cause why the decision
21 previously entered should not be prospectively modified. The
22 order to appear and show cause together with a copy of the
23 affidavit upon which the order is based shall be served by
24 the petitioning party on the nonmoving party in the manner
25 of a summons in a civil action. A hearing shall be set not

1 less than 15 or more than 30 days from the date of service,
2 unless extended for good cause shown. Prospective
3 modification may be ordered but only upon a showing of good
4 cause and material change of circumstances.

5 (8) The department, in its original determinations,
6 and the hearing officer, in making determinations based on
7 objections to original determinations or on petitions to
8 modify, shall consider the standards promulgated for
9 determination of support payments used by the district court
10 of the county of residence of the responsible parent.

11 (9) Debts determined pursuant to this section, accrued
12 and not paid, are subject to collection action under this
13 part without further necessity of action by the hearing
14 officer."

15 Section 46. Section 40-5-241, MCA, is amended to read:
16 "40-5-241. Warrant of ~~for~~ distraint ~~---execution. (1)~~
17 ~~Twenty-one~~ ~~thirty-one~~ days after receipt or refusal of
18 notice of debt under provisions of 40-5-222 or ~~at~~ 31 days
19 after service of notice of debt or as otherwise appropriate
20 under the provisions of 40-5-223 and 40-5-224, the
21 department may issue ~~an abstract of any final order in the~~
22 ~~form of a warrant of for~~ distraint ~~under its official seal~~
23 ~~directed to the sheriff of any county of the state~~
24 ~~commanding him to levy upon and sell the real and personal~~
25 ~~property of the person owing the support debt within his~~

1 county for the payment of the debt, interest, and cost of
 2 executing the warrant and to return the warrant to the
 3 department and pay to it the money collected within 60 days
 4 from the date of the issuance of the warrant based on the
 5 amount of the support debt. The warrant is subject to the
 6 provisions of [sections 1, 4, 5, 8, and 9], with references
 7 to "tax" taken to mean "support debt" and references to
 8 "taxpayer" taken to mean "person owing the support debt", as
 9 well as the provisions of this part. Notwithstanding the
 10 provisions of [subsection (3) of section 5], an appeal from
 11 a hearing may be made directly to district court, as
 12 provided in 40-5-253, and is not appealable to the state tax
 13 appeal board.

14 (2) The sheriff shall, within 5 days after the receipt
 15 of the warrant, file a copy of the warrant with the clerk of
 16 the district court of his county and the clerk shall enter
 17 in the judgment docket, in the column for judgment debtors,
 18 the name of the debtor mentioned in the warrant and in
 19 appropriate columns, the amount of the support debt and the
 20 date when such copy is filed, the amount of the warrant so
 21 docketed, is a lien upon the title to and interest in real
 22 property or chattels real of the person against whom it is
 23 levied in the same manner as a judgment docketed in the
 24 office of such clerk. This lien has the same preference
 25 against the assets of the debtor as claims for taxes.

1 (3) The sheriff shall proceed to levy upon and sell
 2 the property of the debtor in the same manner prescribed by
 3 law for executions issued against property upon judgments of
 4 a court of record and is entitled to the same fees for his
 5 services in executing the warrant, to be collected in the
 6 same manner.

7 (4) If the net proceeds of the sale upon application
 8 to the debt claimed do not satisfy the debt in full, the
 9 department shall have judgment for any deficiency remaining
 10 unsatisfied.

11 Section 47. Section 40-5-245, MCA, is amended to read:
 12 "40-5-245. Satisfaction of debt after levy on property
 13 -- redemption. Any person owning real property or any
 14 interest in real property against which a warrant of for
 15 distraint has been issued and levied upon may pay the amount
 16 due, together with expenses of the proceedings and
 17 reasonable attorney fees to the department. Upon full
 18 payment the sheriff shall restore the property shall be
 19 restored to him, and all further proceedings on the warrant
 20 shall cease. The person shall also have the right within 240
 21 days after sale of property levied upon to redeem the
 22 property by making payment to the purchaser in the amount
 23 paid by the purchaser plus interest at the statutory
 24 interest rate payable on judgments recovered in the courts
 25 of this state."

1 Section 48. Section 40-5-246, MCA, is amended to read:

2 "40-5-246. Release of distraint and return of seized
3 property -- effect. The department may at any time release a
4 distraint on all or part of the property of the debtor or
5 order the sheriff--to return of seized property without
6 liability, if assurance of payment is determined to be
7 adequate by the department or if the action will facilitate
8 the collection of the debt. The release or return does not
9 operate to prevent future action to collect from the the
10 same or other property."

11 Section 49. Section 40-5-255, MCA, is amended to read:

12 "40-5-255. Charging off child support debts as
13 uncollectible. Any support debt due the department from a
14 responsible parent which the department determines
15 uncollectible may be transferred from accounts receivable to
16 a suspense account and cease to be accounted as an asset.
17 In the event a warrant of for distraint has been filed and
18 the support debt has subsequently been charged off as
19 uncollectible, the department shall issue a release of lien.
20 At any time after 6 years from the date a support debt was
21 incurred, the department may charge off as uncollectible any
22 support debt upon which the department finds there is no
23 available, practical, or lawful means by which the debt may
24 be collected. No proceedings or action under the provisions
25 of this part may be begun after expiration of the 6-year

1 period to institute collection of a support debt. Nothing
2 herein may be construed to render invalid or nonactionable a
3 warrant of for distraint filed with the clerk of court prior
4 to the expiration of the 6-year period or an assignment of
5 earnings executed prior to the expiration of the 6-year
6 period."

7 Section 50. Section 40-5-256, MCA, is amended to read:

8 "40-5-256. Employee debtor rights protected --
9 limitation. No employer may discharge or prejudice an
10 employee for reason that an assignment of earnings has been
11 presented in settlement of a support debt or that a warrant
12 of for distraint has been served against the employee's
13 earnings. This provision does not apply if more than three
14 warrants are served upon the same employer within any period
15 of 12 consecutive months."

16 Section 51. Section 69-1-226, MCA, is amended to read:

17 "69-1-226. Failure to pay fee -- penalty and interest
18 -- collection of fee. (1) If a regulated company or an
19 officer or employee of a regulated company files the
20 statement required by 69-1-223(2) but fails, neglects, or
21 refuses to pay the fee due within the time required, the
22 department of revenue may after the time for payment has
23 expired add to the fee due, in addition to any other penalty
24 provided by law, a penalty of 10% thereof plus interest at
25 the rate of 1% per month or fraction of month computed on

1 the total amount of the fee and penalty. Interest is
2 computed from the date the fee is due to the date of
3 payment.

4 (2) The department of revenue shall mail to the
5 regulated company a letter setting forth the amount of the
6 fee, penalty, and interest and notifying the company that
7 payment of the full amount of the fee, penalty, and interest
8 must be remitted within 15 days of the regulated company's
9 receipt of the letter; otherwise a ~~lien~~ warrant for
10 distrain may be filed.

11 (3) The 10% penalty may be waived by the department of
12 revenue if reasonable cause for failure and neglect to make
13 payment is provided to the department."

14 Section 52. Section 69-1-227, MCA, is amended to read:

15 "~~69-1-227. Fee, penalty, and interest as lien warrant~~
16 ~~for distrain. The fee, penalty, and interest due from the~~
17 ~~regulated company are a lien upon all real property of the~~
18 ~~regulated company within a county when the department of~~
19 ~~revenue files a certified copy of the amounts due in the~~
20 ~~office of the clerk of court of the county where the~~
21 ~~property is located. If the fee imposed by this part is not~~
22 ~~paid when due, the department may issue a warrant for~~
23 ~~distrain as provided in [sections 1 through 9].~~ The
24 resulting lien has precedence over any claim, lien, or
25 demand thereafter filed and recorded ~~and may be enforced in~~

1 ~~the name of the state of Montana in the same manner as~~
2 ~~judgment liens are enforced by law."~~

3 Section 53. Codification instruction. Sections 1
4 through 9 are intended to be codified as an integral part of
5 Title 15, and the provisions of Title 15 apply to sections 1
6 through 9.

7 Section 54. Repealer. Sections 15-30-315 and
8 15-31-527, MCA, are repealed.

-End-

SB 272

STATE OF MONTANA

REQUEST NO. 228-81

FISCAL NOTE

Form BD-15

In compliance with a written request received January 27, 19 81, there is hereby submitted a Fiscal Note for SENATE BILL 272 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

An act to generally revise, clarify and unify the procedures for the issuance of a warrant for distraint by the Department of Revenue.

FISCAL IMPACT

The proposed legislation should have no fiscal impact.

PREPARED BY THE DEPARTMENT OF REVENUE

David M. Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-31-81

Approved by Committee
on Judiciary

1 SENATE BILL NO. 272
2 INTRODUCED BY MAZUREK, TURNAGE,
3 S. BROWN, M. ANDERSON
4 BY REQUEST OF THE DEPARTMENT OF REVENUE
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE,
7 CLARIFY, AND UNIFY THE PROCEDURES FOR THE ISSUANCE OF A
8 WARRANT FOR DISTRAINT BY THE DEPARTMENT OF REVENUE; AMENDING
9 SECTIONS 15-30-208, 15-30-226, 15-30-311, 15-30-312,
10 15-31-406, 15-31-525, 15-35-105, 15-36-107, 15-36-108,
11 15-37-107, 15-37-206, 15-38-107, 15-38-108, 15-51-111,
12 15-51-112, 15-53-112, 15-53-113, 15-54-112, 15-54-113,
13 15-55-109, 15-56-112, 15-56-113, 15-58-106, 15-58-107,
14 15-59-106, 15-59-107, 15-59-205, 15-59-206, 15-70-211,
15 15-70-334, 16-1-409, 40-5-222 through 40-5-226, 40-5-241,
16 40-5-245, 40-5-246, 40-5-255, 40-5-256, 69-1-226, AND
17 69-1-227, MCA; AND REPEALING SECTIONS 15-30-315 AND
18 15-31-527, MCA."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21 NEW SECTION. Section 1. Warrant for distraint: (1) A
22 warrant for distraint is an order, under the official seal
23 of the department of revenue, directed to a sheriff of any
24 county of Montana or to any agent authorized by law to
25 collect a tax. The order commands the recipient to levy upon

1 and sell the real and personal property of a delinquent
2 taxpayer.

3 (2) Upon filing the warrant as provided in [section
4 4], there is a lien against all real and personal property
5 of the delinquent taxpayer located in the county where the
6 warrant is filed. The resulting lien is treated in the same
7 manner as a properly docketed judgment lien, and the
8 department may collect delinquent taxes and enforce the tax
9 lien in the same manner as a judgment is enforced.

10 (3) A warrant may be issued for the amount of unpaid
11 tax plus penalty, if any, and accumulated interest. The lien
12 is for the amount indicated on the warrant plus accrued
13 interest from the date of the warrant.

14 NEW SECTION. Section 2. Issuance of warrant. (1) If
15 a tax, other than inheritance or estate tax, administered
16 and collected by the department is not paid within 30 days
17 of the due date, the department may issue a notice to the
18 taxpayer notifying him that unless payment is received
19 within 30 days of the date of the notice, a warrant for
20 distraint may be issued. Thirty days after the date of the
21 notice, the department may issue a warrant if payment is not
22 received.

23 (2) Use of the procedure to issue a warrant under this
24 section does not preclude use of the procedure under
25 [section 3] if the department determines that it is

1 appropriate to utilize [section 3].

2 NEW SECTION. Section 3. Emergency issuance of
3 warrant. (1) The department may issue a warrant for
4 distraint without waiting for the expiration of either
5 30-day period provided for in [section 2] if:

6 (a) the department determines that the collection of
7 the tax is or may be jeopardized because of the delay
8 imposed by the waiting period; or

9 (b) the tax involved is a tax considered to be held in
10 trust by the taxpayer under state law.

11 (2) Whenever the provisions of this section are
12 utilized, the department must notify the taxpayer that
13 warrants have been issued.

14 NEW SECTION. Section 4. Filing with district court.

15 (1) After issuing a warrant, the department may file the
16 warrant with the clerk of a district court. The clerk shall
17 file the warrant in the judgment docket, with the name of
18 the taxpayer listed as the judgment debtor.

19 (2) A copy of the filed warrant may be sent by the
20 department to the sheriff or agent authorized to collect the
21 tax.

22 NEW SECTION. Section 5. Hearing. (1) Except as
23 provided in [section 7], a taxpayer has the right to request
24 a hearing on the matter of tax liability prior to execution
25 on a filed warrant for distraint.

1 (2) The department must provide notice of the right to
2 hearing to the taxpayer. A request for a hearing must be
3 made in writing within 30 days of the date of the notice.
4 This notice may be given prior to the notice referred to in
5 [section 2]. If a written request for a hearing is received,
6 the warrant may not be executed upon until after the date
7 the hearing is held or, if the taxpayer fails to attend a
8 scheduled hearing, the date the hearing is scheduled.

9 (3) The hearing is subject to the contested case
10 provisions of the Montana Administrative Procedure Act.
11 Before a decision may be appealed to the district court, an
12 appeal must first be taken to the state tax appeal board. A
13 request for a hearing must be in writing in order to
14 postpone execution on a warrant.

15 NEW SECTION. Section 6. Execution upon warrant. (1)
16 Upon receipt of a copy of the filed warrant and notice from
17 the department that the applicable hearing provisions have
18 been complied with, the sheriff or agent authorized to
19 collect tax shall proceed to execute upon the warrant in the
20 same manner as prescribed for execution upon a judgment.

21 (2) A notice of levy may be made by means of a
22 certified letter by an agent authorized to collect tax. An
23 agent is not entitled to any fee or compensation in excess
24 of actual expenses incurred in enforcing the warrant.

25 (3) A sheriff shall return a warrant, along with any

1 funds collected, within 90 days of the date of the warrant.

2 (4) If the warrant is returned not satisfied in full,
3 the department has the same remedies to collect the
4 deficiency as are available for any civil judgment.

5 NEW SECTION. Section 7. Emergency execution upon
6 warrant. (1) The department may execute upon a filed warrant
7 for distraint without providing an opportunity for a hearing
8 prior to execution if:

9 (a) the department determines that the collection of
10 the tax is jeopardized because of the delay imposed by the
11 hearing requirement; or

12 (b) ~~the tax involved is a tax considered to be held in~~
13 ~~trust by the taxpayer under state law.~~

14 (2) When the provisions of this section are utilized,
15 the department must notify the taxpayer and inform the
16 taxpayer that he has a right to request a hearing to be held
17 subsequent to execution. A hearing, if desired, must be
18 requested in writing within 30 days of the date of the
19 notice and, if requested, must be held as soon as possible.
20 The commencement of a proceeding under [section 5] does not
21 preclude the use of the provisions of this section if the
22 department determines that such action is appropriate.

23 NEW SECTION. Section 8. Release of lien. (1) Upon
24 payment in full of the unpaid tax plus penalty, if any, and
25 accumulated interest, the department shall release the lien

1 acquired by filing the warrant for distraint.

2 (2) Upon partial payment or whenever the department
3 determines that a release or partial release of the lien
4 will facilitate the collection of the unpaid tax, penalty,
5 and interest, the department may release or may partially
6 release the lien acquired by filing the warrant for
7 distraint. The department may release the lien if it
8 determines that the lien is unenforceable.

9 NEW SECTION. Section 9. Remedy not exclusive. The use
10 of the warrant for distraint provided for in [sections 1
11 through 8] is not exclusive, and the department may use any
12 other remedy provided by law for the collection of tax
13 debts.

14 Section 10. Section 15-30-208, MCA, is amended to
15 read:

16 "15-30-208. Withheld taxes held in trust for state --
17 warrants to collect. (1) Every employer who deducts and
18 withholds any amounts under the provisions of 15-30-201
19 through 15-30-209 shall hold the same in trust for the state
20 of Montana, and if

21 (2) ~~if~~ any tax imposed by 15-30-201 through 15-30-209
22 or any portion of such tax is not paid within 60 days after
23 the same becomes when due, the department shall ~~may~~ issue a
24 warrant under ~~res-officio~~ ~~sect~~ ~~which~~ ~~shall~~ ~~have~~ ~~the~~ ~~same~~
25 force ~~and~~ ~~effect~~ ~~and~~ ~~shall~~ ~~be~~ ~~enforced~~ ~~and~~ ~~carried~~ ~~into~~

1 execution in the same manner as that specified in 15-30-311
2 with respect to warrants relating to unpaid income taxes for
3 distrain as provided in [sections 4 through 9]."

4 Section 11. Section 15-30-226, MCA, is amended to
5 read:

6 "15-30-226. Amounts withheld as ~~lien~~ against agent
7 priority considered in trust. In addition to the penalties
8 provided above, if any withholding agent shall withhold any
9 sums required to be withheld and paid over to the department
10 under 15-30-221 through 15-30-228, the amount of the sums so
11 withheld shall constitute a first lien against all property,
12 real and personal, tangible and intangible, of the
13 withholding agent, which lien shall take precedence over all
14 others, it being the intention of 15-30-221 through
15 15-30-228 that the funds The amounts withheld by the
16 withholding agent shall be under 15-30-221 through 15-30-228
17 are considered funds held in trust by the withholding
18 agent."

19 Section 12. Section 15-30-311, MCA, is amended to
20 read:

21 "15-30-311. Levy upon and sale of property Warrant for
22 distrain. (1) If any tax imposed by this chapter, except
23 15-30-221 through 15-30-228, or any portion of such tax is
24 not paid within 60 days after the same becomes when due, the
25 department shall may issue a warrant under its official seal

1 directed to the sheriff of any county of the state
2 commanding him to levy upon and sell the real and personal
3 property of the person owing the same found within his
4 county for the payment of the amount thereof with the added
5 penalties, interest, and the cost of executing the warrant,
6 and to return such warrant to the department and pay to it
7 the money collected by virtue thereof by a time to be
8 therein specified, not more than 60 days from the date of
9 the warrant for distrain as provided in [sections 1 through
10 2].

11 (2) The sheriff shall, within 5 days after the receipt
12 of the warrant, file with the clerk of the district court of
13 his county a copy thereof, and thereupon the clerk shall
14 enter in the judgment docket in the column for judgment
15 debtors, the name of the taxpayer mentioned in the warrant
16 and in appropriate columns, the amount of the tax or
17 portion thereof and penalties for which the warrant is
18 issued and the date when such copy is filed. Thereupon the
19 amount of such warrant so docketed shall become a lien upon
20 the title to and interest in real property or chattels real
21 of the person against whom it is levied in the same manner
22 as a judgment docketed in the office of such clerk.

23 (3) The sheriff shall thereupon proceed upon the same
24 in all respects, with like effect, and in the same manner
25 prescribed by law in respect to executions issued against

1 ~~property upon judgments of a court of record and shall be~~
 2 ~~entitled to the same fees for his services in executing the~~
 3 ~~warrants to be collected in the same manner in the~~
 4 ~~discretion of the department, a warrant of like terms,~~
 5 ~~force, and effect may be issued and directed to any agent~~
 6 ~~authorized to collect income taxes and, in the execution~~
 7 ~~thereof, such agent shall have the powers conferred by law~~
 8 ~~upon sheriffs but shall be entitled to no fee or~~
 9 ~~compensation in excess of actual expenses paid in the~~
 10 ~~performance of such duty, in the execution of such warrants,~~
 11 ~~a notice of levy issued by the department's authorized agent~~
 12 ~~may be served by certified mail~~

13 ~~(4) If a warrant be returned not satisfied in full,~~
 14 ~~the department shall have the same remedies to enforce the~~
 15 ~~claim for taxes against the taxpayer as if the people of the~~
 16 ~~state had recovered judgment against the taxpayer for the~~
 17 ~~amount of the tax.~~

18 Section 13. Section 15-30-312, MCA, is amended to
 19 read:

20 "15-30-312. Jeopardy assessments. (1) If the
 21 department finds that the assessment or collection of the
 22 tax or a deficiency for any taxable year will be jeopardized
 23 in whole or in part by delay, it may mail or issue notice of
 24 its findings to the taxpayer, together with a demand for
 25 immediate payment of the tax or deficiency declared to be in

1 jeopardy, including penalty and accrued interest. In the
 2 case of a tax for a current period, the department may
 3 declare the taxable period of the taxpayer immediately
 4 terminated and shall mail or issue notice of its findings to
 5 the taxpayer, together with a demand for immediate payment
 6 of the tax based on the period declared terminated.

7 (2) A jeopardy assessment is immediately due and
 8 payable, and proceedings for collection may be commenced at
 9 once, including the issuance of a warrant for distraint as
 10 provided in [sections 1 through 9]."

11 Section 14. Section 15-31-406, MCA, is amended to
 12 read:

13 "15-31-406. License tax sections incorporated by
 14 reference. The provisions of the following sections of this
 15 chapter are incorporated into this part by reference and
 16 made a part hereof:

17 (1) that part of 15-31-101 which defines the term
 18 "corporation" and 15-31-102, which specifies the classes of
 19 organizations whose income shall not be taxed;

20 (2) sections 15-31-111 through 15-31-114; 15-31-141
 21 and 15-31-142; 15-31-301 through 15-31-313; 15-31-501
 22 through 15-31-509; 15-31-525 through ~~15-31-527~~ and
 23 15-31-526; 15-31-531 and 15-31-532; and 15-31-541 through
 24 15-31-543, except that the term "gross income" shall be
 25 construed as excluding the net amount of interest income

1 from valid obligations of the United States and except that
 2 wherever the words "tax", "license tax", "license fee",
 3 "corporation excise tax", or like words appear, referring to
 4 the tax imposed under part 1 of this chapter, there shall be
 5 substituted the words "income tax".

6 Section 15. Section 15-31-525, MCA, is amended to
 7 read:

8 "15-31-525. Levy upon and sale of property. If any tax
 9 imposed by this chapter or any portion of such tax is not
 10 paid within 60 days after the same becomes when due, the
 11 department of revenue shall may issue a warrant directed to
 12 the sheriff of any county of the state commanding him to
 13 levy upon and sell the real and personal property of the
 14 corporation owning the same found within his county for
 15 the payment of the amount thereof with the added penalties,
 16 interest and the cost of executing the warrant and to
 17 return such warrant to the department and pay to it the
 18 money collected by virtue thereof by a time to be therein
 19 specified not more than 60 days from the date of the
 20 warrant. The sheriff shall, within 5 days after the receipt
 21 of the warrant, file with the clerk of the district court of
 22 his county a copy thereof and thereupon the clerk shall
 23 enter in the judgment docket in the column for judgment
 24 debtors, the name of the taxpayer mentioned in the warrant
 25 and in appropriate columns, the amount of the tax or

1 portion thereof and penalties for which the warrant is
 2 issued and the date when such copy is filed and thereupon
 3 the amount of such warrant so docketed shall become a lien
 4 upon the title to and interest in real property or chattels
 5 real of the corporation against whom it is levied in the
 6 same manner as a judgment docketed in the office of such
 7 clerk. The sheriff shall thereupon proceed upon the same in
 8 all respects with like effect and in the same manner
 9 prescribed by law in respect to executions issued against
 10 property upon judgments of a court of record and shall be
 11 entitled to the same fees for his services in executing the
 12 warrant to be collected in the same manner in the
 13 discretion of the department, a warrant of like terms
 14 force and effect may be issued and directed to any agent
 15 authorized to collect income taxes and in the execution
 16 thereof such agent shall have the powers conferred by law
 17 upon sheriffs but shall be entitled to no fee or
 18 compensation in excess of actual expenses paid in the
 19 performance of such duty. If a warrant be returned not
 20 satisfied in full, the department shall have the same
 21 remedies to enforce the claim for taxes against the taxpayer
 22 as if the people of the state had recovered judgment against
 23 the taxpayer for the amount of the tax for distraint as
 24 provided in [sections 1 through 9]."

25 Section 16. Section 15-35-105, MCA, is amended to

1 read:

2 "15-35-105. Penalty for delinquent tax. The department
3 shall add to the amount of all delinquent severance taxes a
4 penalty of 10% of the delinquent amount plus interest at the
5 rate of 1% per month or fraction thereof computed on the
6 total amount of severance tax and penalty. Interest shall be
7 computed from the date the severance tax was due to the date
8 of payment. The department shall mail to the person required
9 to file a quarterly report and pay any severance tax, a
10 letter setting forth the amount of tax, penalty, and
11 interest due, and the letter shall further contain a
12 statement that if payment is not made within 15 days, a lien
13 warrant for distraint may be filed ~~as set forth in~~
14 ~~15-23-704~~. The penalty amount may be waived by the
15 department if reasonable cause for the failure or neglect to
16 file the quarterly statement is provided to the department."

17 Section 17. Section 15-36-107, MCA, is amended to
18 read:

19 "15-36-107. Procedure to compute tax in absence of
20 statement -- penalty and interest. If any such person shall
21 fail, neglect, or refuse to file any statement required by
22 15-36-105 within the time therein required, the department
23 of revenue shall, immediately after such time has expired,
24 proceed to inform itself as best it may regarding the number
25 of barrels of petroleum and other mineral or crude oil or

1 cubic feet of gas extracted and produced by such person in
2 this state during such quarter and during each month thereof
3 and the average value thereof during each such month and
4 shall determine and fix the amount of the severance taxes
5 due to the state from such person for such quarter and shall
6 add to the amount of such severance taxes a penalty of 10%
7 thereof plus interest at the rate of 1% per month or
8 fraction thereof computed on the total amount of severance
9 taxes and penalty. Interest shall be computed from the date
10 the severance taxes were due to the date of payment. The
11 department shall mail to the person required to file a
12 quarterly statement and pay any severance tax, a letter
13 setting forth the amount of severance tax, penalty, and
14 interest due, and the letter shall further contain a
15 statement that if payment is not made within such time, a
16 lien warrant for distraint may be filed ~~as set forth in~~
17 ~~15-36-108~~. ~~Upon receipt of said letter, the person shall~~
18 ~~within 15 days remit to the department the full amount of~~
19 ~~severance tax, penalty, and interest due.~~ The 10% penalty
20 herein provided may be waived by the department if
21 reasonable cause for the failure and neglect to file the
22 statement required by 15-36-105 is provided to the
23 department."

24 Section 18. Section 15-36-108, MCA, is amended to
25 read:

1 ~~"15-36-108. Procedure for collection of tax Warrant~~
 2 ~~for distraint. All tax, penalty, and interest due from any~~
 3 ~~person under this part shall be a lien upon any and all real~~
 4 ~~property of such person when the department of revenue files~~
 5 ~~in the office of the county clerk in the county where such~~
 6 ~~real property is situated a certified copy of its statement~~
 7 ~~of estimated tax computed under 15-36-107. This If all or~~
 8 ~~part of the tax imposed by this part is not paid when due,~~
 9 ~~the department may issue a warrant for distraint as provided~~
 10 ~~in [sections 1 through 9]. The resulting lien shall have~~
 11 ~~has precedence over any other claim, lien, or demand~~
 12 ~~thereafter filed and recorded and may be enforced in the~~
 13 ~~name of the state of Montana in the same manner as judgment~~
 14 ~~liens are enforced by law."~~

15 Section 19. Section 15-37-107, MCA, is amended to
 16 read:

17 ~~"15-37-107. Lien for collection of tax Warrant for~~
 18 ~~distraint. All tax, penalty, and interest due from any~~
 19 ~~person under this part shall be a lien upon any and all real~~
 20 ~~property of such person when the department of revenue files~~
 21 ~~in the office of the county clerk in the county where such~~
 22 ~~real property is situated a certified copy of its statement~~
 23 ~~of estimated tax computed under 15-37-106. This If all or~~
 24 ~~part of the tax imposed by this part is not paid when due,~~
 25 ~~the department may issue a warrant for distraint as provided~~

1 ~~in [sections 1 through 9]. The resulting lien shall have has~~
 2 ~~precedence over any other claim, lien, or demand thereafter~~
 3 ~~filed and recorded and may be enforced in the name of the~~
 4 ~~state of Montana in the same manner as judgment liens are~~
 5 ~~enforced by law."~~

6 Section 20. Section 15-37-206, MCA, is amended to
 7 read:

8 ~~"15-37-206. Lien for collection Collection -- warrant~~
 9 ~~for distraint. (1) The department shall mail to the person~~
 10 ~~required to file a quarterly statement and pay any license~~
 11 ~~tax a letter and tax assessment statement setting forth the~~
 12 ~~amount of delinquent license tax, penalty, and interest due.~~
 13 ~~The letter shall advise that if payment is not made within~~
 14 ~~15 days, a lien warrant for distraint may be filed. Upon~~
 15 ~~receipt of the letter, the person shall remit to the~~
 16 ~~department, within 15 days, the full amount of license tax,~~
 17 ~~penalty, and interest due. All tax, penalty, and interest~~
 18 ~~due from any person under this part shall be a lien upon any~~
 19 ~~and all real property of such person upon the filing by the~~
 20 ~~department of the duplicate tax assessment statement in the~~
 21 ~~office of the county clerk in the county where such real~~
 22 ~~property is situated.~~

23 ~~(2) If all or part of the tax imposed by this part is~~
 24 ~~not paid when due, the department may issue a warrant for~~
 25 ~~distraint as provided in [sections 1 through 9]. The~~

1 resulting lien has precedence over any other claim, lien, or
 2 demand thereafter filed and recorded ~~and may be enforced in~~
 3 ~~the name of the state of Montana in the same manner as~~
 4 ~~judgment liens are enforced at law."~~

5 Section 21. Section 15-38-107, MCA, is amended to
 6 read:

7 "15-38-107. Procedure in case of failure to file
 8 statement. (1) If any person fails, refuses, or neglects to
 9 make and file a statement and return it within the time
 10 prescribed, the department shall immediately after such time
 11 has expired determine, as nearly as may be possible from any
 12 returns or reports filed with the state or from any other
 13 information which the department may be able to obtain, the
 14 total gross value of product of such person from such
 15 business during the calendar year immediately preceding the
 16 year in which the tax is to be paid and shall fix the amount
 17 of the tax due to the state from such person for such
 18 calendar year and shall add to the amount of such tax a
 19 penalty of 10% thereof plus interest at the rate of 1% a
 20 month or fraction thereof computed on the total amount of
 21 tax and penalty. Interest shall be computed from the date
 22 the tax was due to the date of payment.

23 (2) The department shall mail to the person required
 24 to file an annual statement and pay any tax, a letter
 25 setting forth the amount of tax, penalty, and interest due.

1 ~~Upon receipt of this letter, the person shall remit to the~~
 2 ~~department the full amount of license tax, penalty, and~~
 3 ~~interest due within 15 days. The letter shall advise that if~~
 4 ~~payment is not received, a warrant for distraint may be~~
 5 ~~filed.~~

6 (3) The 10% penalty may be waived by the department if
 7 reasonable cause for the failure and neglect to file the
 8 statement required by 15-38-105 is provided to the
 9 department."

10 Section 22. Section 15-38-108, MCA, is amended to
 11 read:

12 "15-38-108. Lien for collection Warrant for distraint.
 13 ~~The tax assessed against any person under this chapter,~~
 14 ~~together with penalties and interest thereon, shall be a~~
 15 ~~lien upon any and all property owned by such person within~~
 16 ~~this state, which lien shall attach on the date the~~
 17 ~~department files in the office of the county clerk in the~~
 18 ~~county where such property is situated a certified copy of~~
 19 ~~its letter sent under 15-38-107(2). This if all or part of~~
 20 ~~the tax imposed by this chapter is not paid when due, the~~
 21 ~~department may issue a warrant for distraint as provided in~~
 22 ~~[sections 1 through 9]. The resulting lien shall have~~
 23 ~~precedence over any other claim, lien, or demand thereafter~~
 24 ~~filed and recorded and may be enforced in the name of the~~
 25 ~~state of Montana in the same manner as judgment liens are~~

1 ~~enforced-by-law."~~

2 Section 23. Section 15-51-111, MCA, is amended to
3 read:

4 "15-51-111. Procedure to compute tax in absence of
5 statement. If any person fails, neglects, or refuses to file
6 any statement required by 15-51-101 within the time therein
7 required, the department of revenue shall, after such time
8 has expired, proceed to inform itself as best it may
9 regarding the number of KWH produced by such person in this
10 state during such quarter and compute the amount of taxes
11 due to the state from such person for such quarter and add
12 the penalty and interest as required by 15-51-103. The
13 department shall mail to the person required to file a
14 quarterly report and pay such tax a letter setting forth the
15 amount of tax, penalty, and interest due, and the letter
16 must further contain a statement that if payment is not made
17 ~~within such time, a lien warrant for distraint may be filed.~~
18 ~~Upon receipt of the letter, the person shall remit to the~~
19 ~~department the full amount of tax, penalty, and interest~~
20 ~~within 15 days.~~ The 10% penalty may be waived by the
21 department if reasonable cause for failure and neglect to
22 file the statement required by 15-51-101 is provided to the
23 department."

24 Section 24. Section 15-51-112, MCA, is amended to
25 read:

1 "15-51-112. Procedure for collection of tax warrant
2 for distraint. ~~All tax, penalty, and interest due from any~~
3 ~~person under this chapter is a lien upon any and all real~~
4 ~~property of such person upon the filing by the department of~~
5 ~~revenue of the duplicate tax assessment statement in the~~
6 ~~office of the county clerk in the county where such real~~
7 ~~property is situated. If all or part of the tax imposed by~~
8 ~~this chapter is not paid when due, the department may issue~~
9 ~~a warrant for distraint as provided in [sections 1 through~~
10 ~~9].~~ The resulting lien has precedence over any other claim,
11 lien, or demand thereafter filed and recorded ~~and may be~~
12 ~~enforced in the name of the state of Montana in the same~~
13 ~~manner as judgment liens are enforced by law."~~

14 Section 25. Section 15-53-112, MCA, is amended to
15 read:

16 "15-53-112. Estimation of tax upon failure to file
17 statement or pay tax -- notice. (1) If a person fails,
18 neglects, or refuses to file the statement required by
19 15-53-102 within the time required or fails to pay the tax
20 required by this chapter on or before the date payment is
21 due, the department of revenue shall proceed to inform
22 itself as best it may regarding the total gross income of
23 the person from its telephone business within this state
24 during the quarter.

25 (2) The department shall compute the amount of license

1 taxes due from the person and shall mail to the person a
 2 letter and tax assessment statement setting forth the amount
 3 of delinquent license tax, penalty, and interest due. The
 4 letter shall advise that if payment is not made, within 15
 5 days a lien warrant for distraint may be filed."

6 Section 26. Section 15-53-113, MCA, is amended to
 7 read:

8 "~~15-53-113. Lien-for-collection-of-tax~~ Warrant for
 9 distraint. ~~All tax, penalty, and interest due from any~~
 10 ~~person under this chapter shall be a lien upon all real~~
 11 ~~property of the person within a county when the department~~
 12 ~~of revenue files in the office of the clerk of court of any~~
 13 ~~county where the real property is situated a certified copy~~
 14 ~~of its assessment letters. If all or part of the tax imposed~~
 15 ~~by this chapter is not paid when due, the department may~~
 16 ~~issue a warrant for distraint as provided in [sections 1~~
 17 ~~through 9].~~ The resulting lien has precedence over any
 18 claim, lien, or demand thereafter filed and recorded and may
 19 ~~be enforced in the name of the state of Montana in the same~~
 20 ~~manner as judgment liens are enforced by law."~~

21 Section 27. Section 15-54-112, MCA, is amended to
 22 read:

23 "~~15-54-112. Estimation of tax upon failure to file~~
 24 ~~statement -- notice. (1) If a person fails, neglects, or~~
 25 ~~refuses to make and file the statement required by~~

1 15-54-103, the department of revenue shall determine as
 2 nearly as possible from any returns or reports filed with
 3 any state or county officer or board under any law of this
 4 state and from any other information that the department may
 5 be able to obtain the total gross receipts of the person
 6 from the business in this state during the year next
 7 preceding April 1.

8 (2) The department shall prepare a statement showing
 9 the amount of the gross receipts and shall compute and
 10 assess the amount of license taxes due from the person and
 11 shall give notice to the person in the same manner as though
 12 the statement had been filed on time and shall proceed to
 13 collect the license tax, if delinquent, together with
 14 penalty and interest as provided for other delinquencies.
 15 The notice shall advise that if payment is not made, the
 16 department may file a warrant for distraint."

17 Section 28. Section 15-54-113, MCA, is amended to
 18 read:

19 "~~15-54-113. Lien-for-collection-of-tax~~ Warrant for
 20 distraint. ~~All tax, penalty, and interest due from any~~
 21 ~~person under this chapter shall be a lien upon all real~~
 22 ~~property of the person within a county when the department~~
 23 ~~of revenue files in the office of the clerk of court of any~~
 24 ~~county where the real property is situated a certified copy~~
 25 ~~of its assessment letters. If all or part of the tax imposed~~

1 by this chapter is not paid when due, the department may
 2 issue a warrant for distraint as provided in [sections 1
 3 through 9]. The resulting lien has precedence over any
 4 claim, lien, or demand thereafter filed and recorded and may
 5 be enforced in the name of the state of Montana in the same
 6 manner as judgment liens are enforced by law."

7 Section 29. Section 15-55-109, MCA, is amended to
 8 read:

9 "15-55-109. Lien for collection of tax Warrant for
 10 distraint. All taxes, penalty, and interest due from any
 11 person under this chapter shall be a lien upon all real
 12 property of the person within a county when the department
 13 files in the office of the clerk of court of any county
 14 where the real property is situated a certified copy of its
 15 letter assessing tax, penalty, or interest under this
 16 chapter. If all or part of the tax imposed by this chapter
 17 is not paid when due, the department may issue a warrant for
 18 distraint as provided in [sections 1 through 9]. The
 19 resulting lien has precedence over any claim, lien, or
 20 demand thereafter filed and recorded and may be enforced in
 21 the name of the state of Montana in the same manner as
 22 judgment liens are enforced by law."

23 Section 30. Section 15-56-112, MCA, is amended to
 24 read:

25 "15-56-112. Estimation of tax upon failure to file

1 return. (1) If a person fails to make the report required by
 2 15-56-103, the department shall determine the value of the
 3 property of that person in this state from any information
 4 that the department may be able to obtain.

5 (2) The department shall prepare a statement showing
 6 the amount of the valuation determined and shall compute and
 7 assess the amount of license taxes due and shall give notice
 8 to the person failing to make the report in the same manner
 9 as though a report had been filed as required by 15-56-103.
 10 The notice shall advise that if payment is not made, the
 11 department may file a warrant for distraint."

12 Section 31. Section 15-56-113, MCA, is amended to
 13 read:

14 "15-56-113. Lien for collection of tax Warrant for
 15 distraint. All taxes, penalty, and interest due from any
 16 person under this chapter shall be a lien upon all real
 17 property of the person within a county when the department
 18 files in the office of the clerk of court of any county
 19 where the real property is situated a certified copy of its
 20 assessment letter. If all or part of the tax imposed by this
 21 chapter is not paid when due, the department may issue a
 22 warrant for distraint as provided in [sections 1 through 9].
 23 The resulting lien has precedence over any claim, lien, or
 24 demand thereafter filed and recorded and may be enforced in
 25 the name of the state of Montana in the same manner as

1 ~~judgment liens are enforced by law."~~

2 Section 32. Section 15-58-106, MCA, is amended to
3 read:

4 "15-58-106. Procedure to determine tax on failure to
5 file statement -- penalty. (1) If any person shall fail,
6 neglect, or refuse to make or file the statement required by
7 15-58-105 or shall fail to make payment of such license tax
8 within the time therein required, the department of revenue
9 shall, immediately after such time has expired, proceed to
10 inform itself as best it may regarding the matters required
11 to be set forth in such statement and shall fix and
12 determine the amount of the license taxes due from such
13 person for such quarter.

14 (2) The department shall add to the amount of all such
15 delinquent license taxes a penalty of 10% of the amount of
16 such license taxes plus interest at the rate of 1% per month
17 or fraction thereof computed on the total amount of license
18 taxes and penalty. Interest shall be computed from the date
19 the license taxes were due to the date of payment.

20 (3) The department shall mail to the person required
21 to file a quarterly statement and pay any license tax a
22 letter setting forth the amount of license tax, penalty, and
23 interest due, and the letter shall further contain a
24 statement that if payment is not made ~~within such time,~~ a
25 ~~lien~~ warrant for distraint may be filed ~~as set forth in~~

1 ~~15-58-107. Upon receipt of said letter, the person shall~~
2 ~~remit to the department within 15 days the full amount of~~
3 ~~license tax, penalty, and interest due.~~

4 (4) The 10% penalty herein provided may be waived by
5 the department if reasonable cause for the failure and
6 neglect to file the statement required by 15-58-105 is
7 provided to the department."

8 Section 33. Section 15-58-107, MCA, is amended to
9 read:

10 "15-58-107. ~~Lien for collection of tax~~ Warrant for
11 distraint. ~~All tax, penalty, and interest due from any~~
12 ~~person under this chapter shall be a lien upon any and all~~
13 ~~real property of such person upon the filing of the~~
14 ~~department of revenue of the duplicate of the statement so~~
15 ~~made by the department or a certified copy of any statement~~
16 ~~filed by said department in the office of the county clerk~~
17 ~~in the county where such real property is situated, which if~~
18 all or part of the tax imposed by this chapter is not paid
19 when due, the department may issue a warrant for distraint
20 as provided in [sections 1 through 9]. The resulting lien
21 ~~shall have~~ has precedence over any other claim, lien, or
22 demand thereafter filed and recorded ~~and which may be~~
23 ~~enforced in the name of the state of Montana in the same~~
24 ~~manner as judgment liens are enforced by law."~~

25 Section 34. Section 15-59-106, MCA, is amended to

1 read:

2 "15-59-106. Procedure to estimate tax on failure to
3 file statement -- penalty. (1) If any such person shall
4 fail, neglect, or refuse to file any statement required by
5 15-59-105 within the time required or shall fail to pay the
6 tax required by this part on or before the date such payment
7 is due, the department of revenue shall, immediately after
8 such time has expired, proceed to inform itself as best it
9 may regarding the amounts of the respective articles or
10 products enumerated in 15-59-101(1) and 15-59-102
11 manufactured or produced by such person within this state or
12 imported by such person into the state during such quarter
13 and during each month thereof and shall determine and fix
14 the amount of the license taxes due to the state from such
15 person for such quarter.

16 (2) The department shall add to the amount of all such
17 delinquent license taxes a penalty of 10% of the amount of
18 such license taxes plus interest at the rate of 1% a month
19 or fraction thereof computed on the total amount of license
20 taxes and penalty. Interest shall be computed from the date
21 the license taxes were due to the date of payment.

22 (3) The department shall mail to the person required
23 to file a quarterly statement and pay any license tax a
24 letter setting forth the amount of license tax, penalty, and
25 interest due, and the letter shall further contain a

1 statement that if payment is not made within 15 days, a lien
2 warrant for distraint may be filed as set forth in
3 15-59-107. Upon receipt of the letter, the person shall
4 remit to the department within 15 days the full amount of
5 license tax, penalty, and interest due.

6 (4) The 10% penalty may be waived by the department if
7 reasonable cause for the failure and neglect to file the
8 statement required by 15-59-105 is provided to the
9 department."

10 Section 35. Section 15-59-107, MCA, is amended to
11 read:

12 "15-59-107. Lien for collection of tax Warrant for
13 distraint. All tax, penalty, and interest due from any
14 person under this part is a lien upon any and all real
15 property of such person upon the filing by the department of
16 revenue of a duplicate of the tax assessment statement in
17 the office of the county clerk in the county where such real
18 property is situated. If all or part of the tax imposed by
19 this part is not paid when due, the department may issue a
20 warrant for distraint as provided in [sections 1 through 9].
21 The resulting lien has precedence over any other claim,
22 lien, or demand thereafter filed and recorded and may be
23 enforced in the name of the state of Montana in the same
24 manner as judgment liens are enforced by law."

25 Section 36. Section 15-59-205, MCA, is amended to

1 read:

2 "15-59-205. Procedure to estimate tax on failure to
3 file -- penalty. (1) If any person shall fail, neglect, or
4 refuse to make or file the statement required by 15-59-204
5 within the time required, the department of revenue shall,
6 immediately after such time has expired, proceed to inform
7 itself as best it may regarding the matters required to be
8 set forth in such statement and shall fix and determine the
9 amount of the license tax due from such person for such
10 quarter.

11 (2) The department shall add to the amount of all such
12 delinquent license tax a penalty of 10% of the amount of
13 such license tax plus interest at the rate of 1% per month
14 or fraction thereof computed on the total amount of license
15 taxes and penalty. Interest shall be computed from the date
16 the license tax was due to the date of payment.

17 (3) The department shall mail to the person required
18 to file a quarterly statement and pay any license tax a
19 letter setting forth the amount of license tax, penalty, and
20 interest due, and the letter shall further contain a
21 statement that if payment is not made within such time, a
22 lien warrant for distraint may be filed ~~as set forth in~~
23 ~~15-59-206. Upon receipt of said letters, the person shall~~
24 ~~remit to the department the full amount of license tax,~~
25 ~~penalty, and interest due within 15 days.~~

1 (4) The 10% penalty herein provided may be waived by
2 the department if reasonable cause for the failure and
3 neglect to file the statement required by 15-59-204 is
4 provided to the department."

5 Section 37. Section 15-59-206, MCA, is amended to
6 read:

7 "~~15-59-206. Lien for collection of tax~~ Warrant for
8 distraint. ~~All tax, penalty, and interest due from any~~
9 ~~person under this part shall be a lien upon any and all real~~
10 ~~property of such person upon the filing by the department of~~
11 ~~revenue of the duplicate of the statement so made by the~~
12 ~~department or a certified copy of any statement filed by~~
13 ~~said department in the office of the county clerk in the~~
14 ~~county where such real property is situated, which if all or~~
15 ~~part of the tax imposed by this part is not paid when due,~~
16 ~~the department may issue a warrant for distraint as provided~~
17 ~~in [sections 1 through 9]. The resulting lien shall have~~ has
18 precedence over any other claim, lien, or demand thereafter
19 filed and recorded and which may be enforced in the name of
20 the state in the same manner as judgment liens are enforced
21 by law."

22 Section 38. Section 15-70-211, MCA, is amended to
23 read:

24 "~~15-70-211. Lien for tax and penalties due --- release~~
25 Warrant for distraint. ~~(1) All license taxes, penalties, and~~

1 interest due from any distributor under the provisions of
 2 this part shall be a lien upon any and all property of such
 3 distributor or other person upon the filing by the
 4 department of revenue of a copy of its statement or a
 5 certified copy of any statement filed with the department in
 6 the office of the county clerk of the county where the
 7 distributor's property is situated. If all or part of the
 8 tax imposed by this part is not paid when due, the
 9 department may issue a warrant for distraint as provided in
 10 [sections 1 through 9]. The resulting lien shall have has
 11 precedence over any other claim, lien, or demand filed or
 12 recorded thereafter. The lien may be enforced in the name of
 13 this state in the same manner as judgment liens are
 14 enforced. No action shall may be maintained to enjoin the
 15 collection of all or any part of the license tax.

16 (2) When the amount due is paid in full before the
 17 entry of foreclosure decree, the state treasurer shall
 18 release the lien by filing a written release in the office
 19 of the county clerk where the lien was filed. At any time
 20 prior to the payment of said taxes, penalty, and interest
 21 before the entry of foreclosure decree, the state treasurer
 22 may release from the operation of the lien a part of the
 23 distributor's property to enable the distributor to
 24 mortgage, sell, or otherwise dispose of it in order to
 25 procure funds to pay taxes, penalty, and interest, provided

1 there remains in the judgment of the state treasurer
 2 sufficient property subject to the lien to ensure the
 3 payment of all the unpaid taxes, penalty, and interest."

4 Section 39. Section 15-70-334, MCA, is amended to
 5 read:

6 "15-70-334. Lien for taxes on property of dealer or
 7 user Warrant for distraint. All special fuel taxes due from
 8 any dealer or user under the provisions of this part
 9 together with all penalties and interest thereon, shall be
 10 a lien upon any and all property of such dealer, user, or
 11 other person upon the filing by the department of revenue of
 12 a duplicate copy of the statement so made by the department
 13 or a certified copy of any statement filed by said
 14 department in the office of the county clerk of the county
 15 where such property is situated, which If all or part of the
 16 tax imposed by this part is not paid when due, the
 17 department may issue a warrant for distraint as provided in
 18 [sections 1 through 9]. The resulting lien shall have has
 19 precedence over any other claim, lien, or demand thereafter
 20 filed or recorded and which may be enforced in the name of
 21 the state of Montana in the same manner as judgment liens
 22 are enforced by law."

23 Section 40. Section 16-1-409, MCA, is amended to read:

24 "16-1-409. Failure to make bear tax returns --
 25 penalties. (1) If any brewer or wholesaler subject to the

1 payment of the tax provided for in 16-1-406 through 16-1-408
 2 shall fail, neglect, or refuse to make any return required
 3 by this code or shall fail to make payment of such tax
 4 within the time herein provided, the department shall,
 5 forthwith after such time has expired, proceed to inform
 6 itself as best it may regarding the matters and things
 7 required to be set forth in such return and, from such
 8 information as it may be able to obtain, to make a statement
 9 showing such matters and things and determine and fix the
 10 amount of such tax due the state from such delinquent brewer
 11 or wholesaler.

12 (2) The department shall add to the amount of tax due
 13 a penalty of 5% thereof for the first failure, willful
 14 neglect, or refusal; 10% for the second; 15% for the third;
 15 and 25% for the fourth and each subsequent failure, neglect,
 16 or refusal; which shall be in addition to the 5% penalty
 17 provided for nonpayment of such tax within the time
 18 provided.

19 (3) Said tax and the penalties added thereto shall
 20 bear interest at the rate of 1% per month from the date such
 21 returns should have been made and said tax paid.

22 (4) The department shall then proceed to collect such
 23 tax with penalties and interest. Upon request of the
 24 department it shall be the duty of the attorney general to
 25 commence and prosecute to final determination in any court

1 of competent jurisdiction an action to collect such tax.

2 ~~(5) All taxes due from any brewer or wholesaler under~~
 3 ~~the provisions of this code, together with all penalties and~~
 4 ~~interest thereon, shall be a lien upon any and all property~~
 5 ~~of such brewer or wholesaler upon the filing by the~~
 6 ~~department of a duplicate copy of the statement made by the~~
 7 ~~department or a certified copy of any return filed with the~~
 8 ~~department in the office of the county clerk of the county~~
 9 ~~where such property is situated, which if all or part of the~~
 10 ~~tax imposed upon a brewer or wholesaler by this part is not~~
 11 ~~paid when due, the department may issue a warrant for~~
 12 ~~distrain as provided in [sections 1 through 9]. The~~
 13 ~~resulting lien shall have has precedence over any other~~
 14 ~~claim, lien, or demand thereafter filed or recorded and may~~
 15 ~~be enforced in the name of the state of Montana in the same~~
 16 ~~manner as other liens are enforced by law.~~

17 (6) No action shall be maintained to enjoin the
 18 collection of such tax or any part thereof. ~~When the amount~~
 19 ~~due the state is paid in full and before the entry of~~
 20 ~~foreclosure decree, the department shall release the lien by~~
 21 ~~filing in the office of the county clerk wherein is filed~~
 22 ~~the lien a written release thereof.~~

23 ~~{7} At any time prior to the payment of said taxes,~~
 24 ~~penalty, and interest, before the entry of foreclosure~~
 25 ~~decree, the department may release from the operation of~~

~~said lien a part of said property to enable the brewer or wholesaler to mortgage, sell, or otherwise dispose of the same in order to procure funds with which to pay taxes, penalty, and interest, provided there remains in the judgment of the department sufficient property subject to said lien to ensure the payment of the whole of said unpaid taxes, penalty and interest.~~

(8)(7) Any tax owed by a brewer or wholesaler under this code not paid within the time provided shall be delinquent, and a penalty of 5% shall be added thereto, and the whole thereof shall bear interest at the rate of 1% per month from the date of delinquency until paid. Any brewer or wholesaler who fails, neglects, or refuses to make the return to the department provided for in 16-3-211 or 16-3-231 or refuses to allow such examination as provided for in 16-3-211 or 16-3-231 or fails to make an accurate return according to the manner prescribed shall be deemed guilty of having committed a misdemeanor and upon conviction shall be fined in an amount not exceeding \$1,000.*

Section 41. Section 40-5-222, MCA, is amended to read:

"40-5-222. Support debt based upon subrogation to or assignment of judgment -- notice -- content -- action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon subrogation to or assignment of the judgment created by a district court

order. The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within 20 30 days of the date of receipt.

(2) The notice of debt shall include:

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

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

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

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

(3) Action to collect the subrogated or assigned support debt by distraint and seizure and sale shall be lawful after 20 30 days from the date of service upon the debtor or 20 30 days from the receipt or refusal by the debtor of the notice of debt."

Section 42. Section 40-5-223, MCA, is amended to read:

"40-5-223. Notice of support liability based upon payment of public assistance -- notice -- contents -- collection warrant -- fair hearing. (1) In the absence of a

1 district court order the department may issue a notice of a
 2 support liability accrued or accruing based upon payment of
 3 public assistance to or for the benefit of any dependent
 4 child or children. The notice of liability shall be served
 5 upon the responsible parent in the manner prescribed for the
 6 service of summons in a civil action, in accordance with the
 7 provisions of the Montana Rules of Civil Procedure.

8 (2) The notice of liability shall include:

9 (a) a statement of the support debt accrued or
 10 accruing, computable on the basis of the amount of public
 11 assistance previously paid and to be paid in the future;

12 (b) a statement of the amount of the monthly public
 13 assistance payment;

14 (c) a statement of the name of the recipient and the
 15 name of the child or children for whom assistance is being
 16 paid;

17 (d) a demand for immediate payment of the support debt
 18 or, in the alternative, a demand that the responsible parent
 19 make answer within 20 30 days of the date of service to the
 20 department stating defenses to liability under 40-5-221;

21 (e) a statement that if no answer is made on or before
 22 20 30 days from the date of the service the support debt
 23 shall be assessed and determined subject to computation and
 24 is subject to collection action;

25 (f) a statement that the property of the responsible

1 parent will be subject to distraint and seizure and sale.

2 (3) If no answer is had by the department to the
 3 notice of liability on or before 20 30 days of the date of
 4 service, the support debt shall be assessed and determined
 5 subject to the computation and the department ~~shall~~ may
 6 issue a warrant of for distraint authorizing a collection
 7 action under this part.

8 (4) If the responsible parent, within 20 30 days of
 9 the date of service of notice of liability, makes answer to
 10 the department alleging defenses to liability under
 11 40-5-221, the responsible parent may receive a fair hearing
 12 pursuant to 40-5-226. The decision of the department in the
 13 hearing shall establish the obligation of the responsible
 14 parent, if any, for repayment of public assistance funds
 15 spent to date as an assessed and determined support debt."

16 Section 43. Section 40-5-224, MCA, is amended to read:
 17 "40-5-224. Finding of support liability based upon
 18 payment of public assistance -- warrant of distraint -- bond
 19 to release warrant -- action to collect. (1) If the
 20 department reasonably believes that the parent is not a
 21 resident of this state or is about to move from this state
 22 or has concealed himself, absconded, absented himself or has
 23 removed or is about to remove, secrete, waste, or otherwise
 24 dispose of property which could be made subject to
 25 collection action to satisfy the support debt, the

1 department may issue a warrant of for distraint pursuant to
 2 40-5-241 during the pendency of the fair hearing or
 3 thereafter, whether or not appealed. No further action may
 4 be taken on the warrant until final determination after fair
 5 hearing and/or appeal. The department shall in such cases
 6 make and file in the record of the fair hearing an affidavit
 7 stating the reasons upon which the belief is founded. The
 8 responsible parent may furnish a bond, not to exceed the
 9 amount of the support debt, during pendency of the hearing
 10 or thereafter, and in such case warrants issued shall be
 11 released. If the decision resulting from the hearing is in
 12 favor of the responsible parent, all warrants issued shall
 13 be released.

14 (2) The department may commence action under the
 15 provisions of this part to collect the support debt on the
 16 date of issuance of the decision resulting from the
 17 hearing."

18 Section 44. Section 40-5-225, MCA, is amended to read:

19 "40-5-225. Notice and finding of financial
 20 responsibility of responsible parent -- administrative
 21 procedure. (1) In lieu of the procedures provided in
 22 40-5-223 and 40-5-224, the department may, in the absence of
 23 a district court order, serve on the responsible parent a
 24 notice and finding of financial responsibility requiring a
 25 responsible parent to appear and show cause at a hearing

1 held by the department why the finding of liability and the
 2 amount of support liability should not be finally ordered.
 3 This notice and finding shall relate to the support debt
 4 accrued or accruing under this part and/or Title 53, chapter
 5 4, including periodic payments to be made in the future for
 6 the period of time any child of the responsible parent is in
 7 need. The hearing shall be held pursuant to this part and
 8 the rules of the department, which shall provide for a fair
 9 hearing.

10 (2) The notice and finding of financial responsibility
 11 shall be served in the same manner prescribed for the
 12 service of a summons in a civil action, in accordance with
 13 the provisions of the Montana Rules of Civil Procedure. Any
 14 responsible parent who objects to all or any part of the
 15 notice and finding shall have the right for not more than 20
 16 30 days from the date of service to request in writing a
 17 hearing, notice of which shall be served upon the department
 18 personally or by registered or certified mail. If no request
 19 is made, the notice and finding of financial responsibility
 20 becomes final. If a request is made, the execution of notice
 21 and finding of financial responsibility shall be stayed
 22 pending the decision on such hearing or any direct appeal to
 23 the courts from the decision.

24 (3) The notice and finding of financial responsibility
 25 shall include:

1 (a) the amount the department has determined the
 2 responsible parent owes, the support debt accrued or
 3 accruing, and, as appropriate, the amount to be paid thereon
 4 each month, all computable on the basis of the amount of the
 5 monthly public assistance payment previously paid or need
 6 alleged and the ability of the responsible parent to pay all
 7 or any portion of the debt;

8 (b) a statement of the name of the recipient or
 9 custodian and the name of any child for whom assistance is
 10 being paid or need is alleged; or a statement of the amount
 11 of periodic future support payments for which financial
 12 responsibility is found;

13 (c) a statement that the responsible parent may object
 14 to all or any part of the notice and finding and request a
 15 hearing to show cause why he should not be determined to be
 16 liable for any or all of the past and future debt determined
 17 and the amount to be paid thereon;

18 (d) a statement that if the responsible parent fails
 19 to request a hearing, the support debt and payments stated
 20 in the notice and finding, including periodic support
 21 payments in the future, shall be assessed, determined, and
 22 ordered by the department and that this debt is subject to
 23 collection action;

24 (e) a statement that the property of the debtor,
 25 without further advance notice or hearing, will be subject

1 to distraint and seizure and sale to satisfy the debt."

2 Section 45. Section 40-5-226, MCA, is amended to read:

3 "40-5-226. Administrative hearing -- nature -- place
 4 -- time -- determinations -- failure to appear -- entry of
 5 findings. (1) The administrative hearing is defined as a
 6 "contested case".

7 (2) The administrative hearing may be held in the
 8 county of residence or other county convenient to the
 9 responsible parent.

10 (3) If a hearing is requested, it shall be scheduled
 11 within 30 days.

12 (4) The hearing officer shall determine the liability
 13 and responsibility, if any, of the alleged responsible
 14 parent under 40-5-221 and shall also determine the amount of
 15 periodic payments to be made to satisfy past, present, or
 16 future liability under 40-5-221. In making these
 17 determinations, the hearing officer shall include in his
 18 consideration the scale of suggested minimum contributions
 19 adopted under 40-5-214.

20 (5) If the responsible parent fails to appear at the
 21 hearing, upon a showing of valid service, the hearing
 22 officer shall enter a decision and order declaring the
 23 support debt and payment provisions stated in the notice and
 24 finding of financial responsibility to be assessed,
 25 determined, and subject to collection action. Within 20 30

1 days of entry of the order, the responsible parent may
 2 petition the department to vacate the order upon a showing
 3 of any of the grounds enumerated in the Montana Rules of
 4 Civil Procedure.

5 (6) The hearing officer shall, within 20 days of the
 6 hearing, enter findings, conclusions, and a final decision
 7 determining liability and responsibility and/or future
 8 periodic support payments. The determination of the hearing
 9 officer entered pursuant to this section shall be entered as
 10 an order unless such findings are set aside pursuant to
 11 40-5-253 and shall limit the support debt under 40-5-221 to
 12 the amounts stated in the decision.

13 (7) The decision establishing liability and future
 14 periodic support payments is superseded upon entry of a
 15 district court order for support to the extent the district
 16 court order is inconsistent with the hearing order or
 17 decision. In the absence of a district court order the
 18 responsible parent may petition the department for issuance
 19 of an order to appear and show cause based on a showing of
 20 good cause and material change of circumstances to require
 21 the other party to appear and show cause why the decision
 22 previously entered should not be prospectively modified. The
 23 order to appear and show cause together with a copy of the
 24 affidavit upon which the order is based shall be served by
 25 the petitioning party on the nonmoving party in the manner

1 of a summons in a civil action. A hearing shall be set not
 2 less than 15 or more than 30 days from the date of service,
 3 unless extended for good cause shown. Prospective
 4 modification may be ordered but only upon a showing of good
 5 cause and material change of circumstances.

6 (8) The department, in its original determinations,
 7 and the hearing officer, in making determinations based on
 8 objections to original determinations or on petitions to
 9 modify, shall consider the standards promulgated for
 10 determination of support payments used by the district court
 11 of the county of residence of the responsible parent.

12 (9) Debts determined pursuant to this section, accrued
 13 and not paid, are subject to collection action under this
 14 part without further necessity of action by the hearing
 15 officer."

16 Section 46. Section 40-5-241, MCA, is amended to read:
 17 "40-5-241. Warrant of for ~~execution.~~ ~~(1)~~
 18 ~~twenty-one~~ thirty-one days after receipt or refusal of
 19 notice of debt under provisions of 40-5-222 or ~~21~~ 31 days
 20 after service of notice of debt or as otherwise appropriate
 21 under the provisions of 40-5-223 and 40-5-224, the
 22 department may issue ~~an abstract of any final order in the~~
 23 ~~form of a warrant of~~ for ~~distrain under its official seal~~
 24 ~~directed to the sheriff of any county of the state~~
 25 ~~commanding him to levy upon and sell the real and personal~~

1 property--of--the--person--owing--the--support--debt--within--his
 2 county--for--the--payment--of--the--debt,--interest,--and--cost--of
 3 executing--the--warrant--and--to--return--the--warrant--to--the
 4 department--and--pay--to--it--the--money--collected--within--60--days
 5 from--the--date--of--the--issuance--of--the--warrant based on the
 6 amount of the support debt. The warrant is subject to the
 7 provisions of [sections 1, 4, 5, 8, and 9], with references
 8 to "tax" taken to mean "support debt" and references to
 9 "taxpayer" taken to mean "person owing the support debt", as
 10 well as the provisions of this part. Notwithstanding the
 11 provisions of [subsection (3) of section 5], an appeal from
 12 a hearing may be made directly to district court, as
 13 provided in 40-5-253, and is not appealable to the state tax
 14 appeal board.

15 ~~(2) The sheriff shall, within 5 days after the receipt~~
 16 ~~of the warrants, file a copy of the warrant with the clerk of~~
 17 ~~the district court of his county and the clerk shall enter~~
 18 ~~in the judgment docket, in the column for judgment debtors,~~
 19 ~~the name of the debtor mentioned in the warrant and, in~~
 20 ~~appropriate columns, the amount of the support debt and the~~
 21 ~~date when such copy is filed. The amount of the warrant so~~
 22 ~~docketed is a lien upon the title to and interest in real~~
 23 ~~property or chattels real of the person against whom it is~~
 24 ~~levied in the same manner as a judgment docketed in the~~
 25 ~~office of such clerk. This lien has the same preference~~

1 against the assets of the debtor as claims for taxes

2 ~~(3) The sheriff shall proceed to levy upon and sell~~
 3 ~~the property of the debtor in the same manner prescribed by~~
 4 ~~law for executions issued against property upon judgments of~~
 5 ~~a court of record and is entitled to the same fees for his~~
 6 ~~services in executing the warrants to be collected in the~~
 7 ~~same manner.~~

8 ~~(4) If the net proceeds of the sale, upon application~~
 9 ~~to the debt claimed, do not satisfy the debt in full, the~~
 10 ~~department shall have judgment for any deficiency remaining~~
 11 ~~unsatisfied.~~

12 Section 47. Section 40-5-245, MCA, is amended to read:
 13 "40-5-245. Satisfaction of debt after levy on property
 14 -- redemption. Any person owning real property or any
 15 interest in real property against which a warrant of for
 16 distrain has been issued and levied upon may pay the amount
 17 due, together with expenses of the proceedings and
 18 reasonable attorney fees to the department. Upon full
 19 payment the sheriff shall ~~restore~~ the property shall be
 20 restored to him, and all further proceedings on the warrant
 21 shall cease. The person shall also have the right within 240
 22 days after sale of property levied upon to redeem the
 23 property by making payment to the purchaser in the amount
 24 paid by the purchaser plus interest at the statutory
 25 interest rate payable on judgments recovered in the courts

1 of this state."

2 Section 48. Section 40-5-246, MCA, is amended to read:

3 "40-5-246. Release of distraint and return of seized
4 property -- effect. The department may at any time release a
5 distraint on all or part of the property of the debtor or
6 order the sheriff--to return of seized property without
7 liability, if assurance of payment is determined to be
8 adequate by the department or if the action will facilitate
9 the collection of the debt. The release or return does not
10 operate to prevent future action to collect from the the
11 same or other property."

12 Section 49. Section 40-5-255, MCA, is amended to read:

13 "40-5-255. Charging off child support debts as
14 uncollectible. Any support debt due the department from a
15 responsible parent which the department determines
16 uncollectible may be transferred from accounts receivable to
17 a suspense account and cease to be accounted as an asset.
18 In the event a warrant of for distraint has been filed and
19 the support debt has subsequently been charged off as
20 uncollectible, the department shall issue a release of lien.
21 At any time after 6 years from the date a support debt was
22 incurred, the department may charge off as uncollectible any
23 support debt upon which the department finds there is no
24 available, practical, or lawful means by which the debt may
25 be collected. No proceedings or action under the provisions

1 of this part may be begun after expiration of the 6-year
2 period to institute collection of a support debt. Nothing
3 herein may be construed to render invalid or nonactionable a
4 warrant of for distraint filed with the clerk of court prior
5 to the expiration of the 6-year period or an assignment of
6 earnings executed prior to the expiration of the 6-year
7 period."

8 Section 50. Section 40-5-256, MCA, is amended to read:

9 "40-5-256. Employee debtor rights protected --
10 limitation. No employer may discharge or prejudice an
11 employee for reason that an assignment of earnings has been
12 presented in settlement of a support debt or that a warrant
13 of for distraint has been served against the employee's
14 earnings. This provision does not apply if more than three
15 warrants are served upon the same employer within any period
16 of 12 consecutive months."

17 Section 51. Section 69-1-226, MCA, is amended to read:

18 "69-1-226. Failure to pay fee -- penalty and interest
19 -- collection of fee. (1) If a regulated company or an
20 officer or employee of a regulated company files the
21 statement required by 69-1-223(2) but fails, neglects, or
22 refuses to pay the fee due within the time required, the
23 department of revenue may after the time for payment has
24 expired add to the fee due, in addition to any other penalty
25 provided by law, a penalty of 10% thereof plus interest at

1 the rate of 1% per month or fraction of month computed on
2 the total amount of the fee and penalty. Interest is
3 computed from the date the fee is due to the date of
4 payment.

5 (2) The department of revenue shall mail to the
6 regulated company a letter setting forth the amount of the
7 fee, penalty, and interest and notifying the company that
8 payment of the full amount of the fee, penalty, and interest
9 must be remitted within 15 days of the regulated company's
10 receipt of the letter; otherwise a lien warrant for
11 distrain may be filed.

12 (3) The 10% penalty may be waived by the department of
13 revenue if reasonable cause for failure and neglect to make
14 payment is provided to the department."

15 Section 52. Section 69-1-227, MCA, is amended to read:

16 "~~69-1-227. Fees, penalty, and interest as lien warrant~~
17 ~~for distrain. The fees, penalty, and interest due from a~~
18 ~~regulated company are a lien upon all real property of the~~
19 ~~regulated company within a county when the department of~~
20 ~~revenue files a certified copy of the amounts due in the~~
21 ~~office of the clerk of court of the county where the~~
22 ~~property is located. If the fee imposed by this part is not~~
23 ~~paid when due, the department may issue a warrant for~~
24 ~~distrain as provided in [sections 1 through 9]. The~~
25 ~~resulting~~ lien has precedence over any claim, lien, or

1 demand thereafter filed and recorded ~~and may be enforced in~~
2 ~~the name of the state of Montana in the same manner as~~
3 ~~judgment liens are enforced by law."~~

4 Section 53. Codification instruction. Sections 1
5 through 9 are intended to be codified as an integral part of
6 Title 15, and the provisions of Title 15 apply to sections 1
7 through 9.

8 Section 54. Repealer. Sections 15-30-315 and
9 15-31-527, MCA, are repealed.

-End-

1 SENATE BILL NO. 272
2 INTRODUCED BY MAZUREK, TURNAGE,
3 S. BROWN, M. ANDERSON
4 BY REQUEST OF THE DEPARTMENT OF REVENUE
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE,
7 CLARIFY, AND UNIFY THE PROCEDURES FOR THE ISSUANCE OF A
8 WARRANT FOR DISTRAINT BY THE DEPARTMENT OF REVENUE; AMENDING
9 SECTIONS 15-30-208, 15-30-226, 15-30-311, 15-30-312,
10 15-31-406, 15-31-525, 15-35-105, 15-36-107, 15-36-108,
11 15-37-107, 15-37-206, 15-38-107, 15-38-108, 15-51-111,
12 15-51-112, 15-53-112, 15-53-113, 15-54-112, 15-54-113,
13 15-55-109, 15-56-112, 15-56-113, 15-58-106, 15-58-107,
14 15-59-106, 15-59-107, 15-59-205, 15-59-206, 15-70-211,
15 15-70-334, 16-1-409, 40-5-222 through 40-5-226, 40-5-241,
16 40-5-245, 40-5-246, 40-5-255, 40-5-256, 69-1-226, AND
17 69-1-227, MCA; AND REPEALING SECTIONS 15-30-315 AND
18 15-31-527, MCA."
19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
21 NEW SECTION. Section 1. Warrant for distraint: (1) A
22 warrant for distraint is an order, under the official seal
23 of the department of revenue, directed to a sheriff of any
24 county of Montana or to any agent authorized by law to
25 collect a tax. The order commands the recipient to levy upon

There are no changes in SB 272, and due to length will not be rerun. Please refer to yellow copy for complete text.

1 SENATE BILL NO. 272
 2 INTRODUCED BY MAZUREK, TURNAGE,
 3 S. BROWN, M. ANDERSON
 4 BY REQUEST OF THE DEPARTMENT OF REVENUE
 5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE,
 7 CLARIFY, AND UNIFY THE PROCEDURES FOR THE ISSUANCE OF A
 8 WARRANT FOR DISTRRAINT BY THE DEPARTMENT OF REVENUE; AMENDING
 9 SECTIONS 15-30-208, 15-30-226, 15-30-311, 15-30-312,
 10 15-31-406, 15-31-525, 15-35-105, 15-36-107, 15-36-108,
 11 15-37-107, 15-37-206, 15-38-107, 15-38-108, 15-51-111,
 12 15-51-112, 15-53-112, 15-53-113, 15-54-112, 15-54-113,
 13 15-55-109, 15-56-112, 15-56-113, 15-58-106, 15-58-107,
 14 15-59-106, 15-59-107, 15-59-205, 15-59-206, 15-70-211,
 15 15-70-334, 16-1-409, 40-5-222 through 40-5-226, 40-5-241,
 16 40-5-245, 40-5-246, 40-5-255, 40-5-256, 69-1-226, AND
 17 69-1-227, MCA; AND REPEALING SECTIONS 15-30-315 AND
 18 15-31-527, MCA."
 19

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

21 NEW SECTION. Section 1. Warrant for distraint: (1) A
 22 warrant for distraint is an order, under the official seal
 23 of the department of revenue, directed to a sheriff of any
 24 county of Montana or to any agent authorized by law to
 25 collect a tax. The order commands the recipient to levy upon

1 and sell the real and personal property of a delinquent
 2 taxpayer.

3 (2) Upon filing the warrant as provided in [section
 4 4], there is a lien against all real and personal property
 5 of the delinquent taxpayer located in the county where the
 6 warrant is filed. The resulting lien is treated in the same
 7 manner as a properly docketed judgment lien, and the
 8 department may collect delinquent taxes and enforce the tax
 9 lien in the same manner as a judgment is enforced.

10 (3) A warrant may be issued for the amount of unpaid
 11 tax plus penalty, if any, and accumulated interest. The lien
 12 is for the amount indicated on the warrant plus accrued
 13 interest from the date of the warrant.

14 NEW SECTION. Section 2. Issuance of warrant. (1) If
 15 a tax, other than inheritance or estate tax, administered
 16 and collected by the department is not paid within 30 days
 17 of the due date, the department may issue a notice to the
 18 taxpayer notifying him that unless payment is received
 19 within 30 days of the date of the notice, a warrant for
 20 distraint may be issued. Thirty days after the date of the
 21 notice, the department may issue a warrant if payment is not
 22 received.

23 (2) Use of the procedure to issue a warrant under this
 24 section does not preclude use of the procedure under
 25 [section 3] if the department determines that it is

1 appropriate to utilize [section 3].

2 NEW SECTION. Section 3. Emergency issuance of
3 warrant. (1) The department may issue a warrant for
4 distraint without waiting for the expiration of either
5 30-day period provided for in [section 2] if:

6 (a) the department determines that the collection of
7 the tax is or may be jeopardized because of the delay
8 imposed by the waiting period; or

9 (b) the tax involved is a tax considered to be held in
10 trust by the taxpayer under state law.

11 (2) Whenever the provisions of this section are
12 utilized, the department must notify the taxpayer that
13 warrants have been issued.

14 NEW SECTION. Section 4. Filing with district court.

15 (1) After issuing a warrant, the department may file the
16 warrant with the clerk of a district court. The clerk shall
17 file the warrant in the judgment docket, with the name of
18 the taxpayer listed as the judgment debtor.

19 (2) A copy of the filed warrant may be sent by the
20 department to the sheriff or agent authorized to collect the
21 tax.

22 NEW SECTION. Section 5. Hearing. (1) Except as
23 provided in [section 7], a taxpayer has the right to request
24 a hearing on the matter of tax liability prior to execution
25 on a filed warrant for distraint.

1 (2) The department must provide notice of the right to
2 hearing to the taxpayer. A request for a hearing must be
3 made in writing within 30 days of the date of the notice.
4 This notice may be given prior to the notice referred to in
5 [section 2]. If a written request for a hearing is received,
6 the warrant may not be executed upon until after the date
7 the hearing is held or, if the taxpayer fails to attend a
8 scheduled hearing, the date the hearing is scheduled.

9 (3) The hearing is subject to the contested case
10 provisions of the Montana Administrative Procedure Act.
11 Before a decision may be appealed to the district court, an
12 appeal must first be taken to the state tax appeal board. A
13 request for a hearing must be in writing in order to
14 postpone execution on a warrant.

15 NEW SECTION. Section 6. Execution upon warrant. (1)
16 Upon receipt of a copy of the filed warrant and notice from
17 the department that the applicable hearing provisions have
18 been complied with, the sheriff or agent authorized to
19 collect THE tax shall proceed to execute upon the warrant in
20 the same manner as prescribed for execution upon a judgment.

21 (2) A notice of levy may be made by means of a
22 certified letter by an agent authorized to collect THE tax.
23 An agent is not entitled to any fee or compensation in
24 excess of actual expenses incurred in enforcing the warrant.

25 (3) A sheriff OR AGENT shall return a warrant, along

1 with any funds collected, within 90 days of the date of the
2 warrant.

3 (4) If the warrant is returned not satisfied in full,
4 the department has the same remedies to collect the
5 deficiency as are available for any civil judgment.

6 NEW SECTION. Section 7. Emergency execution upon
7 warrant. (1) The department may execute upon a filed warrant
8 for distraint without providing an opportunity for a hearing
9 prior to execution if:

10 ~~(a)~~ the department determines that the collection of
11 the tax is jeopardized because of the delay imposed by the
12 hearing requirement; or

13 ~~(b) --the tax involved is a tax considered to be held in~~
14 ~~trust by the taxpayer under state law.~~

15 (2) When the provisions of this section are utilized,
16 the department must notify the taxpayer and inform the
17 taxpayer that he has a right to request a hearing to be held
18 subsequent to execution. A hearing, if desired, must be
19 requested in writing within 30 days of the date of the
20 notice and, if requested, must be held as soon as possible.
21 The commencement of a proceeding under [section 5] does not
22 preclude the use of the provisions of this section if the
23 department determines that such action is appropriate.

24 NEW SECTION. Section 8. Release of lien. (1) Upon
25 payment in full of the unpaid tax plus penalty, if any, and

1 accumulated interest, the department shall release the lien
2 acquired by filing the warrant for distraint.

3 (2) Upon partial payment or whenever the department
4 determines that a release or partial release of the lien
5 will facilitate the collection of the unpaid tax, penalty,
6 and interest, the department may release or may partially
7 release the lien acquired by filing the warrant for
8 distraint. The department may release the lien if it
9 determines that the lien is unenforceable.

10 NEW SECTION. Section 9. Remedy not exclusive. The use
11 of the warrant for distraint provided for in [sections 1
12 through 8] is not exclusive, and the department may use any
13 other remedy provided by law for the collection of tax
14 debts.

15 Section 10. Section 15-30-208, MCA, is amended to
16 read:

17 "15-30-208. Withheld taxes held in trust for state --
18 warrants to collect. (1) Every employer who deducts and
19 withholds any amounts under the provisions of 15-30-201
20 through 15-30-209 shall hold the same in trust for the state
21 of Montana; ~~and if~~

22 (2) ~~If~~ any tax imposed by 15-30-201 through 15-30-209
23 or any portion of such tax is not paid ~~within 60 days after~~
24 ~~the same becomes~~ when due, the department ~~shall~~ may issue a
25 warrant ~~under its official seal which shall have the same~~

1 ~~force and effect and shall be enforced and carried into~~
2 ~~execution in the same manner as that specified in 15-30-311~~
3 ~~with respect to warrants relating to unpaid income taxes for~~
4 ~~distrain as provided in [sections 4 1 through 9]."~~

5 Section 11. Section 15-30-226, MCA, is amended to
6 read:

7 "15-30-226. Amounts withheld as ~~lien~~ against agent ---
8 priority considered in trust. In addition to the penalties
9 provided above, if any withholding agent shall withhold any
10 sums required to be withheld and paid over to the department
11 under 15-30-221 through 15-30-228, the amount of the sums so
12 withheld shall constitute a first lien against all property,
13 real and personal, tangible and intangible, of the
14 withholding agent, which lien shall take precedence over all
15 others, it being the intention of 15-30-221 through
16 15-30-228 that the funds The amounts withheld by the
17 withholding agent shall be under 15-30-221 through 15-30-228
18 are considered funds held in trust by the withholding
19 agent."

20 Section 12. Section 15-30-311, MCA, is amended to
21 read:

22 "15-30-311. Levy upon and sale of property Warrant for
23 distrain. ~~{1}~~ If any tax imposed by this chapter, except
24 15-30-221 through 15-30-229, or any portion of such tax is
25 not paid within 60 days after the same becomes when due, the

1 department shall may issue a warrant under its official seal
2 directed to the sheriff of any county of the state
3 commanding him to levy upon and sell the real and personal
4 property of the person owing the same found within his
5 county for the payment of the amount thereof with the added
6 penalties, interest, and the cost of executing the warrant
7 and to return such warrant to the department and pay to it
8 the money collected by virtue thereof by a time to be
9 therein specified, not more than 60 days from the date of
10 the warrant for distrain as provided in [sections 1 through
11 9].

12 ~~{2}~~ The sheriff shall, within 5 days after the receipt
13 of the warrant, file with the clerk of the district court of
14 his county a copy thereof and thereupon the clerk shall
15 enter in the judgment docket, in the column for judgment
16 debtors, the name of the taxpayer mentioned in the warrant
17 and, in appropriate columns, the amount of the tax or
18 portion thereof and penalties for which the warrant is
19 issued and the date when such copy is filed. Thereupon the
20 amount of such warrant so docketed shall become a lien upon
21 the title to and interest in real property or chattels real
22 of the person against whom it is levied in the same manner
23 as a judgment docketed in the office of such clerk.

24 ~~{3}~~ The sheriff shall thereupon proceed upon the same
25 in all respects, with like effect, and in the same manner

1 prescribed by law in respect to executions issued against
 2 property upon judgments of a court of record and shall be
 3 entitled to the same fees for his services in executing the
 4 warrant to be collected in the same manner in the
 5 discretion of the department. A warrant of like terms,
 6 force and effect may be issued and directed to any agent
 7 authorized to collect income taxes and in the execution
 8 thereof such agent shall have the powers conferred by law
 9 upon sheriffs but shall be entitled to no fee or
 10 compensation in excess of actual expenses paid in the
 11 performance of such duties in the execution of such warrants.
 12 A notice of levy issued by the department's authorized agent
 13 may be served by certified mail.

14 (4) If a warrant be returned not satisfied in full
 15 the department shall have the same remedies to enforce the
 16 claim for taxes against the taxpayer as if the people of the
 17 state had recovered judgment against the taxpayer for the
 18 amount of the tax."

19 Section 13. Section 15-30-312, MCA, is amended to
 20 read:

21 "15-30-312. Jeopardy assessments. (1) If the
 22 department finds that the assessment or collection of the
 23 tax or a deficiency for any taxable year will be jeopardized
 24 in whole or in part by delay, it may mail or issue notice of
 25 its findings to the taxpayer, together with a demand for

1 immediate payment of the tax or deficiency declared to be in
 2 jeopardy, including penalty and accrued interest. In the
 3 case of a tax for a current period, the department may
 4 declare the taxable period of the taxpayer immediately
 5 terminated and shall mail or issue notice of its findings to
 6 the taxpayer, together with a demand for immediate payment
 7 of the tax based on the period declared terminated.

8 (2) A jeopardy assessment is immediately due and
 9 payable, and proceedings for collection may be commenced at
 10 once, including the issuance of a warrant for distraint as
 11 provided in [sections 1 through 9]."

12 Section 14. Section 15-31-406, MCA, is amended to
 13 read:

14 "15-31-406. License tax sections incorporated by
 15 reference. The provisions of the following sections of this
 16 chapter are incorporated into this part by reference and
 17 made a part hereof:

18 (1) that part of 15-31-101 which defines the term
 19 "corporation" and 15-31-102, which specifies the classes of
 20 organizations whose income shall not be taxed;

21 (2) sections 15-31-111 through 15-31-114; 15-31-141
 22 and 15-31-142; 15-31-301 through 15-31-313; 15-31-501
 23 through 15-31-509; 15-31-525 through ~~15-31-527~~ and
 24 15-31-526; 15-31-531 and 15-31-532; and 15-31-541 through
 25 15-31-543, except that the term "gross income" shall be

1 construed as excluding the net amount of interest income
 2 from valid obligations of the United States and except that
 3 wherever the words "tax", "license tax", "license fee",
 4 "corporation excise tax", or like words appear, referring to
 5 the tax imposed under part 1 of this chapter, there shall be
 6 substituted the words "income tax".

7 Section 15. Section 15-31-525, MCA, is amended to
 8 read:

9 "15-31-525. Levy upon and sale of property. If any tax
 10 imposed by this chapter or any portion of such tax is not
 11 paid within 60 days after the same becomes when due, the
 12 department of revenue shall may issue a warrant directed to
 13 the sheriff of any county of the state commanding him to
 14 levy upon and sell the real and personal property of the
 15 corporation owning the same found within his county, for
 16 the payment of the amount thereof with the added penalties,
 17 interest, and the cost of executing the warrant and to
 18 return such warrant to the department and pay to it the
 19 money collected by virtue thereof by a time to be therein
 20 specified, not more than 60 days from the date of the
 21 warrant. The sheriff shall, within 5 days after the receipt
 22 of the warrant, file with the clerk of the district court of
 23 his county a copy thereof, and thereupon the clerk shall
 24 enter in the judgment docket, in the column for judgment
 25 debtors, the name of the taxpayer mentioned in the warrant

1 and, in appropriate columns, the amount of the tax or
 2 portion thereof and penalties for which the warrant is
 3 issued and the date when such copy is filed, and thereupon
 4 the amount of such warrant so docketed shall become a lien
 5 upon the title to and interest in real property or chattels
 6 real of the corporation against whom it is levied in the
 7 same manner as a judgment docketed in the office of such
 8 clerk. The sheriff shall thereupon proceed upon the same in
 9 all respects, with like effect, and in the same manner
 10 prescribed by law in respect to executions issued against
 11 property upon judgments of a court of record and shall be
 12 entitled to the same fees for his services in executing the
 13 warrant to be collected in the same manner, in the
 14 discretion of the department, as a warrant of like terms,
 15 force, and effect may be issued and directed to any agent
 16 authorized to collect income taxes, and in the execution
 17 thereof such agent shall have the powers conferred by law
 18 upon sheriffs but shall be entitled to no fee or
 19 compensation in excess of actual expenses paid in the
 20 performance of such duty, if a warrant be returned not
 21 satisfied in full, the department shall have the same
 22 remedies to enforce the claim for taxes against the taxpayer
 23 as if the people of the state had recovered judgment against
 24 the taxpayer for the amount of the tax, for distraint as
 25 provided in [sections 1 through 9]."

1 Section 16. Section 15-35-105, MCA, is amended to
2 read:

3 "15-35-105. Penalty for delinquent tax. The department
4 shall add to the amount of all delinquent severance taxes a
5 penalty of 10% of the delinquent amount plus interest at the
6 rate of 1% per month or fraction thereof computed on the
7 total amount of severance tax and penalty. Interest shall be
8 computed from the date the severance tax was due to the date
9 of payment. The department shall mail to the person required
10 to file a quarterly report and pay any severance tax, a
11 letter setting forth the amount of tax, penalty, and
12 interest due, and the letter shall further contain a
13 statement that if payment is not made ~~within 15 days~~, a ~~lien~~
14 warrant for distraint may be filed ~~as set forth in~~
15 ~~15-23-794~~. The penalty amount may be waived by the
16 department if reasonable cause for the failure or neglect to
17 file the quarterly statement is provided to the department."

18 Section 17. Section 15-36-107, MCA, is amended to
19 read:

20 "15-36-107. Procedure to compute tax in absence of
21 statement -- penalty and interest. If any such person shall
22 fail, neglect, or refuse to file any statement required by
23 15-36-105 within the time therein required, the department
24 of revenue shall, immediately after such time has expired,
25 proceed to inform itself as best it may regarding the number

1 of barrels of petroleum and other mineral or crude oil or
2 cubic feet of gas extracted and produced by such person in
3 this state during such quarter and during each month thereof
4 and the average value thereof during each such month and
5 shall determine and fix the amount of the severance taxes
6 due to the state from such person for such quarter and shall
7 add to the amount of such severance taxes a penalty of 10%
8 thereof plus interest at the rate of 1% per month or
9 fraction thereof computed on the total amount of severance
10 taxes and penalty. Interest shall be computed from the date
11 the severance taxes were due to the date of payment. The
12 department shall mail to the person required to file a
13 quarterly statement and pay any severance tax, a letter
14 setting forth the amount of severance tax, penalty, and
15 interest due, and the letter shall further contain a
16 statement that if payment is not made ~~within such time~~, a
17 ~~lien~~ warrant for distraint may be filed ~~as set forth in~~
18 ~~15-36-108~~. ~~Upon receipt of said letter, the person shall~~
19 ~~within 15 days remit to the department the full amount of~~
20 ~~severance tax, penalty, and interest due.~~ The 10% penalty
21 herein provided may be waived by the department if
22 reasonable cause for the failure and neglect to file the
23 statement required by 15-36-105 is provided to the
24 department."

25 Section 18. Section 15-36-108, MCA, is amended to

1 read:

2 ~~"15-36-108. Procedure for collection of tax Warrant~~
 3 ~~for distraint. All tax, penalty, and interest due from any~~
 4 ~~person under this part shall be a lien upon any and all real~~
 5 ~~property of such person when the department of revenue files~~
 6 ~~in the office of the county clerk in the county where such~~
 7 ~~real property is situated a certified copy of its statement~~
 8 ~~of estimated tax computed under 15-36-107. This if all or~~
 9 ~~part of the tax imposed by this part is not paid when due,~~
 10 ~~the department may issue a warrant for distraint as provided~~
 11 ~~in [sections 1 through 9]. The resulting lien shall have~~
 12 ~~has precedence over any other claim, lien, or demand~~
 13 ~~thereafter filed and recorded and may be enforced in the~~
 14 ~~name of the state of Montana in the same manner as judgment~~
 15 ~~liens are enforced by law."~~

16 Section 19. Section 15-37-107, MCA, is amended to
 17 read:

18 ~~"15-37-107. Lien for collection of tax Warrant for~~
 19 ~~distraint. All tax, penalty, and interest due from any~~
 20 ~~person under this part shall be a lien upon any and all real~~
 21 ~~property of such person when the department of revenue files~~
 22 ~~in the office of the county clerk in the county where such~~
 23 ~~real property is situated a certified copy of its statement~~
 24 ~~of estimated tax computed under 15-37-106. This if all or~~
 25 ~~part of the tax imposed by this part is not paid when due,~~

1 the department may issue a warrant for distraint as provided
 2 in [sections 1 through 9]. The resulting lien shall have has
 3 precedence over any other claim, lien, or demand thereafter
 4 filed and recorded and may be enforced in the name of the
 5 state of Montana in the same manner as judgment liens are
 6 enforced by law."

7 Section 20. Section 15-37-206, MCA, is amended to
 8 read:

9 ~~"15-37-206. Lien for collection Collection -- warrant~~
 10 ~~for distraint. (1) The department shall mail to the person~~
 11 ~~required to file a quarterly statement and pay any license~~
 12 ~~tax a letter and tax assessment statement setting forth the~~
 13 ~~amount of delinquent license tax, penalty, and interest due.~~
 14 ~~The letter shall advise that if payment is not made within~~
 15 ~~15 days, a warrant for distraint may be filed. Upon~~
 16 ~~receipt of the letter, the person shall remit to the~~
 17 ~~department within 15 days, the full amount of license tax,~~
 18 ~~penalty, and interest due. All tax, penalty, and interest~~
 19 ~~due from any person under this part shall be a lien upon any~~
 20 ~~and all real property of such person upon the filing by the~~
 21 ~~department of the duplicate tax assessment statement in the~~
 22 ~~office of the county clerk in the county where such real~~
 23 ~~property is situated.~~

24 ~~(2) If all or part of the tax imposed by this part is~~
 25 ~~not paid when due, the department may issue a warrant for~~

1 distrain as provided in [sections 1 through 9]. The
 2 resulting lien has precedence over any other claim, lien, or
 3 demand thereafter filed and recorded ~~and may be enforced in~~
 4 ~~the name of the state of Montana in the same manner as~~
 5 ~~judgment liens are enforced at law.~~"

6 Section 21. Section 15-38-107, MCA, is amended to
 7 read:

8 "15-38-107. Procedure in case of failure to file
 9 statement. (1) If any person fails, refuses, or neglects to
 10 make and file a statement and return it within the time
 11 prescribed, the department shall immediately after such time
 12 has expired determine, as nearly as may be possible from any
 13 returns or reports filed with the state or from any other
 14 information which the department may be able to obtain, the
 15 total gross value of product of such person from such
 16 business during the calendar year immediately preceding the
 17 year in which the tax is to be paid and shall fix the amount
 18 of the tax due to the state from such person for such
 19 calendar year and shall add to the amount of such tax a
 20 penalty of 10% thereof plus interest at the rate of 1% a
 21 month or fraction thereof computed on the total amount of
 22 tax and penalty. Interest shall be computed from the date
 23 the tax was due to the date of payment.

24 (2) The department shall mail to the person required
 25 to file an annual statement and pay any tax, a letter

1 setting forth the amount of tax, penalty, and interest due.
 2 ~~Upon receipt of this letter, the person shall remit to the~~
 3 ~~department the full amount of license tax, penalty, and~~
 4 ~~interest due within 15 days. The letter shall advise that if~~
 5 ~~payment is not received, a warrant for distrain may be~~
 6 ~~filed.~~

7 (3) The 10% penalty may be waived by the department if
 8 reasonable cause for the failure and neglect to file the
 9 statement required by 15-38-105 is provided to the
 10 department."

11 Section 22. Section 15-38-108, MCA, is amended to
 12 read:

13 "15-38-108. Lien for collection warrant for distrain-
 14 The tax assessed against any person under this chapter,
 15 together with penalties and interest thereon, shall be a
 16 lien upon any and all property owned by such person within
 17 this state, which lien shall attach on the date the
 18 department files in the office of the county clerk in the
 19 county where such property is situated a certified copy of
 20 its letter sent under 15-38-107(2). This if all or part of
 21 the tax imposed by this chapter is not paid when due, the
 22 department may issue a warrant for distrain as provided in
 23 [sections 1 through 9]. The resulting lien shall have
 24 precedence over any other claim, lien, or demand thereafter
 25 filed and recorded ~~and may be enforced in the name of the~~

1 state-of-Montana-in-the-same-manner-as-judgment-liens-are
2 enforced-by-law."

3 Section 23. Section 15-51-111, MCA, is amended to
4 read:

5 "15-51-111. Procedure to compute tax in absence of
6 statement. If any person fails, neglects, or refuses to file
7 any statement required by 15-51-101 within the time therein
8 required, the department of revenue shall, after such time
9 has expired, proceed to inform itself as best it may
10 regarding the number of KWH produced by such person in this
11 state during such quarter and compute the amount of taxes
12 due to the state from such person for such quarter and add
13 the penalty and interest as required by 15-51-103. The
14 department shall mail to the person required to file a
15 quarterly report and pay such tax a letter setting forth the
16 amount of tax, penalty, and interest due, and the letter
17 must further contain a statement that if payment is not made
18 within such time, a lien warrant for distraint may be filed.
19 ~~Upon receipt of the letter, the person shall remit to the~~
20 ~~department the full amount of tax, penalty, and interest~~
21 ~~within 15 days.~~ The 10% penalty may be waived by the
22 department if reasonable cause for failure and neglect to
23 file the statement required by 15-51-101 is provided to the
24 department."

25 Section 24. Section 15-51-112, MCA, is amended to

1 read:

2 "15-51-112. Procedure for collection of tax warrant
3 for distraint. ~~All tax, penalty, and interest due from any~~
4 ~~person under this chapter is a lien upon any and all real~~
5 ~~property of such person upon the filing by the department of~~
6 ~~revenue of the duplicate tax assessment statement in the~~
7 ~~office of the county clerk in the county where such real~~
8 ~~property is situated. If all or part of the tax imposed by~~
9 ~~this chapter is not paid when due, the department may issue~~
10 ~~a warrant for distraint as provided in [sections 1 through~~
11 ~~9]. The resulting lien has precedence over any other claim,
12 lien, or demand thereafter filed and recorded and may be
13 enforced in the name of the state of Montana in the same
14 manner as judgment liens are enforced by law."~~

15 Section 25. Section 15-53-112, MCA, is amended to
16 read:

17 "15-53-112. Estimation of tax upon failure to file
18 statement or pay tax -- notice. (1) If a person fails,
19 neglects, or refuses to file the statement required by
20 15-53-102 within the time required or fails to pay the tax
21 required by this chapter on or before the date payment is
22 due, the department of revenue shall proceed to inform
23 itself as best it may regarding the total gross income of
24 the person from its telephone business within this state
25 during the quarter.

1 (2) The department shall compute the amount of license
2 taxes due from the person and shall mail to the person a
3 letter and tax assessment statement setting forth the amount
4 of delinquent license tax, penalty, and interest due. The
5 letter shall advise that if payment is not made, ~~within 15~~
6 ~~days a lien warrant for distraint~~ may be filed."

7 Section 26. Section 15-53-113, MCA, is amended to
8 read:

9 "~~15-53-113. Lien-for-collection-of-tax Warrant for~~
10 ~~distraint. All-tax,--penalty,--and--interest--due--from--any~~
11 ~~person-under-this-chapter-shall-be-a--lien--upon--all--real~~
12 ~~property--of--the-person-within-a-county-when-the-department~~
13 ~~of-revenue-files-in-the-office-of-the-clerk-of-court-of--any~~
14 ~~county--where-the-real-property-is-situated-a-certified-copy~~
15 ~~of-its-assessment-letters. If all or part of the tax imposed~~
16 ~~by this chapter is not paid when due, the department may~~
17 ~~issue a warrant for distraint as provided in [sections 1~~
18 ~~through 9]. The resulting lien has precedence over any~~
19 ~~claim, lien, or demand thereafter filed and recorded and may~~
20 ~~be enforced in the name of the state of Montana in the same~~
21 ~~manner as judgment liens are enforced by law."~~

22 Section 27. Section 15-54-112, MCA, is amended to
23 read:

24 "15-54-112. Estimation of tax upon failure to file
25 statement -- notice. (1) If a person fails, neglects, or

1 refuses to make and file the statement required by
2 15-54-103, the department of revenue shall determine as
3 nearly as possible from any returns or reports filed with
4 any state or county officer or board under any law of this
5 state and from any other information that the department may
6 be able to obtain the total gross receipts of the person
7 from the business in this state during the year next
8 preceding April 1.

9 (2) The department shall prepare a statement showing
10 the amount of the gross receipts and shall compute and
11 assess the amount of license taxes due from the person and
12 shall give notice to the person in the same manner as though
13 the statement had been filed on time and shall proceed to
14 collect the license tax, if delinquent, together with
15 penalty and interest as provided for other delinquencies.
16 The notice shall advise that if payment is not made, the
17 department may file a warrant for distraint."

18 Section 28. Section 15-54-113, MCA, is amended to
19 read:

20 "15-54-113. ~~lien-for-collection-of-tax Warrant for~~
21 ~~distraint. All-tax,--penalty,--and--interest--due--from--any~~
22 ~~person-under-this-chapter-shall-be-a--lien--upon--all--real~~
23 ~~property--of--the-person-within-a-county-when-the-department~~
24 ~~of-revenue-files-in-the-office-of-the-clerk-of-court-of--any~~
25 ~~county--where-the-real-property-is-situated-a-certified-copy~~

1 ~~of its assessment letters. If all or part of the tax imposed~~
 2 ~~by this chapter is not paid when due, the department may~~
 3 ~~issue a warrant for distraint as provided in [sections 1~~
 4 ~~through 9]. The resulting lien has precedence over any~~
 5 ~~claim, lien, or demand thereafter filed and recorded and may~~
 6 ~~be enforced in the name of the state of Montana in the same~~
 7 ~~manner as judgment liens are enforced by law."~~

8 Section 29. Section 15-55-109, MCA, is amended to
 9 read:

10 "15-55-109. ~~lien for collection of tax~~ Warrant for
 11 distraint. All tax, penalty, and interest due from any
 12 person under this chapter shall be a lien upon all real
 13 property of the person within a county when the department
 14 files in the office of the clerk of court of any county
 15 where the real property is situated a certified copy of its
 16 letter assessing tax, penalty, or interest under this
 17 chapter. If all or part of the tax imposed by this chapter
 18 is not paid when due, the department may issue a warrant for
 19 distraint as provided in [sections 1 through 9]. The
 20 resulting lien has precedence over any claim, lien, or
 21 demand thereafter filed and recorded and may be enforced in
 22 the name of the state of Montana in the same manner as
 23 judgment liens are enforced by law."

24 Section 30. Section 15-56-112, MCA, is amended to
 25 read:

1 "15-56-112. Estimation of tax upon failure to file
 2 return. (1) If a person fails to make the report required by
 3 15-56-103, the department shall determine the value of the
 4 property of that person in this state from any information
 5 that the department may be able to obtain.

6 (2) The department shall prepare a statement showing
 7 the amount of the valuation determined and shall compute and
 8 assess the amount of license taxes due and shall give notice
 9 to the person failing to make the report in the same manner
 10 as though a report had been filed as required by 15-56-103.
 11 The notice shall advise that if payment is not made, the
 12 department may file a warrant for distraint."

13 Section 31. Section 15-56-113, MCA, is amended to
 14 read:

15 "15-56-113. ~~lien for collection of tax~~ Warrant for
 16 distraint. All tax, penalty, and interest due from any
 17 person under this chapter shall be a lien upon all real
 18 property of the person within a county when the department
 19 files in the office of the clerk of court of any county
 20 where the real property is situated a certified copy of its
 21 assessment letters. If all or part of the tax imposed by this
 22 chapter is not paid when due, the department may issue a
 23 warrant for distraint as provided in [sections 1 through 9].
 24 The resulting lien has precedence over any claim, lien, or
 25 demand thereafter filed and recorded and may be enforced in

1 ~~the name of the state of Montana in the same manner as~~
 2 ~~judgment liens are enforced by law."~~

3 Section 32. Section 15-58-106, MCA, is amended to
 4 read:

5 "15-58-106. Procedure to determine tax on failure to
 6 file statement -- penalty. (1) If any person shall fail,
 7 neglect, or refuse to make or file the statement required by
 8 15-58-105 or shall fail to make payment of such license tax
 9 within the time therein required, the department of revenue
 10 shall, immediately after such time has expired, proceed to
 11 inform itself as best it may regarding the matters required
 12 to be set forth in such statement and shall fix and
 13 determine the amount of the license taxes due from such
 14 person for such quarter.

15 (2) The department shall add to the amount of all such
 16 delinquent license taxes a penalty of 10% of the amount of
 17 such license taxes plus interest at the rate of 1% per month
 18 or fraction thereof computed on the total amount of license
 19 taxes and penalty. Interest shall be computed from the date
 20 the license taxes were due to the date of payment.

21 (3) The department shall mail to the person required
 22 to file a quarterly statement and pay any license tax a
 23 letter setting forth the amount of license tax, penalty, and
 24 interest due, and the letter shall further contain a
 25 statement that if payment is not made within such time, a

1 ~~lien warrant for distraint~~ may be filed as set forth in
 2 ~~15-58-107.~~ Upon receipt of said letter, the person shall
 3 ~~remit to the department within 15 days the full amount of~~
 4 ~~license tax, penalty, and interest due.~~

5 (4) The 10% penalty herein provided may be waived by
 6 the department if reasonable cause for the failure and
 7 neglect to file the statement required by 15-58-105 is
 8 provided to the department."

9 Section 33. Section 15-58-107, MCA, is amended to
 10 read:

11 "15-58-107. ~~Lien for collection of tax~~ Warrant for
 12 distraint. ~~All tax, penalty, and interest due from any~~
 13 ~~person under this chapter shall be a lien upon any and all~~
 14 ~~real property of such person upon the filing of the~~
 15 ~~department of revenue of the duplicate of the statement so~~
 16 ~~made by the department or a certified copy of any statement~~
 17 ~~filed by said department in the office of the county clerk~~
 18 ~~in the county where such real property is situated, which if~~
 19 all or part of the tax imposed by this chapter is not paid
 20 when due, the department may issue a warrant for distraint
 21 as provided in [sections 1 through 9]. The resulting lien
 22 ~~shall have~~ has precedence over any other claim, lien, or
 23 demand thereafter filed and recorded ~~and which may be~~
 24 ~~enforced in the name of the state of Montana in the same~~
 25 ~~manner as judgment liens are enforced by law."~~

1 Section 34. Section 15-59-106, MCA, is amended to
2 read:

3 "15-59-106. Procedure to estimate tax on failure to
4 file statement -- penalty. (1) If any such person shall
5 fail, neglect, or refuse to file any statement required by
6 15-59-105 within the time required or shall fail to pay the
7 tax required by this part on or before the date such payment
8 is due, the department of revenue shall, immediately after
9 such time has expired, proceed to inform itself as best it
10 may regarding the amounts of the respective articles or
11 products enumerated in 15-59-101(1) and 15-59-102
12 manufactured or produced by such person within this state or
13 imported by such person into the state during such quarter
14 and during each month thereof and shall determine and fix
15 the amount of the license taxes due to the state from such
16 person for such quarter.

17 (2) The department shall add to the amount of all such
18 delinquent license taxes a penalty of 10% of the amount of
19 such license taxes plus interest at the rate of 1% a month
20 or fraction thereof computed on the total amount of license
21 taxes and penalty. Interest shall be computed from the date
22 the license taxes were due to the date of payment.

23 (3) The department shall mail to the person required
24 to file a quarterly statement and pay any license tax a
25 letter setting forth the amount of license tax, penalty, and

1 interest due, and the letter shall further contain a
2 statement that if payment is not made within 15 days, a lien
3 warrant for distraint may be filed as set forth in
4 15-59-107. Upon receipt of the letter, the person shall
5 remit to the department within 15 days the full amount of
6 license tax, penalty, and interest due.

7 (4) The 10% penalty may be waived by the department if
8 reasonable cause for the failure and neglect to file the
9 statement required by 15-59-105 is provided to the
10 department."

11 Section 35. Section 15-59-107, MCA, is amended to
12 read:

13 "15-59-107. Lien for collection of tax warrant for
14 distraint. All tax, penalty, and interest due from any
15 person under this part is a lien upon any and all real
16 property of such person upon the filing by the department of
17 revenue of a duplicate of the tax assessment statement in
18 the office of the county clerk in the county where such real
19 property is situated. If all or part of the tax imposed by
20 this part is not paid when due, the department may issue a
21 warrant for distraint as provided in [sections 1 through 9].
22 The resulting lien has precedence over any other claim,
23 lien, or demand thereafter filed and recorded and may be
24 enforced in the name of the state of Montana in the same
25 manner as judgment liens are enforced by law."

1 Section 36. Section 15-59-205, MCA, is amended to
2 read:

3 "15-59-205. Procedure to estimate tax on failure to
4 file -- penalty. (1) If any person shall fail, neglect, or
5 refuse to make or file the statement required by 15-59-204
6 within the time required, the department of revenue shall,
7 immediately after such time has expired, proceed to inform
8 itself as best it may regarding the matters required to be
9 set forth in such statement and shall fix and determine the
10 amount of the license tax due from such person for such
11 quarter.

12 (2) The department shall add to the amount of all such
13 delinquent license tax a penalty of 10% of the amount of
14 such license tax plus interest at the rate of 1% per month
15 or fraction thereof computed on the total amount of license
16 taxes and penalty. Interest shall be computed from the date
17 the license tax was due to the date of payment.

18 (3) The department shall mail to the person required
19 to file a quarterly statement and pay any license tax a
20 letter setting forth the amount of license tax, penalty, and
21 interest due, and the letter shall further contain a
22 statement that if payment is not made within such time, a
23 lien warrant for distraint may be filed as set forth in
24 ~~15-59-206~~. Upon receipt of said letter, the person shall
25 remit to the department the full amount of license tax

1 ~~penalty and interest due within 15 days.~~

2 (4) The 10% penalty herein provided may be waived by
3 the department if reasonable cause for the failure and
4 neglect to file the statement required by 15-59-204 is
5 provided to the department."

6 Section 37. Section 15-59-206, MCA, is amended to
7 read:

8 "~~15-59-206. Lien for collection of tax~~ warrant for
9 distraint. ~~All tax, penalty, and interest due from any~~
10 ~~person under this part shall be a lien upon any and all real~~
11 ~~property of such person upon the filing by the department of~~
12 ~~revenue of the duplicate of the statement so made by the~~
13 ~~department or a certified copy of any statement filed by~~
14 ~~said department in the office of the county clerk in the~~
15 ~~county where such real property is situated, which~~ if all or
16 part of the tax imposed by this part is not paid when due,
17 the department may issue a warrant for distraint as provided
18 in [sections 1 through 9]. The resulting lien shall have
19 precedence over any other claim, lien, or demand thereafter
20 filed and recorded and which may be enforced in the name of
21 the state in the same manner as judgment liens are enforced
22 by law."

23 Section 38. Section 15-70-211, MCA, is amended to
24 read:

25 "~~15-70-211. Lien for tax and penalties due --- release~~

1 Warrant for distraint. ~~(1) All license taxes, penalties, and~~
 2 ~~interest due from any distributor under the provisions of~~
 3 ~~this part shall be a lien upon any and all property of such~~
 4 ~~distributor or other person upon the filing by the~~
 5 ~~department of revenue of a copy of its statement or a~~
 6 ~~certified copy of any statement filed with the department in~~
 7 ~~the office of the county clerk of the county where the~~
 8 ~~distributor's property is situated. If all or part of the~~
 9 ~~tax imposed by this part is not paid when due, the~~
 10 ~~department may issue a warrant for distraint as provided in~~
 11 ~~[sections 1 through 9]. The resulting lien shall have has~~
 12 ~~precedence over any other claim, lien, or demand filed or~~
 13 ~~recorded thereafter. The lien may be enforced in the name of~~
 14 ~~this state in the same manner as judgment liens are~~
 15 ~~enforced. No action shall may be maintained to enjoin the~~
 16 ~~collection of all or any part of the license tax.~~

17 ~~(2) When the amount due is paid in full before the~~
 18 ~~entry of foreclosure decree, the state treasurer shall~~
 19 ~~release the lien by filing a written release in the office~~
 20 ~~of the county clerk where the lien was filed. At any time~~
 21 ~~prior to the payment of said taxes, penalty, and interest~~
 22 ~~before the entry of foreclosure decree, the state treasurer~~
 23 ~~may release from the operation of the lien a part of the~~
 24 ~~distributor's property to enable the distributor to~~
 25 ~~mortgage, sell, or otherwise dispose of it in order to~~

1 ~~procure funds to pay taxes, penalty, and interest, provided~~
 2 ~~there remains, in the judgment of the state treasurer~~
 3 ~~sufficient property subject to the lien to ensure the~~
 4 ~~payment of all the unpaid taxes, penalty, and interest."~~

5 Section 39. Section 15-70-334, MCA, is amended to
 6 read:

7 "15-70-334. Lien for taxes on property of dealer or
 8 user Warrant for distraint. All special fuel taxes due from
 9 any dealer or user under the provisions of this part
 10 together with all penalties and interest thereon shall be
 11 a lien upon any and all property of such dealer, user, or
 12 other person upon the filing by the department of revenue of
 13 a duplicate copy of the statement so made by the department
 14 or a certified copy of any statement filed by said
 15 department in the office of the county clerk of the county
 16 where such property is situated, which if all or part of the
 17 tax imposed by this part is not paid when due, the
 18 department may issue a warrant for distraint as provided in
 19 [sections 1 through 9]. The resulting lien shall have has
 20 precedence over any other claim, lien, or demand thereafter
 21 filed or recorded and which may be enforced in the name of
 22 the state of Montana in the same manner as judgment liens
 23 are enforced by law."

24 Section 40. Section 16-1-409, MCA, is amended to read:
 25 "16-1-409. Failure to make beer tax returns --

1 penalties. (1) If any brewer or wholesaler subject to the
 2 payment of the tax provided for in 16-1-406 through 16-1-408
 3 shall fail, neglect, or refuse to make any return required
 4 by this code or shall fail to make payment of such tax
 5 within the time herein provided, the department shall,
 6 forthwith after such time has expired, proceed to inform
 7 itself as best it may regarding the matters and things
 8 required to be set forth in such return and, from such
 9 information as it may be able to obtain, to make a statement
 10 showing such matters and things and determine and fix the
 11 amount of such tax due the state from such delinquent brewer
 12 or wholesaler.

13 (2) The department shall add to the amount of tax due
 14 a penalty of 5% thereof for the first failure, willful
 15 neglect, or refusal; 10% for the second; 15% for the third;
 16 and 25% for the fourth and each subsequent failure, neglect,
 17 or refusal; which shall be in addition to the 5% penalty
 18 provided for nonpayment of such tax within the time
 19 provided.

20 (3) Said tax and the penalties added thereto shall
 21 bear interest at the rate of 1% per month from the date such
 22 returns should have been made and said tax paid.

23 (4) The department shall then proceed to collect such
 24 tax with penalties and interest. Upon request of the
 25 department it shall be the duty of the attorney general to

1 commence and prosecute to final determination in any court
 2 of competent jurisdiction an action to collect such tax.

3 ~~(5) All taxes due from any brewer or wholesaler under~~
 4 ~~the provisions of this code, together with all penalties and~~
 5 ~~interest thereon, shall be a lien upon any and all property~~
 6 ~~of such brewer or wholesaler upon the filing by the~~
 7 ~~department of a duplicate copy of the statement made by the~~
 8 ~~department or a certified copy of any return filed with the~~
 9 ~~department in the office of the county clerk of the county~~
 10 ~~where such property is situated, which if all or part of the~~
 11 ~~tax imposed upon a brewer or wholesaler by this part is not~~
 12 ~~paid when due, the department may issue a warrant for~~
 13 ~~distrain as provided in [sections 1 through 9]. The~~
 14 ~~resulting lien shall have has precedence over any other~~
 15 ~~claim, lien, or demand thereafter filed or recorded and may~~
 16 ~~be enforced in the name of the state of Montana in the same~~
 17 ~~manner as other liens are enforced by law.~~

18 (6) No action shall be maintained to enjoin the
 19 collection of such tax or any part thereof. ~~When the amount~~
 20 ~~due the state is paid in full and before the entry of~~
 21 ~~foreclosure decree, the department shall release the lien by~~
 22 ~~filing in the office of the county clerk wherein is filed~~
 23 ~~the lien a written release thereof.~~

24 ~~(7) At any time prior to the payment of said taxes,~~
 25 ~~penalty, and interest, before the entry of foreclosure~~

~~1 decree the department may release from the operation of
 2 said lien a part of said property to enable the brewer or
 3 wholesaler to mortgage, sell, or otherwise dispose of the
 4 same in order to procure funds with which to pay taxes,
 5 penalty, and interest, provided there remains in the
 6 judgment of the department sufficient property subject to
 7 said lien to ensure the payment of the whole of said unpaid
 8 taxes, penalty, and interest.~~

9 (8)(7) Any tax owed by a brewer or wholesaler under
 10 this code not paid within the time provided shall be
 11 delinquent, and a penalty of 5% shall be added thereto, and
 12 the whole thereof shall bear interest at the rate of 1% per
 13 month from the date of delinquency until paid. Any brewer or
 14 wholesaler who fails, neglects, or refuses to make the
 15 return to the department provided for in 16-3-211 or
 16 16-3-231 or refuses to allow such examination as provided
 17 for in 16-3-211 or 16-3-231 or fails to make an accurate
 18 return according to the manner prescribed shall be deemed
 19 guilty of having committed a misdemeanor and upon conviction
 20 shall be fined in an amount not exceeding \$1,000."

21 Section 41. Section 40-5-222, MCA, is amended to read:

22 "40-5-222. Support debt based upon subrogation to or
 23 assignment of judgment -- notice -- content -- action to
 24 collect. (1) The department may issue a notice of a support
 25 debt accrued or accruing based upon subrogation to or

1 assignment of the judgment created by a district court
 2 order. The notice may be served upon the debtor in the
 3 manner prescribed for the service of a summons in a civil
 4 action in accordance with the provisions of the Montana
 5 Rules of Civil Procedure, demanding payment within 20 30
 6 days of the date of receipt.

7 (2) The notice of debt shall include:

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

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

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

16 (d) a statement that the net proceeds will be applied
 17 to the satisfaction of the support debt.

18 (3) Action to collect the subrogated or assigned
 19 support debt by distraint and seizure and sale shall be
 20 lawful after 20 30 days from the date of service upon the
 21 debtor or 20 30 days from the receipt or refusal by the
 22 debtor of the notice of debt."

23 Section 42. Section 40-5-223, MCA, is amended to read:

24 "40-5-223. Notice of support liability based upon
 25 payment of public assistance -- notice -- contents --

1 collection warrant -- fair hearing. (1) In the absence of a
 2 district court order the department may issue a notice of a
 3 support liability accrued or accruing based upon payment of
 4 public assistance to or for the benefit of any dependent
 5 child or children. The notice of liability shall be served
 6 upon the responsible parent in the manner prescribed for the
 7 service of summons in a civil action, in accordance with the
 8 provisions of the Montana Rules of Civil Procedure.

9 (2) The notice of liability shall include:

10 (a) a statement of the support debt accrued or
 11 accruing, computable on the basis of the amount of public
 12 assistance previously paid and to be paid in the future;

13 (b) a statement of the amount of the monthly public
 14 assistance payment;

15 (c) a statement of the name of the recipient and the
 16 name of the child or children for whom assistance is being
 17 paid;

18 (d) a demand for immediate payment of the support debt
 19 or, in the alternative, a demand that the responsible parent
 20 make answer within 20 30 days of the date of service to the
 21 department stating defenses to liability under 40-5-221;

22 (e) a statement that if no answer is made on or before
 23 20 30 days from the date of the service the support debt
 24 shall be assessed and determined subject to computation and
 25 is subject to collection action;

1 (f) a statement that the property of the responsible
 2 parent will be subject to distraint and seizure and sale.

3 (3) If no answer is had by the department to the
 4 notice of liability on or before 20 30 days of the date of
 5 service, the support debt shall be assessed and determined
 6 subject to the computation and the department shall may
 7 issue a warrant of for distraint authorizing a collection
 8 action under this part.

9 (4) If the responsible parent, within 20 30 days of
 10 the date of service of notice of liability, makes answer to
 11 the department alleging defenses to liability under
 12 40-5-221, the responsible parent may receive a fair hearing
 13 pursuant to 40-5-226. The decision of the department in the
 14 hearing shall establish the obligation of the responsible
 15 parent, if any, for repayment of public assistance funds
 16 spent to date as an assessed and determined support debt."

17 Section 43. Section 40-5-224, MCA, is amended to read:
 18 "40-5-224. Finding of support liability based upon
 19 payment of public assistance -- warrant of distraint -- bond
 20 to release warrant -- action to collect. (1) If the
 21 department reasonably believes that the parent is not a
 22 resident of this state or is about to move from this state
 23 or has concealed himself, absconded, absented himself or has
 24 removed or is about to remove, secrete, waste, or otherwise
 25 dispose of property which could be made subject to

1 collection action to satisfy the support debt, the
 2 department may issue a warrant of for distraint pursuant to
 3 40-5-241 during the pendency of the fair hearing or
 4 thereafter, whether or not appealed. No further action may
 5 be taken on the warrant until final determination after fair
 6 hearing and/or appeal. The department shall in such cases
 7 make and file in the record of the fair hearing an affidavit
 8 stating the reasons upon which the belief is founded. The
 9 responsible parent may furnish a bond, not to exceed the
 10 amount of the support debt, during pendency of the hearing
 11 or thereafter, and in such case warrants issued shall be
 12 released. If the decision resulting from the hearing is in
 13 favor of the responsible parent, all warrants issued shall
 14 be released.

15 (2) The department may commence action under the
 16 provisions of this part to collect the support debt on the
 17 date of issuance of the decision resulting from the
 18 hearing."

19 Section 44. Section 40-5-225, MCA, is amended to read:

20 "40-5-225. Notice and finding of financial
 21 responsibility of responsible parent -- administrative
 22 procedure. (1) In lieu of the procedures provided in
 23 40-5-223 and 40-5-224, the department may, in the absence of
 24 a district court order, serve on the responsible parent a
 25 notice and finding of financial responsibility requiring a

1 responsible parent to appear and show cause at a hearing
 2 held by the department why the finding of liability and the
 3 amount of support liability should not be finally ordered.
 4 This notice and finding shall relate to the support debt
 5 accrued or accruing under this part and/or Title 53, chapter
 6 4, including periodic payments to be made in the future for
 7 the period of time any child of the responsible parent is in
 8 need. The hearing shall be held pursuant to this part and
 9 the rules of the department, which shall provide for a fair
 10 hearing.

11 (2) The notice and finding of financial responsibility
 12 shall be served in the same manner prescribed for the
 13 service of a summons in a civil action, in accordance with
 14 the provisions of the Montana Rules of Civil Procedure. Any
 15 responsible parent who objects to all or any part of the
 16 notice and finding shall have the right for not more than 20
 17 30 days from the date of service to request in writing a
 18 hearing, notice of which shall be served upon the department
 19 personally or by registered or certified mail. If no request
 20 is made, the notice and finding of financial responsibility
 21 becomes final. If a request is made, the execution of notice
 22 and finding of financial responsibility shall be stayed
 23 pending the decision on such hearing or any direct appeal to
 24 the courts from the decision.

25 (3) The notice and finding of financial responsibility

1 shall include:

2 (a) the amount the department has determined the
3 responsible parent owes, the support debt accrued or
4 accruing, and, as appropriate, the amount to be paid thereon
5 each month, all computable on the basis of the amount of the
6 monthly public assistance payment previously paid or need
7 alleged and the ability of the responsible parent to pay all
8 or any portion of the debt;

9 (b) a statement of the name of the recipient or
10 custodian and the name of any child for whom assistance is
11 being paid or need is alleged; or a statement of the amount
12 of periodic future support payments for which financial
13 responsibility is found;

14 (c) a statement that the responsible parent may object
15 to all or any part of the notice and finding and request a
16 hearing to show cause why he should not be determined to be
17 liable for any or all of the past and future debt determined
18 and the amount to be paid thereon;

19 (d) a statement that if the responsible parent fails
20 to request a hearing, the support debt and payments stated
21 in the notice and finding, including periodic support
22 payments in the future, shall be assessed, determined, and
23 ordered by the department and that this debt is subject to
24 collection action;

25 (e) a statement that the property of the debtor,

1 without further advance notice or hearing, will be subject
2 to distraint and seizure and sale to satisfy the debt."

3 Section 45. Section 40-5-226, MCA, is amended to read:
4 "40-5-226. Administrative hearing -- nature -- place
5 -- time -- determinations -- failure to appear -- entry of
6 findings. (1) The administrative hearing is defined as a
7 "contested case".

8 (2) The administrative hearing may be held in the
9 county of residence or other county convenient to the
10 responsible parent.

11 (3) If a hearing is requested, it shall be scheduled
12 within 30 days.

13 (4) The hearing officer shall determine the liability
14 and responsibility, if any, of the alleged responsible
15 parent under 40-5-221 and shall also determine the amount of
16 periodic payments to be made to satisfy past, present, or
17 future liability under 40-5-221. In making these
18 determinations, the hearing officer shall include in his
19 consideration the scale of suggested minimum contributions
20 adopted under 40-5-214.

21 (5) If the responsible parent fails to appear at the
22 hearing, upon a showing of valid service, the hearing
23 officer shall enter a decision and order declaring the
24 support debt and payment provisions stated in the notice and
25 finding of financial responsibility to be assessed,

1 determined, and subject to collection action. Within ~~20~~ 30
 2 days of entry of the order, the responsible parent may
 3 petition the department to vacate the order upon a showing
 4 of any of the grounds enumerated in the Montana Rules of
 5 Civil Procedure.

6 (6) The hearing officer shall, within 20 days of the
 7 hearing, enter findings, conclusions, and a final decision
 8 determining liability and responsibility and/or future
 9 periodic support payments. The determination of the hearing
 10 officer entered pursuant to this section shall be entered as
 11 an order unless such findings are set aside pursuant to
 12 40-5-253 and shall limit the support debt under 40-5-221 to
 13 the amounts stated in the decision.

14 (7) The decision establishing liability and future
 15 periodic support payments is superseded upon entry of a
 16 district court order for support to the extent the district
 17 court order is inconsistent with the hearing order or
 18 decision. In the absence of a district court order the
 19 responsible parent may petition the department for issuance
 20 of an order to appear and show cause based on a showing of
 21 good cause and material change of circumstances to require
 22 the other party to appear and show cause why the decision
 23 previously entered should not be prospectively modified. The
 24 order to appear and show cause together with a copy of the
 25 affidavit upon which the order is based shall be served by

1 the petitioning party on the nonmoving party in the manner
 2 of a summons in a civil action. A hearing shall be set not
 3 less than 15 or more than 30 days from the date of service,
 4 unless extended for good cause shown. Prospective
 5 modification may be ordered but only upon a showing of good
 6 cause and material change of circumstances.

7 (8) The department, in its original determinations,
 8 and the hearing officer, in making determinations based on
 9 objections to original determinations or on petitions to
 10 modify, shall consider the standards promulgated for
 11 determination of support payments used by the district court
 12 of the county of residence of the responsible parent.

13 (9) Debts determined pursuant to this section, accrued
 14 and not paid, are subject to collection action under this
 15 part without further necessity of action by the hearing
 16 officer."

17 Section 46. Section 40-5-241, MCA, is amended to read:
 18 "40-5-241. Warrant of for ~~for~~ ~~execution.~~ ~~{}~~
 19 ~~Twenty-one~~ Thirty-one days after receipt or refusal of
 20 notice of debt under provisions of 40-5-222 or ~~21~~ 31 days
 21 after service of notice of debt or as otherwise appropriate
 22 under the provisions of 40-5-223 and 40-5-224, the
 23 department may issue ~~an abstract of any final order in the~~
 24 ~~form of a warrant of~~ for ~~distrain~~ ~~under its official seal~~
 25 ~~directed to the sheriff of any county of the state~~

1 commanding him to levy upon and sell the real and personal
 2 property of the person owing the support debt within his
 3 county for the payment of the debt, interest, and cost of
 4 executing the warrant and to return the warrant to the
 5 department and pay to it the money collected within 60 days
 6 from the date of the issuance of the warrant based on the
 7 amount of the support debt. The warrant is subject to the
 8 provisions of [sections 1, 4, 5, 8, and 9], with references
 9 to "tax" taken to mean "support debt" and references to
 10 "taxpayer" taken to mean "person owing the support debt", as
 11 well as the provisions of this part. Notwithstanding the
 12 provisions of [subsection (3) of section 5], an appeal from
 13 a hearing may be made directly to district court, as
 14 provided in 40-5-253, and is not appealable to the state tax
 15 appeal board.

16 (2) ~~The sheriff shall, within 5 days after the receipt~~
 17 ~~of the warrant, file a copy of the warrant with the clerk of~~
 18 ~~the district court of his county and the clerk shall enter~~
 19 ~~in the judgment docket, in the column for judgment debtors,~~
 20 ~~the name of the debtor mentioned in the warrant and, in~~
 21 ~~appropriate columns, the amount of the support debt and the~~
 22 ~~date when such copy is filed. The amount of the warrant so~~
 23 ~~docketed is a lien upon the title to and interest in real~~
 24 ~~property or chattels real of the person against whom it is~~
 25 ~~levied in the same manner as a judgment docketed in the~~

1 office of such clerk. This lien has the same preference
 2 against the assets of the debtor as claims for taxes.

3 (3) ~~The sheriff shall proceed to levy upon and sell~~
 4 ~~the property of the debtor in the same manner prescribed by~~
 5 ~~law for executions issued against property upon judgments of~~
 6 ~~a court of record and is entitled to the same fees for his~~
 7 ~~services in executing the warrant to be collected in the~~
 8 ~~same manner.~~

9 (4) ~~If the net proceeds of the sale upon application~~
 10 ~~to the debt claimed, do not satisfy the debt in full, the~~
 11 ~~department shall have judgment for any deficiency remaining~~
 12 ~~unsatisfied."~~

13 Section 47. Section 40-5-245, MCA, is amended to read:

14 "40-5-245. Satisfaction of debt after levy on property
 15 -- redemption. Any person owning real property or any
 16 interest in real property against which a warrant of for
 17 distrain has been issued and levied upon may pay the amount
 18 due, together with expenses of the proceedings and
 19 reasonable attorney fees to the department. Upon full
 20 payment the sheriff shall restore the property shall be
 21 restored to him, and all further proceedings on the warrant
 22 shall cease. The person shall also have the right within 240
 23 days after sale of property levied upon to redeem the
 24 property by making payment to the purchaser in the amount
 25 paid by the purchaser plus interest at the statutory

1 interest rate payable on judgments recovered in the courts
2 of this state."

3 Section 48. Section 40-5-246, MCA, is amended to read:

4 "40-5-246. Release of distraint and return of seized
5 property -- effect. The department may at any time release a
6 distraint on all or part of the property of the debtor or
7 order the sheriff--to return of seized property without
8 liability, if assurance of payment is determined to be
9 adequate by the department or if the action will facilitate
10 the collection of the debt. The release or return does not
11 operate to prevent future action to collect from the the
12 same or other property."

13 Section 49. Section 40-5-255, MCA, is amended to read:

14 "40-5-255. Charging off child support debts as
15 uncollectible. Any support debt due the department from a
16 responsible parent which the department determines
17 uncollectible may be transferred from accounts receivable to
18 a suspense account and cease to be accounted as an asset.
19 In the event a warrant of for distraint has been filed and
20 the support debt has subsequently been charged off as
21 uncollectible, the department shall issue a release of lien.
22 At any time after 6 years from the date a support debt was
23 incurred, the department may charge off as uncollectible any
24 support debt upon which the department finds there is no
25 available, practical, or lawful means by which the debt may

1 be collected. No proceedings or action under the provisions
2 of this part may be begun after expiration of the 6-year
3 period to institute collection of a support debt. Nothing
4 herein may be construed to render invalid or nonactionable a
5 warrant of for distraint filed with the clerk of court prior
6 to the expiration of the 6-year period or an assignment of
7 earnings executed prior to the expiration of the 6-year
8 period."

9 Section 50. Section 40-5-256, MCA, is amended to read:

10 "40-5-256. Employee debtor rights protected --
11 limitation. No employer may discharge or prejudice an
12 employee for reason that an assignment of earnings has been
13 presented in settlement of a support debt or that a warrant
14 of for distraint has been served against the employee's
15 earnings. This provision does not apply if more than three
16 warrants are served upon the same employer within any period
17 of 12 consecutive months."

18 Section 51. Section 69-1-226, MCA, is amended to read:

19 "69-1-226. Failure to pay fee -- penalty and interest
20 -- collection of fee. (1) If a regulated company or an
21 officer or employee of a regulated company files the
22 statement required by 69-1-223(2) but fails, neglects, or
23 refuses to pay the fee due within the time required, the
24 department of revenue may after the time for payment has
25 expired add to the fee due, in addition to any other penalty

1 provided by law, a penalty of 10% thereof plus interest at
2 the rate of 1% per month or fraction of month computed on
3 the total amount of the fee and penalty. Interest is
4 computed from the date the fee is due to the date of
5 payment.

6 (2) The department of revenue shall mail to the
7 regulated company a letter setting forth the amount of the
8 fee, penalty, and interest and notifying the company that
9 payment of the full amount of the fee, penalty, and interest
10 must be remitted within 15 days of the regulated company's
11 receipt of the letter; otherwise a lien warrant for
12 distrain may be filed.

13 (3) The 10% penalty may be waived by the department of
14 revenue if reasonable cause for failure and neglect to make
15 payment is provided to the department."

16 Section 52. Section 69-1-227, MCA, is amended to read:
17 "69-1-227. ~~Fee, penalty, and interest as lien~~ Warrant
18 for distrain. The fee, penalty, and interest due from a
19 regulated company are a lien upon all real property of the
20 regulated company within a county when the department of
21 revenue files a certified copy of the amounts due in the
22 office of the clerk of court of the county where the
23 property is located. If the fee imposed by this part is not
24 paid when due, the department may issue a warrant for
25 distrain as provided in [sections 1 through 9]. The

1 resulting lien has precedence over any claim, lien, or
2 demand thereafter filed and recorded and may be enforced in
3 the name of the state of Montana in the same manner as
4 judgment liens are enforced by law."

5 Section 53. Codification instruction. Sections 1
6 through 9 are intended to be codified as an integral part of
7 Title 15, and the provisions of Title 15 apply to sections 1
8 through 9.

9 Section 54. Repealer. Sections 15-30-315 and
10 15-31-527, MCA, are repealed.

-End-

House amendment to Senate Bill 272:

1. Page 7, line 3.
Following: "sections"
Strike: "4"
Insert: "1"

Respectfully report as follows: That.....SENATE..... Bill No. 272.....

BE AMENDED AS FOLLOWS:

1. Page 4, line 19.
Following: "collect"
Insert: "the"

2. Page 4, line 22.
Following: "collect"
Insert: "the"

3. Page 4, line 25.
Following: "sheriff"
Insert: "or agent"