

SENATE BILL NO. 109

Introduced: 01/12/83

Referred to Committee on Judiciary: 01/12/83

Hearing: 1/19/83

Report: 01/24/83, Do Not Pass. Report Adopted.

Bill Killed.

1 S.B. BILL NO. 109
2 INTRODUCED BY Sen. Fabrega
3 BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW
6 RELATING TO ENFORCEMENT OF SUPPORT; MAKING DEADLINES
7 UNIFORM; ESTABLISHING FLEXIBLE HEARING DATE REQUIREMENTS;
8 AMENDING SECTIONS 40-5-222, 40-5-226, AND 40-5-241, MCA."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Section 40-5-222, MCA, is amended to read:
12 "40-5-222. Support debt based upon subrogation to, or
13 assignment of judgment -- notice -- content -- action to
14 collect. (1) The department may issue a notice of a support
15 debt accrued or accruing based upon subrogation to or
16 assignment of the judgment created by a district court
17 order. The notice may be served upon the debtor in the
18 manner prescribed for the service of a summons in a civil
19 action in accordance with the provisions of the Montana
20 Rules of Civil Procedure, demanding payment within 30 days
21 of the date of receipt.
22 (2) The notice of debt shall include:
23 (a) a statement of the support debt accrued or
24 accruing, computable on the amount required to be paid under
25 any district court order to which the department is

1 subrogated or has an assigned interest;
2 (b) a statement that the property of the debtor is
3 subject to collection action;
4 (c) a statement that the property is subject to
5 distraint and seizure and sale;
6 (d) a statement that the net proceeds will be applied
7 to the satisfaction of the support debt;
8 (e) a statement that the debtor is entitled to a fair
9 hearing.
10 (3) Action to collect the subrogated or assigned
11 support debt by distraint and seizure and sale shall be
12 lawful after 30 days from the date of service upon the
13 debtor or 30 days from the receipt or refusal by the debtor
14 of the notice of debt.
15 (4) Within 20 30 days of the date of service of notice
16 of support debt, the debtor may request a fair hearing as
17 provided in 40-5-226."
18 Section 2. Section 40-5-226, MCA, is amended to read:
19 "40-5-226. Administrative hearing -- nature -- place
20 -- time -- determinations -- failure to appear -- entry of
21 findings. (1) The administrative hearing is defined as a
22 "contested case".
23 (2) The administrative hearing may be held in the
24 county of residence or other county convenient to the
25 responsible parent.

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(3) If a hearing is requested, it shall be scheduled ~~within 30 days to be held on a date that is reasonably soon after the request. The responsible parent must be notified of the hearing date within 30 days of the request for the hearing.~~

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

(5) If the responsible parent fails to appear at the hearing, upon a showing of valid service, the hearing officer shall enter a decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed, determined, and subject to collection action. Within 30 days of entry of the order, the responsible parent may petition the department to vacate the order upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(6) The hearing officer shall, within 20 ~~30~~ days of the hearing, enter findings, conclusions, and a final

decision determining liability and responsibility and/or future periodic support payments. The determination of the hearing officer entered pursuant to this section shall be entered as an order unless such findings are set aside pursuant to 40-5-253 and shall limit the support debt under 40-5-221 to the amounts stated in the decision.

(7) The decision establishing liability and future periodic support payments is ~~superseded-upon~~ modified from the date of entry of a district court order for support to the extent the district court order is inconsistent with the hearing order or decision. In the absence of a district court order the responsible parent may petition the department for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances to require the other party to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning party on the nonmoving party in the manner of a summons in a civil action. A hearing shall be set not less than 15 or more than 30 days from the date of service, unless extended for good cause shown. Prospective modification may be ordered but only upon a showing of good cause and material change of circumstances.

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

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

11 Section 3. Section 40-5-241, MCA, is amended to read:

12 "40-5-241. Warrant for distraint. Thirty-one days
13 after receipt or refusal of notice of debt under provisions
14 of 40-5-222 or 31 days after service of notice of debt or as
15 otherwise appropriate under the provisions of 40-5-223 and
16 40-5-224, the department may issue a warrant for distraint
17 based on the amount of the support debt. The warrant is
18 subject to the provisions of 15-1-701, 15-1-704, ~~15-1-705~~
19 through 15-1-706, 15-1-708, and 15-1-709, with references to
20 "tax" taken to mean "support debt" and references to
21 "taxpayer" taken to mean "person owing the support debt", as
22 well as the provisions of this part. Notwithstanding the
23 provisions of subsection (3) of 15-1-705, an appeal from a
24 hearing may be made directly to district court, as provided
25 in 40-5-253, and is not appealable to the state tax appeal

1 board."

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