

HOUSE BILL NO. 440

INTRODUCED BY J. BROWN, BERGENE, CHRISTIAENS

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE HOUSE

January 23, 1985	Introduced and referred to Committee on Judiciary.
January 24, 1985	Fiscal Note requested.
January 29, 1985	Fiscal Note returned.
February 7, 1985	Committee recommend bill do pass. Report adopted.
	Bill printed and placed on members' desks.
February 8, 1985	Second reading, do pass.
February 9, 1985	Considered correctly engrossed.
February 11, 1985	Third reading, passed.
	Transmitted to Senate.

IN THE SENATE

February 12, 1985	Introduced and referred to Committee on Judiciary.
March 28, 1985	Committee recommend bill be concurrred in as amended. Report adopted.
March 30, 1985	Second reading, concurred in.
April 1, 1985	Third reading, concurred in. Ayes, 47; Noes, 0.
	Returned to House with amendments.

IN THE HOUSE

April 2, 1985

Received from Senate.

April 5, 1985

Second reading, amendments
concurrent in.

April 8, 1985

Third reading, amendments
concurrent in.

Sent to enrolling.

Reported correctly enrolled.

1 HOUSE BILL NO. 440
 2 INTRODUCTION BY J. Brown Bergme
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE
 6 DEPARTMENT OF REVENUE TO ENFORCE MAINTENANCE AWARDS TO
 7 CUSTODIAL PARENTS OF CHILDREN WHOSE SUPPORT IS BEING
 8 ENFORCED BY THE DEPARTMENT; PROVIDING THAT THE DEPARTMENT IS
 9 SUBROGATED TO THE AMOUNT OF PUBLIC ASSISTANCE PAID TO OR FOR
 10 THE BENEFIT OF A CHILD AND HIS CARETAKER UP TO THE AMOUNT OF
 11 THE SUPPORT AWARD; AMENDING SECTIONS 40-5-201 THROUGH
 12 40-5-203 AND 40-5-255, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 40-5-201, MCA, is amended to read:
 16 "40-5-201. Definitions. As used in this part, the
 17 following definitions apply:

- 18 (1) "Child" or "dependent child" means any person
 19 under 18 years of age who is not otherwise emancipated,
 20 self-supporting, married, or a member of the armed forces of
 21 the United States.
- 22 (2) "Department" means the department of revenue.
- 23 (3) "Director" means the director of the department of
 24 revenue or his authorized representative.
- 25 (4) "Disposable earnings" means that part of the

1 earnings of any individual remaining after the deduction
 2 from those earnings of any amount required by law to be
 3 withheld.

4 (5) "District court order" means any judgment or order
 5 of the district court of the state of Montana or an order of
 6 a court of appropriate jurisdiction of another state
 7 ordering payment of a set or determinable amount of support
 8 money.

9 (6) "Earnings" means compensation paid or payable for
 10 personal services, whether denominated as wages, salary,
 11 commission, bonus, or otherwise, and specifically includes
 12 periodic payments under pension or retirement programs or
 13 insurance policies of any type. "Earnings" specifically
 14 includes all gain derived from capital, labor, or both
 15 combined, including profit gained through sale or conversion
 16 of capital assets.

17 (7) "Need" means the necessary costs of food,
 18 clothing, shelter, and medical care for the support of a
 19 dependent child or children.

20 (8) "Public assistance" means any type of monetary or
 21 other assistance, including medical and foster care
 22 benefits, furnished to a person by a state or county agency,
 23 regardless of the original source of the assistance.

24 (9) "Responsible parent" means the natural or adoptive
 25 parent of a dependent child.

1 (10) "Support debt" or "support obligation" means:

2 (a) the sum created by the failure to provide support
3 to a dependent child under the laws of this state or the
4 decree of any court of appropriate jurisdiction ordering a
5 sum to be paid as child support; or

6 (b) the sum created by a decree or order of any court
7 of appropriate jurisdiction ordering a sum to be paid as
8 spousal maintenance under chapter 4, part 2, of this title
9 when the judgment or order requiring payment of maintenance
10 also contains a judgment or order requiring payment of child
11 support for a child of whom the person awarded maintenance
12 is the custodial parent."

13 Section 2. Section 40-5-202, MCA, is amended to read:

14 "40-5-202. Department of revenue -- powers and duties
15 regarding collection of support debt. (1) Whenever the
16 department of social and rehabilitation services receives an
17 application for public assistance on behalf of a child and
18 it appears to the satisfaction of that department that the
19 child has been abandoned by his parents; the child and one
20 parent have been abandoned by the other parent; or the
21 parent or other person who has a responsibility for the
22 care, support, or maintenance of such child has failed or
23 neglected to give proper care or support to the child, the
24 department of social and rehabilitation services shall
25 promptly refer the matter to the department of revenue for

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

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

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

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

25 (5) No agreement between any obligee and any obligor

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

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

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

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

1 caretaker of the children.

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

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

9 Section 3. Section 40-5-203, MCA, is amended to read:

10 "40-5-203. Support enforcement services. (1) The
 11 department may accept applications for support enforcement
 12 services on behalf of persons who are not recipients of
 13 public assistance and may take appropriate action to
 14 establish or enforce support obligations against persons
 15 owing a duty to pay support.

16 (2) The department may establish by rule reasonable
 17 standards necessary to limit applications for support
 18 enforcement services. These standards shall take into
 19 account the earnings, income, and other resources already
 20 available to support the person for whom a support
 21 obligation exists.

22 (3) The department may charge a fee as compensation
 23 for services rendered in establishment of or enforcement of
 24 support obligations. This fee shall be agreed on in writing
 25 with the custodial parent when departmental enforcement is

1 authorized by [section 5], or the parent, custodian, or
 2 guardian of the person for whom a support obligation is owed
 3 or that person if no parent, custodian, or guardian exists.
 4 An initiation fee as a portion of the collection fee may be
 5 charged the applicant by the department. The department
 6 shall by rule establish reasonable fees for support
 7 enforcement services, and the schedule of fees shall be made
 8 available to all applicants for support enforcement
 9 services. The department may, upon a showing of necessity,
 10 waive or defer any such fee."

11 Section 4. 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 or former spouse which the department
 15 determines uncollectible may be transferred from accounts
 16 receivable to a suspense account and cease to be accounted
 17 as an asset. In the event a warrant for distraint has been
 18 filed and the support debt has subsequently been charged off
 19 as uncollectible, the department shall issue a release of
 20 lien. At any time after 6 years from the date a support debt
 21 was incurred, the department may charge off as uncollectible
 22 any 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 for distraint filed with the clerk of court prior to
 4 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 NEW SECTION. Section 5. Department authorized to
 8 enforce maintenance awards. When a judgment or order
 9 creating a child support obligation also contains a judgment
 10 or order for the support of a former spouse and the former
 11 spouse is the custodial parent of the child, the department
 12 may collect and enforce spousal support under this part.

13 NEW SECTION. Section 6. Codification instruction.
 14 Section 5 is intended to be codified as an integral part of
 15 Title 40, chapter 5, part 2, and the provisions of Title 40,
 16 chapter 5, part 2, apply to section 5.

17 NEW SECTION. Section 7. Extension of authority. Any
 18 existing authority of the department of revenue to make
 19 rules on the subject of the provisions of this act is
 20 extended to the provisions of this act.

-End-

FISCAL NOTE

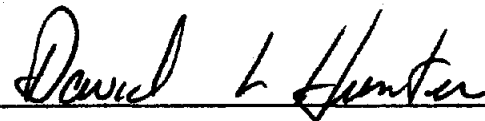
In compliance with a written request received January 24, 19 85, there is hereby submitted a Fiscal Note for H.B. 440 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION

An act to permit the Department of Revenue to enforce maintenance awards to custodial parents of children whose support is being enforced by the Department; providing that the Department is subrogated to the amount of public assistance paid to or for the benefit of a child and his caretaker up to the amount of the support award.

ASSUMPTIONS

Less than 1% of all child support orders contain orders of spousal maintenance. Thus, the impact on revenues will be minimal. Basically, the purpose of this proposed bill is to enable the Montana Child Support Enforcement Bureau to comply with new federal regulations.



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: JAN 29, 1985

APPROVED BY COMMITTEE
ON JUDICIARY

1 HOUSE BILL NO. 440
2 INTRODUCED BY J. Brown Byrne
3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE
6 DEPARTMENT OF REVENUE TO ENFORCE MAINTENANCE AWARDS TO
7 CUSTODIAL PARENTS OF CHILDREN WHOSE SUPPORT IS BEING
8 ENFORCED BY THE DEPARTMENT; PROVIDING THAT THE DEPARTMENT IS
9 SUBROGATED TO THE AMOUNT OF PUBLIC ASSISTANCE PAID TO OR FOR
10 THE BENEFIT OF A CHILD AND HIS CARETAKER UP TO THE AMOUNT OF
11 THE SUPPORT AWARD; AMENDING SECTIONS 40-5-201 THROUGH
12 40-5-203 AND 40-5-255, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 40-5-201, MCA, is amended to read:

16 "40-5-201. Definitions. As used in this part, the
17 following definitions apply:

18 (1) "Child" or "dependent child" means any person
19 under 18 years of age who is not otherwise emancipated,
20 self-supporting, married, or a member of the armed forces of
21 the United States.

22 (2) "Department" means the department of revenue.

23 (3) "Director" means the director of the department of
24 revenue or his authorized representative.

25 (4) "Disposable earnings" means that part of the

1 earnings of any individual remaining after the deduction
2 from those earnings of any amount required by law to be
3 withheld.

4 (5) "District court order" means any judgment or order
5 of the district court of the state of Montana or an order of
6 a court of appropriate jurisdiction of another state
7 ordering payment of a set or determinable amount of support
8 money.

9 (6) "Earnings" means compensation paid or payable for
10 personal services, whether denominated as wages, salary,
11 commission, bonus, or otherwise, and specifically includes
12 periodic payments under pension or retirement programs or
13 insurance policies of any type. "Earnings" specifically
14 includes all gain derived from capital, labor, or both
15 combined, including profit gained through sale or conversion
16 of capital assets.

17 (7) "Need" means the necessary costs of food,
18 clothing, shelter, and medical care for the support of a
19 dependent child or children.

20 (8) "Public assistance" means any type of monetary or
21 other assistance, including medical and foster care
22 benefits, furnished to a person by a state or county agency,
23 regardless of the original source of the assistance.

24 (9) "Responsible parent" means the natural or adoptive
25 parent of a dependent child.

SECOND READING
HB 440



1 (10) "Support debt" or "support obligation" means:

2 (a) the sum created by the failure to provide support
3 to a dependent child under the laws of this state or the
4 decree of any court of appropriate jurisdiction ordering a
5 sum to be paid as child support; or

6 (b) the sum created by a decree or order of any court
7 of appropriate jurisdiction ordering a sum to be paid as
8 spousal maintenance under chapter 4, part 2, of this title
9 when the judgment or order requiring payment of maintenance
10 also contains a judgment or order requiring payment of child
11 support for a child of whom the person awarded maintenance
12 is the custodial parent."

13 Section 2. Section 40-5-202, MCA, is amended to read:

14 "40-5-202. Department of revenue -- powers and duties
15 regarding collection of support debt. (1) Whenever the
16 department of social and rehabilitation services receives an
17 application for public assistance on behalf of a child and
18 it appears to the satisfaction of that department that the
19 child has been abandoned by his parents; the child and one
20 parent have been abandoned by the other parent; or the
21 parent or other person who has a responsibility for the
22 care, support, or maintenance of such child has failed or
23 neglected to give proper care or support to the child, the
24 department of social and rehabilitation services shall
25 promptly refer the matter to the department of revenue for

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

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

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

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

25 (5) No agreement between any obligee and any obligor

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

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

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

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

1 caretaker of the children.

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

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

9 Section 3. Section 40-5-203, MCA, is amended to read:

10 "40-5-203. Support enforcement services. (1) The
 11 department may accept applications for support enforcement
 12 services on behalf of persons who are not recipients of
 13 public assistance and may take appropriate action to
 14 establish or enforce support obligations against persons
 15 owing a duty to pay support.

16 (2) The department may establish by rule reasonable
 17 standards necessary to limit applications for support
 18 enforcement services. These standards shall take into
 19 account the earnings, income, and other resources already
 20 available to support the person for whom a support
 21 obligation exists.

22 (3) The department may charge a fee as compensation
 23 for services rendered in establishment of or enforcement of
 24 support obligations. This fee shall be agreed on in writing
 25 with the custodial parent when departmental enforcement is

1 authorized by [section 5], or the parent, custodian, or
 2 guardian of the person for whom a support obligation is owed
 3 or that person if no parent, custodian, or guardian exists.
 4 An initiation fee as a portion of the collection fee may be
 5 charged the applicant by the department. The department
 6 shall by rule establish reasonable fees for support
 7 enforcement services, and the schedule of fees shall be made
 8 available to all applicants for support enforcement
 9 services. The department may, upon a showing of necessity,
 10 waive or defer any such fee."

11 Section 4. 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 or former spouse which the department
 15 determines uncollectible may be transferred from accounts
 16 receivable to a suspense account and cease to be accounted
 17 as an asset. In the event a warrant for distraint has been
 18 filed and the support debt has subsequently been charged off
 19 as uncollectible, the department shall issue a release of
 20 lien. At any time after 6 years from the date a support debt
 21 was incurred, the department may charge off as uncollectible
 22 any 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 for distraint filed with the clerk of court prior to
 4 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 NEW SECTION. Section 5. Department authorized to
 8 enforce maintenance awards. When a judgment or order
 9 creating a child support obligation also contains a judgment
 10 or order for the support of a former spouse and the former
 11 spouse is the custodial parent of the child, the department
 12 may collect and enforce spousal support under this part.

13 NEW SECTION. Section 6. Codification instruction.
 14 Section 5 is intended to be codified as an integral part of
 15 Title 40, chapter 5, part 2, and the provisions of Title 40,
 16 chapter 5, part 2, apply to section 5.

17 NEW SECTION. Section 7. Extension of authority. Any
 18 existing authority of the department of revenue to make
 19 rules on the subject of the provisions of this act is
 20 extended to the provisions of this act.

-End-

1 HOUSE BILL NO. 440
 2 INTRODUCED BY J. Brown Byrne
 3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE
 6 DEPARTMENT OF REVENUE TO ENFORCE MAINTENANCE AWARDS TO
 7 CUSTODIAL PARENTS OF CHILDREN WHOSE SUPPORT IS BEING
 8 ENFORCED BY THE DEPARTMENT; PROVIDING THAT THE DEPARTMENT IS
 9 SUBROGATED TO THE AMOUNT OF PUBLIC ASSISTANCE PAID TO OR FOR
 10 THE BENEFIT OF A CHILD AND HIS CARETAKER UP TO THE AMOUNT OF
 11 THE SUPPORT AWARD; AMENDING SECTIONS 40-5-201 THROUGH
 12 40-5-203 AND 40-5-255, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 40-5-201, MCA, is amended to read:
 16 "40-5-201. Definitions. As used in this part, the
 17 following definitions apply:

18 (1) "Child" or "dependent child" means any person
 19 under 18 years of age who is not otherwise emancipated,
 20 self-supporting, married, or a member of the armed forces of
 21 the United States.

22 (2) "Department" means the department of revenue.

23 (3) "Director" means the director of the department of
 24 revenue or his authorized representative.

25 (4) "Disposable earnings" means that part of the

1 earnings of any individual remaining after the deduction
 2 from those earnings of any amount required by law to be
 3 withheld.

4 (5) "District court order" means any judgment or order
 5 of the district court of the state of Montana or an order of
 6 a court of appropriate jurisdiction of another state
 7 ordering payment of a set or determinable amount of support
 8 money.

9 (6) "Earnings" means compensation paid or payable for
 10 personal services, whether denominated as wages, salary,
 11 commission, bonus, or otherwise, and specifically includes
 12 periodic payments under pension or retirement programs or
 13 insurance policies of any type. "Earnings" specifically
 14 includes all gain derived from capital, labor, or both
 15 combined, including profit gained through sale or conversion
 16 of capital assets.

17 (7) "Need" means the necessary costs of food,
 18 clothing, shelter, and medical care for the support of a
 19 dependent child or children.

20 (8) "Public assistance" means any type of monetary or
 21 other assistance, including medical and foster care
 22 benefits, furnished to a person by a state or county agency,
 23 regardless of the original source of the assistance.

24 (9) "Responsible parent" means the natural or adoptive
 25 parent of a dependent child.

1 (10) "Support debt" or "support obligation" means:

2 (a) the sum created by the failure to provide support
3 to a dependent child under the laws of this state or the
4 decree of any court of appropriate jurisdiction ordering a
5 sum to be paid as child support; or

6 (b) the sum created by a decree or order of any court
7 of appropriate jurisdiction ordering a sum to be paid as
8 spousal maintenance under chapter 4, part 2, of this title
9 when the judgment or order requiring payment of maintenance
10 also contains a judgment or order requiring payment of child
11 support for a child of whom the person awarded maintenance
12 is the custodial parent."

13 Section 2. Section 40-5-202, MCA, is amended to read:

14 "40-5-202. Department of revenue -- powers and duties
15 regarding collection of support debt. (1) Whenever the
16 department of social and rehabilitation services receives an
17 application for public assistance on behalf of a child and
18 it appears to the satisfaction of that department that the
19 child has been abandoned by his parents; the child and one
20 parent have been abandoned by the other parent; or the
21 parent or other person who has a responsibility for the
22 care, support, or maintenance of such child has failed or
23 neglected to give proper care or support to the child, the
24 department of social and rehabilitation services shall
25 promptly refer the matter to the department of revenue for

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

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

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

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

25 (5) No agreement between any obligee and any obligor

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

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

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

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

1 caretaker of the children.

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

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

9 Section 3. Section 40-5-203, MCA, is amended to read:

10 "40-5-203. Support enforcement services. (1) The
 11 department may accept applications for support enforcement
 12 services on behalf of persons who are not recipients of
 13 public assistance and may take appropriate action to
 14 establish or enforce support obligations against persons
 15 owing a duty to pay support.

16 (2) The department may establish by rule reasonable
 17 standards necessary to limit applications for support
 18 enforcement services. These standards shall take into
 19 account the earnings, income, and other resources already
 20 available to support the person for whom a support
 21 obligation exists.

22 (3) The department may charge a fee as compensation
 23 for services rendered in establishment of or enforcement of
 24 support obligations. This fee shall be agreed on in writing
 25 with the custodial parent when departmental enforcement is

1 authorized by [section 5], or the parent, custodian, or
 2 guardian of the person for whom a support obligation is owed
 3 or that person if no parent, custodian, or guardian exists.
 4 An initiation fee as a portion of the collection fee may be
 5 charged the applicant by the department. The department
 6 shall by rule establish reasonable fees for support
 7 enforcement services, and the schedule of fees shall be made
 8 available to all applicants for support enforcement
 9 services. The department may, upon a showing of necessity,
 10 waive or defer any such fee."

11 Section 4. 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 or former spouse which the department
 15 determines uncollectible may be transferred from accounts
 16 receivable to a suspense account and cease to be accounted
 17 as an asset. In the event a warrant for distraint has been
 18 filed and the support debt has subsequently been charged off
 19 as uncollectible, the department shall issue a release of
 20 lien. At any time after 6 years from the date a support debt
 21 was incurred, the department may charge off as uncollectible
 22 any 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 for distraint filed with the clerk of court prior to
 4 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 NEW SECTION. Section 5. Department authorized to
 8 enforce maintenance awards. When a judgment or order
 9 creating a child support obligation also contains a judgment
 10 or order for the support of a former spouse and the former
 11 spouse is the custodial parent of the child, the department
 12 may collect and enforce spousal support under this part.

13 NEW SECTION. Section 6. Codification instruction.
 14 Section 5 is intended to be codified as an integral part of
 15 Title 40, chapter 5, part 2, and the provisions of Title 40,
 16 chapter 5, part 2, apply to section 5.

17 NEW SECTION. Section 7. Extension of authority. Any
 18 existing authority of the department of revenue to make
 19 rules on the subject of the provisions of this act is
 20 extended to the provisions of this act.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2

March 28 19. 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 440

third reading copy (blue color)

(Senator Pinsoneault)

ENFORCEMENT OF SPOUSAL SUPPORT BY DEPARTMENT OF REVENUE

Respectfully report as follows: That HOUSE BILL No. 440

be amended as follows:

- 1. Title, lines 11 and 12. Following: "40-5-201" on line 11 Strike: remainder of line 11 through "40-5-203" on line 12 Insert: ", 40-5-202,"
2. Page 5, line 22. Following: "to" Insert: ": (a) the lesser of"
3. Page 5, line 24. Following: line 23 Insert: ", of the responsible parent, or the amount of support contained in the court order;" Following: "and" Insert: "(b)"
4. Page 6, line 9 through page 7, line 10. Strike: section 3 in its entirety Renumber: subsequent sections

XXXXXX

XXXXXXXXXX

CONTINUED

Chairman.

Page 2 of 2

HOUSE BILL NO. 440

5. Page 8, line 14. Following: "Section" Strike: "5" Insert: "4"

6. Page 8, line 16. Following: "section" Strike: "5" Insert: "4"

AND AS AMENDED

BE CONCURRED IN

Senator Joe Mazurek, Chairman

HOUSE BILL NO. 440

INTRODUCED BY J. BROWN, BERGENE, CHRISTIAENS

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE DEPARTMENT OF REVENUE TO ENFORCE MAINTENANCE AWARDS TO CUSTODIAL PARENTS OF CHILDREN WHOSE SUPPORT IS BEING ENFORCED BY THE DEPARTMENT; PROVIDING THAT THE DEPARTMENT IS SUBROGATED TO THE AMOUNT OF PUBLIC ASSISTANCE PAID TO OR FOR THE BENEFIT OF A CHILD AND HIS CARETAKER UP TO THE AMOUNT OF THE SUPPORT AWARD; AMENDING SECTIONS 40-5-201, THROUGH 40-5-203 40-5-202, AND 40-5-255, MCA."

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

Section 1. Section 40-5-201, MCA, is amended to read:

"40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Child" or "dependent child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(2) "Department" means the department of revenue.

(3) "Director" means the director of the department of revenue or his authorized representative.

(4) "Disposable earnings" means that part of the

earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(5) "District court order" means any judgment or order of the district court of the state of Montana or an order of a court of appropriate jurisdiction of another state ordering payment of a set or determinable amount of support money.

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments under pension or retirement programs or insurance policies of any type. "Earnings" specifically includes all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

(8) "Public assistance" means any type of monetary or other assistance, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance.

(9) "Responsible parent" means the natural or adoptive parent of a dependent child.

REFERENCE BILL



1 (10) "Support debt" or "support obligation" means:

2 (a) the sum created by the failure to provide support
3 to a dependent child under the laws of this state or the
4 decree of any court of appropriate jurisdiction ordering a
5 sum to be paid as child support; or

6 (b) the sum created by a decree or order of any court
7 of appropriate jurisdiction ordering a sum to be paid as
8 spousal maintenance under chapter 4, part 2, of this title
9 when the judgment or order requiring payment of maintenance
10 also contains a judgment or order requiring payment of child
11 support for a child of whom the person awarded maintenance
12 is the custodial parent."

13 Section 2. Section 40-5-202, MCA, is amended to read:

14 "40-5-202. Department of revenue -- powers and duties
15 regarding collection of support debt. (1) Whenever the
16 department of social and rehabilitation services receives an
17 application for public assistance on behalf of a child and
18 it appears to the satisfaction of that department that the
19 child has been abandoned by his parents; the child and one
20 parent have been abandoned by the other parent; or the
21 parent or other person who has a responsibility for the
22 care, support, or maintenance of such child has failed or
23 neglected to give proper care or support to the child, the
24 department of social and rehabilitation services shall
25 promptly refer the matter to the department of revenue for

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

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

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

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

25 (5) No agreement between any obligee and any obligor

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

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

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

16 (8) If a district court orders an amount of support to
17 be paid by a responsible parent, the department shall be
18 subrogated to the debt created by the order and the money
19 judgment shall be determined to be in favor of the
20 department. This subrogation ~~shall apply to temporary spouse~~
21 ~~support orders and family maintenance orders up~~ applies both
22 to:

23 (A) THE LESSER OF the amount paid by the department in
24 public assistance money to or for the benefit of a dependent
25 child or children OF THE RESPONSIBLE PARENT OR THE AMOUNT OF

1 SUPPORT CONTAINED IN THE COURT ORDER; but and

2 (B) to any amount allocated to the benefit of the
3 children on the basis of providing necessities for the
4 caretaker of the children.

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

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

12 ~~Section 3--Section 40-5-203, MCA, is amended to read:~~
13 ~~"40-5-203--Support--enforcement--services--(1)--The~~
14 ~~department--may--accept--applications--for--support--enforcement~~
15 ~~services--on--behalf--of--persons--who--are--not--recipients--of~~
16 ~~public--assistance--and--may--take--appropriate--action--to~~
17 ~~establish--or--enforce--support--obligations--against--persons~~
18 ~~owing--a--duty--to--pay--support.~~

19 ~~(2)--The--department--may--establish--by--rule--reasonable~~
20 ~~standards--necessary--to--limit--applications--for--support~~
21 ~~enforcement--services.--These--standards--shall--take--into~~
22 ~~account--the--earnings,--income,--and--other--resources--already~~
23 ~~available--to--support--the--person--for--whom--a--support~~
24 ~~obligation--exists.~~

25 ~~(3)--The--department--may--charge--a--fee--as--compensation~~

1 for services rendered in establishment of or enforcement of
 2 support obligations. This fee shall be agreed on in writing
 3 with ~~the custodial parent when departmental enforcement is~~
 4 ~~authorized by {section 5}, or~~ the parent, custodian, or
 5 guardian of the person for whom a support obligation is owed
 6 or that person if no parent, custodian, or guardian exists.
 7 An initiation fee as a portion of the collection fee may be
 8 charged the applicant by the department. The department
 9 shall by rule establish reasonable fees for support
 10 enforcement services, and the schedule of fees shall be made
 11 available to all applicants for support enforcement
 12 services. The department may, upon a showing of necessity,
 13 waive or defer any such fee."

14 Section 3. Section 40-5-255, MCA, is amended to read:
 15 "40-5-255. Charging off child support debts as
 16 uncollectible. Any support debt due the department from a
 17 responsible parent or former spouse which the department
 18 determines uncollectible may be transferred from accounts
 19 receivable to a suspense account and cease to be accounted
 20 as an asset. In the event a warrant for distraint has been
 21 filed and the support debt has subsequently been charged off
 22 as uncollectible, the department shall issue a release of
 23 lien. At any time after 6 years from the date a support debt
 24 was incurred, the department may charge off as uncollectible
 25 any support debt upon which the department finds there is no

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

10 NEW SECTION. Section 4. Department authorized to
 11 enforce maintenance awards. When a judgment or order
 12 creating a child support obligation also contains a judgment
 13 or order for the support of a former spouse and the former
 14 spouse is the custodial parent of the child, the department
 15 may collect and enforce spousal support under this part.

16 NEW SECTION. Section 5. Codification instruction.
 17 Section 5 4 is intended to be codified as an integral part
 18 of Title 40, chapter 5, part 2, and the provisions of Title
 19 40, chapter 5, part 2, apply to section 5 4.

20 NEW SECTION. Section 6. Extension of authority. Any
 21 existing authority of the department of revenue to make
 22 rules on the subject of the provisions of this act is
 23 extended to the provisions of this act.

-End-